

UNVEILING THE SILENCED SUFFERING OF WOMEN IN AFGHANISTAN: A MULTI-DIMENSIONAL ANALYSIS

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Abstract

Based on Islamic teachings, there is no religious justification for denying women and girls their right to education. Islam promotes inclusivity and women's empowerment through education, while the hijab should not restrict access to education or societal participation. The government must uphold the rights of women and girls, including their right to education, to create an inclusive society. Supporting women's education aligns with Islamic principles and is crucial for societal progress and development. Educated women contribute to positive change and the well-being of their communities. The state should ensure equal access to education for women and girls, aligning with Islam and fostering a prosperous and inclusive society in Afghanistan.

Keywords: *Women's education, religious justification, inclusivity, women empowerment.*

PROLOGUE

The denial of women and girls' right to education in Afghanistan is deeply concerning and represents a significant setback for human rights and gender equality. During the conflict first, they implemented a series of oppressive policies that severely restricted the rights and freedoms of Afghan women and girls.¹⁵⁴ One of the most egregious violations was the complete ban on girls' education.¹⁵⁵ Girls were not allowed to attend schools, and women were denied the opportunity to pursue higher education or professional careers. This denial of education had a devastating impact on the lives and prospects of Afghan women and girls, limiting their personal development, independence, and access to opportunities. Tragically, after the

Taliban's return to power in 2021, reports and evidence began to emerge indicating a disturbingly similar situation.¹⁵⁶ Girls beyond puberty were once again being denied their right to education in certain areas under Taliban control. This denial was justified by the Taliban as a temporary measure while they claimed to restructure the education system. However, such temporary measures can have long-lasting consequences for the lives and futures of the affected girls and women. Education is a fundamental human right enshrined in various international declarations and conventions. The Universal Declaration of Human Rights, for example, affirms the right to education without any discrimination based on gender.¹⁵⁷ Denying girls' education not only

¹⁵⁴ Female Education in Afghanistan After the Return of the Taliban, <https://www.e-ir.info/2022/04/23/female-education-in-afghanistan-after-the-return-of-the-taliban/> (last visited Jun 30, 2023).

¹⁵⁵ Ayelet Shachar, *Religion, State, and the Problem of Gender: New Modes of Citizenship and Governance in Diverse Societies*, 50 MCGILL LAW J. 49 (2005).

¹⁵⁶ Sayed Quadrat Hashimy, *Recognition And Legitimacy of the Taliban Government: A Conundrum in International Law*, (2023), <https://papers.ssrn.com/abstract=4150964> (last visited Jun 30, 2023).

¹⁵⁷ Grant Farr, *Female Education in Afghanistan After the Return of the Taliban*, E-INTERNATIONAL RELATIONS (2022), <https://www.e-ir.info/2022/04/23/female-education-in-afghanistan-after-the-return-of-the-taliban/>

violates their individual rights but also hampers the overall progress and development of society. Access to education is crucial for the empowerment and advancement of women and girls.¹⁵⁸ It enhances their knowledge, skills, and abilities, enabling them to actively participate in society, contribute to the economy, and shape their own destinies. Education has a transformative effect on individuals and communities, leading to improved health, reduced poverty, and increased gender equality.

The international community has consistently emphasized the importance of ensuring equal access to education for all individuals, irrespective of gender.¹⁵⁹ Numerous organizations, governments, and advocates have worked tirelessly to promote and protect the right to education for women and girls in Afghanistan and around the world.¹⁶⁰ They recognize that investing in girls' education is not only a matter of human rights but also a crucial strategy for sustainable development, peace, and prosperity. Efforts are underway to support initiatives that aim to break down the barriers and challenges that hinder girls' education. These include advocating for policy changes, providing financial assistance, promoting gender-sensitive curricula, and creating safe and inclusive learning environments. By addressing the root causes of gender inequality and investing in girls' education, we can contribute to building a more equitable and just society.¹⁶¹

It is important to address the issue of women's rights and education within the context of

Afghanistan's Islamic values. While it is true that Afghanistan is an Islamic country where the majority of its population adheres to Islam, it is crucial to emphasize that Islamic teachings, as found in the Quran and Hadith, support and uphold the rights of women, including their right to education.¹⁶² Islam places a strong emphasis on seeking knowledge and acquiring education for both men and women.¹⁶³ The Quran highlights the importance of education, urging Muslims to seek knowledge and reflect upon the signs of God in the universe. Prophet Muhammad (peace be upon him) also emphasized the significance of education and encouraged both men and women to pursue knowledge. Therefore, based on Islamic teachings, there should be no religious or theological justification for denying women and girls their right to education. Islam does not mandate restrictions on women's education or hinder their intellectual development. On the contrary, it promotes inclusivity and the empowerment of women through education. While it is true that wearing the hijab is an important aspect of Islamic practice for many Afghan women, it is essential to note that wearing the hijab does not in any way conflict with women's right to education.¹⁶⁴ The hijab is a personal choice and an expression of religious belief and modesty. It should not be used as a tool to limit women's access to education or participation in society.

The government as the ruling authority in Afghanistan, has a responsibility to uphold the rights and dignity of all Afghan citizens, including women and girls. It is imperative that the government respects and protects the rights of women and girls, including their right to education.¹⁶⁵ By doing so, they can contribute to creating a society where every individual has

ir.info/2022/04/23/female-education-in-afghanistan-after-the-return-of-the-taliban/ (last visited Jun 30, 2023).

¹⁵⁸ Afghanistan: Girls Struggle for an Education, HUMAN RIGHTS WATCH (2017), <https://www.hrw.org/news/2017/10/17/afghanistan-girls-struggle-education> (last visited Jun 30, 2023).

¹⁵⁹ Dina Hadid, *Taliban begins to enforce education ban, leaving Afghan women with tears and anger*, NPR, Dec. 21, 2022, <https://www.npr.org/sections/goatsandsoda/2022/12/21/1144703393/taliban-begins-to-enforce-education-ban-leaving-afghan-women-with-tears-and-anger> (last visited Jun 30, 2023).

¹⁶⁰ Afghan girls and women made focus of International Education Day: UNESCO | UN News, (2023), <https://news.un.org/en/story/2023/01/1132637> (last visited Jun 30, 2023).

¹⁶¹ Benjamin G. Bishin & Feryal M. Cherif, *Women, Property Rights, and Islam*, 49 COMP. POLIT. 501 (2017).

¹⁶² The hijab ban threatens Muslim women's access to education - Frontline, <https://frontline.thehindu.com/cover-story/the-hijab-ban-threatens-muslim-womens-access-to-education/article38431141.ece> (last visited Jul 1, 2023).

¹⁶³ Major Sources of Islam | The Basics to Islam, <https://sites.udel.edu/msadelaware/major-sources-of-islam/> (last visited Jul 1, 2023).

¹⁶⁴ The hijab ban threatens Muslim women's access to education - Frontline, *supra* note 13.

¹⁶⁵ Major Sources of Islam | The Basics to Islam, *supra* note 14.

the opportunity to learn, grow, and reach their full potential, regardless of their gender.¹⁶⁶

Supporting and promoting women's education is not only aligned with Islamic principles but also crucial for the progress and development of any society. Educated women play vital roles in various spheres, including academia, healthcare, politics, and the economy. They become agents of positive change and contribute to the overall well-being and advancement of their communities. Henceforth, it is essential to emphasize that Islam supports the rights of women, including their right to education. The government in Afghanistan should uphold these rights and ensure that women and girls have equal access to education. By doing so, they can align themselves with Islamic teachings and contribute to the creation of a prosperous and inclusive society for all Afghans, irrespective of their gender.

FEMALE EDUCATION RIGHT UNDER ISLAMIC JURISPRUDENCE

Education is crucial for societal progress, and denying women their right to education raises concerns among human rights activists. While Islam is sometimes portrayed as a barrier to women's advancement, such restrictions stem from cultural practices and societal norms, not from the religion itself.¹⁶⁷ Islam emphasizes the importance of knowledge, and throughout history, there have been educated and influential women. Efforts are underway within the Muslim community to address these disparities and promote equal access to education for women, aligning with the principles of Islam.¹⁶⁸

In Islam, the right to education is considered fundamental for both men and women. Islamic teachings emphasize the importance of seeking knowledge and acquiring education as a

lifelong pursuit. The Prophet Muhammad (peace be upon him) encouraged Muslims, regardless of gender, to seek knowledge and learn throughout their lives. Islam promotes the concept of equal access to education for all individuals, regardless of their gender. There are several verses in the Quran and teachings of the Prophet Muhammad that highlight the significance of education and its benefits for both men and women. These teachings emphasize the responsibility of parents and society to provide educational opportunities for their children, regardless of their gender.¹⁶⁹

One of the most well-known sayings of the Prophet Muhammad is, "Seeking knowledge is obligatory for every Muslim." This statement applies to both men and women, indicating that education is a duty and right for all Muslims. Islamic history also showcases numerous examples of highly educated and influential women who made significant contributions in various fields. For instance, during the time of the Prophet Muhammad, women were active participants in seeking knowledge, engaging in discussions, and acquiring expertise in various disciplines. However, it is important to note that cultural practices and societal norms can sometimes restrict or limit women's access to education in certain regions or communities. Such limitations are not in accordance with the teachings of Islam but are influenced by cultural factors. The Quran places a strong emphasis on seeking knowledge and encourages Muslims to reflect, ponder, and explore the signs of God's creation. This pursuit of knowledge is considered a means to develop a deeper understanding of the world and one's place in it. Education is seen as a means to strengthen faith, acquire wisdom, and contribute positively to society. Here are a few verses from the Quran that highlight the significance of education: "Read! In the name of your Lord who created: He created man from a

¹⁶⁶ Islam Doesn't Deny Women Education, So Why Does the Taliban?, <https://en.vogue.me/culture/afghanistan-taliban-women-school-ban/> (last visited Jul 1, 2023).

¹⁶⁷ Bishin and Cherif, *supra* note 12.

¹⁶⁸ Shifts in Social Norms Often Underpin Change | How Change Happens | Oxford Academic, <https://academic.oup.com/book/10072/chapter/157524416> (last visited Jul 1, 2023).

¹⁶⁹ Cindy Juliana, *Ratification of the Declaration of the Rights of the Indonesian Child as an Implementation of Cosmopolitanism*, MODERN DIPLOMACY (2023), <https://modern diplomacy.eu/2023/06/30/ratification-of-the-declaration-of-the-rights-of-the-indonesian-child-as-an-implementation-of-cosmopolitanism/> (last visited Jul 1, 2023).

clinging substance. Read! And your Lord is the Most Generous, who taught by the pen, taught man that which he knew not." ¹⁷⁰ Are those who know equal to those who do not know? Only they will remember [who are] people of understanding."¹⁷¹

These verses emphasize the importance of seeking knowledge and understanding as a means to differentiate oneself and develop a deeper appreciation of God's creation. The teachings of Prophet Muhammad also emphasize the significance of education for both men and women. He is reported to have said, "Seeking knowledge is obligatory upon every Muslim" and "The ink of the scholar is more sacred than the blood of the martyr."¹⁷² These teachings highlight the value and importance of acquiring knowledge in Islam. In the early Islamic era, women were active participants in seeking knowledge and education. There were prominent female scholars and teachers who made significant contributions in various fields of knowledge.

The significance and value of knowledge are explicitly and implicitly emphasized in more than five hundred instances within the Holy Qur'an. As part of their role, Prophets were entrusted with the task of spreading knowledge and wisdom to humanity. Allah Almighty expresses this concept by stating:

commanding selves) and teaches you the Book and inculcates in you logic and wisdom and enlightens you (on the mysteries of spiritual gnosis and divine truth) which you did not know.

¹⁷³

He is the One Who sent a (Glorious) Messenger (blessings and peace be upon him) amongst the illiterate people from amongst themselves who recites to them His Revelations and cleanses and purifies them (outwardly and inwardly) and teaches them the Book and wisdom. Indeed, they were in open error before (his most welcome arrival).¹⁷⁴

هُوَ الَّذِي بَعَثَ فِي الْأُمِّيِّينَ رَسُولًا مِنْهُمْ يَتْلُوا عَلَيْهِمْ آيَاتِهِ وَيُزَكِّيهِمْ وَيُعَلِّمُهُمُ الْكِتَابَ وَالْحِكْمَةَ وَإِنْ كَانُوا مِنْ قَبْلُ لَفِي ضَلَالٍ مُبِينٍ

Say: 'Can those who have knowledge and those who do not be alike?' So only the wise do receive the admonition.¹⁷⁵

قُلْ هَلْ يَسْتَوِي الَّذِينَ يَعْلَمُونَ وَالَّذِينَ لَا يَعْلَمُونَ إِنَّمَا يَتَذَكَّرُ أُولُو الْأَلْبَابِ

So only those of His servants who have knowledge (of these realities with a vision and outlook) fear Him. Surely, Allah is Almighty, Most Forgiving.¹⁷⁶

إِنَّمَا يَخْشَى اللَّهَ مِنْ عِبَادِهِ الْعُلَمَاءُ إِنَّ اللَّهَ عَزِيزٌ غَفُورٌ

Acquisition of knowledge is binding on all Muslims (both men and women) without any discrimination).¹⁷⁷

طَلَبُ الْعِلْمِ فَرِيضَةٌ عَلَى كُلِّ مُسْلِمٍ

| English Translation | Quran Verses |
|---|--|
| Likewise, We have sent you (Our) Messenger (blessings and peace be upon him) from amongst yourselves who recites to you Our Revelations and purifies and sanctifies (your hearts and ill- | كَمَا أَرْسَلْنَا فِيكُمْ رَسُولًا مِنْكُمْ يَتْلُوا عَلَيْكُمْ آيَاتِنَا وَيُزَكِّيكُمْ وَيُعَلِّمُكُمُ الْكِتَابَ وَالْحِكْمَةَ وَيُعَلِّمُكُم مَّا لَمْ تَكُونُوا تَعْلَمُونَ |

¹⁷⁰ (Quran 96:1-5)

¹⁷¹ (Quran 39:9).

¹⁷² Importance of Girls' Education as Right: A Legal Study from Islamic Approach, <https://www.scirp.org/journal/paperinformation.aspx?paperid=62544> (last visited Jul 1, 2023).

¹⁷³ [al-Baqara, 2:151.]

¹⁷⁴ [al-Jumu'a, 62:2.]

¹⁷⁵ [al-Zumar, 39:9.]

¹⁷⁶ [Fatir, 35:28.]

¹⁷⁷ [Narrated by Ibn Maja in al-Sunan, 1:81 §224.]

| | | | |
|---|---|--|--|
| <p>Acquire knowledge even if you may have to go to China for it.¹⁷⁸</p> | <p>أَطْلُبُوا الْعِلْمَ وَلَوْ بِالصِّينِ</p> | <p>and may not be hurt (considered by mistake as roving slave girls). And Allah is Most Forgiving, Ever-Merciful.¹⁸²</p> | |
| <p>Allah Almighty makes the path to paradise easier for him who walks on it for getting knowledge.¹⁷⁹</p> | <p>مَنْ سَلَكَ طَرِيقًا يَلْتَمِسُ فِيهِ عِلْمًا سَهَّلَ اللَّهُ لَهُ بِهِ طَرِيقًا إِلَى الْجَنَّةِ</p> | <p>WOMEN'S RIGHT TO EDUCATION UNDER INTERNATIONAL LAWS</p> | |
| <p>(O Beloved!) Read (commencing) with the Name of Allah, Who has created (everything). He created man from a hanging mass (clinging) like a leech (to the mother's womb). Read, and your Lord is Most Generous, Who taught man (reading and writing) by the pen, Who (besides that) taught man (all that) which he did not know.¹⁸⁰</p> | <p>أَقْرَأْ بِاسْمِ رَبِّكَ الَّذِي خَلَقَ الْإِنْسَانَ مِنْ عَلَقٍ. أَلَمْ يَكُنْ الْأَكْرَمُ الَّذِي عَلَّمَ بِالْقَلَمِ. عَلَّمَ الْإِنْسَانَ مَا لَمْ يَعْلَمْ</p> | <p>Under international law, the right to education is recognized as a fundamental human right for all individuals, regardless of gender.¹⁸³ Women have the same rights as men to access and pursue education. Several international human rights instruments explicitly protect and promote the right to education, including</p> | |
| <p>And direct the believing women that they (too) must keep their eyes lowered and guard their chastity, and must not show off their adornments and beautification except that (part of it) which becomes visible itself.¹⁸¹</p> | <p>وَقُلْ لِلْمُؤْمِنَاتِ يَعْضُرْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا</p> | <p>Universal Declaration of Human Rights</p> | |
| <p>O Prophet! Say to your wives, your daughters and the women of believers that, (whilst going out,) they should draw their veils as coverings over them. It is more likely that this way they may be recognized (as pious, free women),</p> | <p>يَا أَيُّهَا النَّبِيُّ قُلْ لَأَزْوَاجِكَ وَبَنَاتِكَ وَنِسَاءِ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ مِنْ جَلَابِيبِهِنَّ ذَلِكَ أَدْنَى أَنْ يُعْرَفْنَ فَلَا يُؤْذَيْنَ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا</p> | <p>Article 26 of the UDHR states that "everyone has the right to education" and that education shall be directed to the full development of the human personality and the promotion of understanding, tolerance, and equality.¹⁸⁴ The ICESCR reinforces this right by recognizing the right to education as a fundamental right and calling for free and compulsory primary education, equal access to higher education, and the progressive realization of accessible and quality education for all.</p> | |
| | | <p>International Covenant on Economic, Social and Cultural Rights</p> | |
| | | <p>Article 10 of ICES stipulates that: the States' Parties to the present Covenant recognize that:</p> | |
| | | <p>The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered</p> | |

¹⁷⁸ [Narrated by al-Bazzar in al-Musnad, 1:175 §95.]

¹⁷⁹ [Narrated by Muslim in al-Sahih, 4:2074 §2699.]

¹⁸⁰ [al-'Alaq, 96:1-5.]

¹⁸¹ [al-Nur, 24:31.]

¹⁸² [12 al-Ahزاب, 33:59.]

¹⁸³ Prof (Dr) M. Suresh Benjamin & Sayed Qudrat Hashimy, *The Fourth World Tussle for Recognition of Rights under International Law: A cursory Glance*, (2023), <https://papers.ssrn.com/abstract=4487709> (last visited Jun 30, 2023).

¹⁸⁴ Article 26 of The Universal Declaration of Human Rights, <https://www.humanrights.com/course/lesson/articles-26-30/read-article-26.html> (last visited Jun 30, 2023).

into with the free consent of the intending spouses.

Article 13 states that:

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) *Primary education shall be compulsory and available free to all;*

(b) *Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;*

(c) *Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;*

(d) *Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;*

(e) *The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.*

3. The States Parties to the present Covenant undertake to have respect for the liberty of

parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the state and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the state.

Article 14 stipulates that each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.¹⁸⁵

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Article 10 of CEDAW recognizes the right of women to education on an equal basis with men. It calls for eliminating discrimination against women in education and ensuring equal access to educational opportunities.¹⁸⁶ States parties are required to take measures to eliminate gender stereotypes, ensure the same conditions for career guidance, scholarships, and vocational training, and promote women's

¹⁸⁵ Richard, *International Covenant on Economic, Social and Cultural Rights, TACKLING VIOLENCE AGAINST WOMEN* (2016), <https://blogs.lse.ac.uk/vaw/int/treaty-bodies/international-covenant-on-economic-social-and-cultural-rights/> (last visited Jun 30, 2023).

¹⁸⁶ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) for Youth, UN WOMEN – HEADQUARTERS, <https://www.unwomen.org/en/digital-library/publications/2016/12/cedaw-for-youth> (last visited Jun 30, 2023).

access to continuing education and professional advancement. Furthermore, the

United Nations Sustainable Development Goals (SDGs)

Goal 4, aims to ensure inclusive and quality education for all. This goal explicitly highlights the need to promote gender equality and ensure equal access to education for girls and women.

WOMEN'S EDUCATION UNDER THE DOMESTIC LAW

CONSTITUTION 2004

Constitution 2004 stipulates that:

- i. The state shall adopt necessary measures to foster education at all levels (Art. 17)
- ii. Education is the right of all citizens of Afghanistan, which shall be offered up to the B.A. level in the state educational institutes free of charge by the state. To expand balanced education as well as to provide mandatory intermediate education throughout Afghanistan, the state shall design and implement effective programs and prepare the ground for teaching mother tongues in areas where they are spoken. (Art. 43)
- iii. The state shall devise and implement effective programs to create and foster balanced education for women, improve the education of nomads as well as eliminate illiteracy in the country. (Art. 44)
- iv. The state shall devise and implement a unified educational curricula based on the tenets of the sacred religion of Islam, national culture as well as academic principles, and develop religious subjects curricula for schools on the basis of existing Islamic sects in Afghanistan. (Art. 4)
- v. Establishing and administering higher, general and specialized educational institutions shall be the duty of the state. ... Admission terms to higher educational institutes of the state and other related matters shall be regulated by law. (Art. 46)

CONSTITUTION 1964

Article 34 directs that:

- a) Education is the right of every Afghan and shall be provided free of charge by the state and the citizens of Afghanistan. The aim of the state in this sphere is to reach a stage where suitable facilities for education will be made available to all Afghans, in accordance with the provisions of the law. The government is obliged to prepare and implement a program for balanced and universal education in Afghanistan. It is the duty of the state to guide and supervise education.
- b) Primary education is compulsory for all children in areas where facilities for this purpose are provided by the state.
- c) The state alone has the right and duty to establish and administer the institutions of public and higher learning. Outside this sphere, Afghan nationals are entitled to establish technical and literacy schools. Conditions for the establishment of such schools, their curricula and the conditions of learning in such schools are to be determined by law.
- d) The government may grant permission, in accordance with the provisions of the law, to foreign persons to establish private schools for the exclusive use of foreigners.

CONSTITUTION 1923

Art. 14 Constitution 1923¹⁸⁷ – Every subject of Afghanistan has the right to an education at no cost and in accordance with the appropriate curriculum. Foreigners are not permitted to operate schools in Afghanistan but are not barred from being employed as teachers.

Art. 15 of – All schools in Afghanistan are under the control, supervision, and inspection of the government which is charged with developing the scientific and national education of all citizens on the basis of unity and discipline but the methods and teaching of the beliefs and

¹⁸⁷ THE CONSTITUTION OF AFGHANISTAN APRIL 9, 1923, 19, <http://www.dircost.unito.it/cs/docs/AFGHANISTAN%201923.htm> (last visited May 11, 2023).

religions of protected and refugee subjects (hindus and jews) shall not be interfered with.

Art. 42 – The state and local councils in addition to those duties prescribed in the basic organization law will:

- a) make suggestions to the government for the improvement of industry, commerce, agriculture, and education
- b) petition the government regarding any irregularities in matters of taxation or general government administration with a view to demanding remedial action (see appendix b)
- c) complain to the government regarding any violations of the basic rights conferred upon the people by this constitution.

Art. 68 – Elementary education is compulsory for all citizens of Afghanistan. The various curricula and branches of knowledge are detailed in a special law and they will be implemented.

SILENCED SUFFERING OF AFGHAN WOMEN

The victimology of Afghan women is a complex and distressing topic. For decades, Afghan women have faced numerous challenges and violations of their human rights, often resulting in victimization. It is important to note that the following information is based on patterns and trends observed prior to my knowledge cutoff in September 2021, and the situation may have evolved since then.

Gender-Based Violence

Afghan women have been subjected to various forms of gender-based violence, including domestic violence, forced marriages, honor killings, sexual assault, and rape. These acts of violence are often perpetrated by family members, community members, armed groups, or even strangers. Such violence can have severe physical, psychological, and social consequences for the victims.¹⁸⁸

¹⁸⁸ UNFPA Afghanistan | Gender-based Violence, <https://afghanistan.unfpa.org/en/node/15232> (last visited Jun 30, 2023).

Limited Access to Education

Historically, Afghan women have faced significant barriers to education, particularly under Taliban rule. Girls' schools were often targeted, and women were prevented from pursuing higher education and professional careers.¹⁸⁹ This restriction limited their opportunities for personal development, empowerment, and economic independence.

Forced and Child Marriages

Forced and child marriages have been prevalent in Afghanistan, particularly in rural and conservative areas.¹⁹⁰ Young girls, sometimes as young as 10 or 11, are married off without their consent, often to much older men. These marriages often result in limited education, early pregnancies, and increased vulnerability to domestic violence.

Reproductive Health Challenges

Afghan women face numerous challenges related to reproductive health, including limited access to healthcare services, high maternal mortality rates, lack of family planning resources, and cultural barriers that restrict discussions around reproductive health.¹⁹¹ These factors contribute to increased health risks and limited agency over their own bodies and reproductive choices.

Restrictions on Freedom and Mobility

Afghan women have historically faced significant restrictions on their freedom of movement and participation in public life.¹⁹² This includes limitations on their ability to work, engage in social activities, and travel independently. These restrictions severely limit

¹⁸⁹ Protecting education in Afghanistan | UNESCO, <https://www.unesco.org/en/emergencies/education/afghanistan> (last visited Jun 30, 2023).

¹⁹⁰ Girls increasingly at risk of child marriage in Afghanistan, <https://www.unicef.org/press-releases/girls-increasingly-risk-child-marriage-afghanistan> (last visited Jun 30, 2023).

¹⁹¹ Sayed Quadrat Hashimy, *The Legal Paradigm of Menstrual Leaves Policy in the United Arab Emirates, Kuwait, and Afghanistan*, (2023), <https://papers.ssrn.com/abstract=4383912> (last visited Jun 30, 2023).

¹⁹² Women Literally Being Erased from Public Life in Afghanistan, Speaker Tells Security Council, Sounding Alarm over Country's Dire Situation | UN Press, <https://press.un.org/en/2022/sc15153.doc.htm> (last visited Jun 30, 2023).

their autonomy and contribute to their vulnerability.

Displacement and Refugees

Afghan women have been disproportionately affected by conflict and displacement. The ongoing conflict in Afghanistan has forced many women and their families to become internally displaced persons or seek refuge in neighboring countries. This displacement often exposes them to further risks, including exploitation, violence, and limited access to essential services.

Lack of Legal Protection

Despite some progress in recent years, Afghan women continue to face legal barriers and limited protection.¹⁹³ Laws and cultural norms that discriminate against women, lack of enforcement mechanisms, and weak judicial systems contribute to a climate where women's rights violations often go unpunished. It is essential to recognize that the experiences and circumstances of Afghan women are diverse and can vary based on factors such as ethnicity, socioeconomic status, geographic location, and individual agency. The situation in Afghanistan remains fluid, and recent political developments may have further impacted the victimology of Afghan women.

VICTIMOLOGY OF AFGHAN DISABLED WOMEN

The victimology of Afghan disabled women adds an additional layer of vulnerability and challenges to their lives.¹⁹⁴ Afghan disabled women often face intersecting forms of discrimination and marginalization due to their gender, disability, and the social context in which they live. While my knowledge is based on information available up to September 2021, it is important to note that the situation may have evolved since then.

¹⁹³ Sayed Qudrat Hashimy, *The Agonizing Narrative of Environmental Dilapidation in the Tussle of Armed Conflict; from the Lens of International Humanitarian Law*, (2023), <https://papers.ssrn.com/abstract=4383907> (last visited Jun 30, 2023).

¹⁹⁴ Sayed Qudrat Hashimy, *Mapping the Paradigm of Disabilities in Afghanistan from the Lens of Law and Policy*, (2023), <https://papers.ssrn.com/abstract=4383888> (last visited Jun 30, 2023).

Limited Access to Healthcare

Disabled women in Afghanistan face significant barriers in accessing adequate healthcare services.¹⁹⁵ These barriers can include physical inaccessibility of healthcare facilities, lack of specialized medical services, and societal stigma that further isolates and discriminates against disabled women.¹⁹⁶ As a result, their health needs often go unmet, exacerbating their vulnerabilities.

Social Stigma and Discrimination

Disabled women in Afghanistan often experience social stigma and discrimination, which can isolate them from their communities and limit their opportunities for social interaction and participation.¹⁹⁷ Negative attitudes towards disability contribute to their marginalization and hinder their ability to exercise their rights and access resources.¹⁹⁸

Lack of Education and Employment Opportunities

Disabled women in Afghanistan face significant barriers to education and employment. Educational institutions and workplaces are often inaccessible and ill-equipped to accommodate their specific needs.¹⁹⁹ This lack of access to education and employment opportunities perpetuates their economic dependence and limits their ability to achieve financial independence and self-sufficiency.

Increased Risk of Violence and Abuse

Disabled women are at a higher risk of experiencing various forms of violence and abuse, including domestic violence, sexual

¹⁹⁵ Sayed Qudrat Hashimy, *Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse*, (2022), <https://papers.ssrn.com/abstract=4308596> (last visited Jun 30, 2023).

¹⁹⁶ Hashimy, *supra* note 45.

¹⁹⁷ Sayed Qudrat Hashimy, *Chronicle Causes for the Failure of the Afghan Government: Past Imperfect and Future Tense of Afghanistan*, (2023), <https://papers.ssrn.com/abstract=4352525> (last visited Jun 30, 2023).

¹⁹⁸ Sayed Qudrat Hashimy, *Survivors and Disability of Armed Conflicts: The Conundrum of Differentlyabled Persons in Afghanistan*, (2023), <https://papers.ssrn.com/abstract=4411536> (last visited Jun 30, 2023).

¹⁹⁹ Sayed Qudrat Hashimy, Jackson Simango Magoge & Ahsnat Mokarim, *Relentless Violation of International Humanitarian Law During the Ongoing Conflicts in Afghanistan*, (2022), <https://papers.ssrn.com/abstract=4011585> (last visited Jun 30, 2023).

violence, and neglect.²⁰⁰ Their disabilities may make them more vulnerable to exploitation and less able to seek help or escape from abusive situations. Moreover, the stigma surrounding disability can further silence their experiences and discourage reporting.

Inadequate Support Services

Disabled women often face a lack of support services tailored to their specific needs, such as assistive devices, rehabilitation services, and mental health support.²⁰¹ The limited availability of these services further restricts their ability to cope with their disabilities, live independently, and participate fully in society.

Displacement and Refugees

Disabled Afghan women who are displaced or become refugees face additional challenges. The lack of accessible infrastructure and services in refugee camps, coupled with the already precarious situation of displacement, further increases their vulnerability to abuse, exploitation, and neglect.²⁰² Legal and Policy Gaps: The legal and policy frameworks in Afghanistan may not adequately address the rights and needs of disabled women. Existing laws and policies often fall short in providing necessary protections, accommodations, and support for this marginalized group. The lack of enforcement mechanisms and awareness of disability rights further compounds these challenges. Efforts to address the victimology of Afghan disabled women require a comprehensive approach that includes improving accessibility, promoting inclusive education and employment opportunities, addressing social stigma, providing specialized healthcare services, and strengthening legal protections. It is crucial to empower disabled women by involving them in decision-making

processes and ensuring their voices are heard in policies and programs that affect their lives.²⁰³

ROLE OF AFGHAN WOMEN ON THE EMPLOYMENT

The role of women's employment in Afghanistan has been a crucial aspect of the country's social, economic, and political development. While Afghanistan has made significant progress in women's empowerment over the years, the situation remains complex and challenging due to various cultural, social, and political factors. Historically, Afghanistan has been a patriarchal society with limited opportunities for women to participate in the workforce.²⁰⁴ However, following the fall of the Taliban regime in 2001, there has been a gradual shift towards recognising and promoting women's rights, including their right to work. The Afghan constitution guarantees equal rights for men and women, and several initiatives have been undertaken to increase women's employment opportunities.²⁰⁵

Women's employment plays a vital role in Afghanistan's economic growth and development. By joining the workforce, women contribute to the overall productivity of the country, enhance household incomes, and reduce poverty.²⁰⁶ They bring diverse skills and perspectives to various sectors, which can lead to innovation, increased productivity, and economic competitiveness.²⁰⁷

²⁰³ Girls' Education and Islam: A Divine Command with Historical Precedent - Onward for Afghan Women, <https://onwardforafghanwomen.org/policy/girls-education-and-islam-a-divine-command-with-historical-precedent/> (last visited Jul 1, 2023).

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²⁰⁵ Protecting Geographical Indications in Afghanistan, https://scholar.google.com/citations?view_op=view_citation&hl=en&user=_XhWcpEAAAAJ&citation_for_view=_XhWcpEAAAAJ:GZelqfngyKEC (last visited Jul 1, 2023).

²⁰⁶ Role of Self-Help Groups through Micro-Finance for Poverty Alleviation, https://scholar.google.com/citations?view_op=view_citation&hl=en&user=_XhWcpEAAAAJ&cstart=20&pagesize=80&citation_for_view=_XhWcpEAAAAJ:oEW5MyxtvQ4C (last visited Jul 1, 2023).

²⁰⁷ The Impact of Social Media on Afghanistan's Tourism Industry: A Roadmap for the Future in the Internet Highway, https://scholar.google.com/citations?view_op=view_citation&hl=en&user=_XhWcpEAAAAJ&cstart=20&pagesize=80&citation_for_view=_XhWcpEAAAAJ:7ioeYXKzaWoC (last visited Jul 1, 2023).

²⁰⁰ Hashimy, *supra* note 42.

²⁰¹ Survivors and Disability of Armed Conflicts: The Conundrum of Differently Abled Persons in Afghanistan, https://scholar.google.com/citations?view_op=view_citation&hl=en&user=_XhWcpEAAAAJ&cstart=20&pagesize=80&citation_for_view=_XhWcpEAAAAJ:l_4PpDxvVJAC (last visited Jun 30, 2023).

²⁰² Sayed Qudrat Hashimy, *War Crimes in Afghanistan*, (2022), <https://papers.ssrn.com/abstract=4344441> (last visited Jun 30, 2023).

Moreover, women's employment has significant social benefits. It fosters gender equality and challenges traditional gender roles, leading to greater gender equity in society. It enables women to become financially independent, empowering them to make decisions about their own lives, education, health, and well-being. It also positively impacts the next generation, as working mothers can provide better opportunities and education for their children, thereby breaking the cycle of poverty.²⁰⁸

However, women's employment in Afghanistan faces numerous challenges. One of the key obstacles is cultural and social norms that discourage women from working outside the home. Traditional gender roles, early marriages, limited access to education, and gender-based violence often hinder women's participation in the workforce. In many rural areas, women face additional barriers such as limited mobility and lack of infrastructure and services.

Political instability and insecurity also pose significant challenges. The ongoing conflict and the resurgence of the Taliban have created an uncertain environment, impacting women's safety and restricting their access to education and employment opportunities.²⁰⁹ This situation further exacerbates gender inequalities and undermines the progress made in women's rights.

To address these challenges, concerted efforts are required from multiple stakeholders. The Afghan government, along with international organizations, must prioritize women's rights and create an enabling environment for women's employment. This includes investing in education and vocational training programs, ensuring access to healthcare and childcare services, promoting women's entrepreneurship, and implementing laws and policies that

protect women's rights in the workplace.²¹⁰ Furthermore, changing societal attitudes and cultural norms is crucial. Public awareness campaigns, community engagement, and collaboration with religious leaders and local influencers can help challenge negative perceptions and promote the benefits of women's employment. It is vital to involve men and boys in these efforts to foster a more inclusive and gender-equitable society. In conclusion, women's employment plays a pivotal role in Afghanistan's development, contributing to economic growth, poverty reduction, and social progress. Despite the challenges, promoting women's rights and creating opportunities for women to participate in the workforce are essential for building a more inclusive and prosperous Afghanistan.

THE ROLE OF AFGHAN WOMEN IN INTELLECTUAL PROPERTY RIGHTS

The role of Afghan women in intellectual property rights (IPR) is critical for the development, protection, and enforcement of intellectual property in Afghanistan.²¹¹ Intellectual property encompasses various forms of creative works, inventions, trademarks, and designs that individuals or organizations create. Ensuring women's active participation in IPR is essential for fostering innovation, promoting economic growth, and empowering women in the Afghan society.

Firstly, women's involvement in innovation and creativity is vital for the development of intellectual property. By encouraging and supporting Afghan women's participation in science, technology, engineering, and mathematics (STEM) fields, as well as in creative industries such as arts, literature, and design, Afghanistan can harness the diverse perspectives and talents of women. This can lead to the creation of new and valuable intellectual property assets, including

²⁰⁸ Sayed Quadrat Hashimy, *Impact of COVID-19 on the Trade in Afghanistan*, (2021), <https://papers.ssrn.com/abstract=4169486> (last visited Jul 1, 2023).

²⁰⁹ Full article: Culture, Religion, and Freedom of Religion or Belief, <https://www.tandfonline.com/doi/full/10.1080/15570274.2018.1535033> (last visited Jul 1, 2023).

²¹⁰ Girls' Education and Islam: A Divine Command with Historical Precedent - Onward for Afghan Women, *supra* note 54.

²¹¹ Sayed Quadrat Hashimy, *Impact of WTO Agreement Accession on Trade and a Few Intellectual Property Rights in Afghanistan*, (2021), <https://papers.ssrn.com/abstract=4291992> (last visited Jul 1, 2023).

inventions, artistic works, and technological innovations. Secondly, protecting and enforcing intellectual property rights can significantly benefit Afghan women entrepreneurs and creators.²¹² Women who develop new products, start businesses, or create artistic works should have their intellectual property protected, as it provides them with a legal framework to safeguard their creations and prevent unauthorized use or infringement. This protection helps women to maintain control over their work, retain economic benefits, and attract investment and partnerships.

Additionally, intellectual property rights can create economic opportunities for Afghan women. By obtaining patents, trademarks, or copyrights, women entrepreneurs can commercialize their innovations, brands, or creative works, generating income and contributing to the national economy. Intellectual property can also facilitate technology transfer and licensing agreements, allowing women to enter into collaborations and partnerships with local and international companies.

Furthermore, the recognition and respect for intellectual property rights contribute to a culture of innovation, creativity, and entrepreneurship. Afghan women's active participation in IPR can inspire and encourage other women and girls to pursue careers in STEM fields, arts, and business, fostering a supportive environment for the growth of intellectual property in the country. This can lead to a more inclusive and diverse innovation ecosystem, where the perspectives and contributions of women are valued and celebrated. However, it is important to acknowledge that Afghan women face specific challenges in accessing and benefiting from intellectual property rights. Limited access to education and resources, cultural barriers, and gender-based discrimination can create hurdles for women in understanding and

navigating the complex IPR system.²¹³ Therefore, it is crucial to provide capacity-building programs, training, and support to empower women in understanding their rights, filing applications, and leveraging intellectual property for their economic and social advancement.

Thus, the role of Afghan women in intellectual property rights is multifaceted and crucial. Their participation in innovation, protection, and enforcement of intellectual property can contribute to economic growth, empower women entrepreneurs and creators, and foster a culture of creativity and entrepreneurship in Afghanistan. Ensuring equal access, providing support, and promoting awareness about IPR among women are essential steps towards creating an inclusive and thriving intellectual property ecosystem in the country.

THE ROLE OF AFGHAN WOMEN IN ENVIRONMENTAL PROTECTION

The role of Afghan women in environmental protection is essential for addressing the environmental challenges faced by the country and achieving sustainable development. Afghan women play a crucial role as caretakers of natural resources, advocates for sustainable practices, and agents of change in their communities. Their involvement can bring diverse perspectives, innovative solutions, and long-term benefits for the environment and society as a whole.

Conservation and Natural Resource Management

Afghan women have traditionally been responsible for managing natural resources, such as water, land, and forests, for their households and communities. Their intimate knowledge of local ecosystems and sustainable practices can contribute to the conservation and preservation of biodiversity.²¹⁴ Women's

²¹² Sayed Qudrat Hashimy & Jackson Simango Magoge, *Role of WTO in the Promotion of Trade and IPR in Afghanistan*, (2021), <https://papers.ssrn.com/abstract=4043959> (last visited Jul 1, 2023).

²¹³ Sayed Qudrat Hashimy, *China's Belt-Road Initiative and Investment Strategies: A Two Pillar Approach to Afghanistan*, (2023), <https://papers.ssrn.com/abstract=4334278> (last visited Jul 1, 2023).

²¹⁴ The Agonizing Narrative of Environmental Dilapidation in the tussle of Armed Conflict; from the Lens of International Humanitarian Laws,

involvement in community-based natural resource management initiatives, such as watershed management, reforestation programs, and sustainable agriculture, can lead to the protection and restoration of ecosystems and the promotion of sustainable land use practices.

Environmental Education and Awareness

Afghan women can play a vital role in raising awareness about environmental issues and promoting sustainable behaviors. Through education and community outreach programs, women can disseminate information about climate change, waste management, water conservation, and other environmental concerns.²¹⁵ They can advocate for sustainable practices within their households, schools, and communities, inspiring others to adopt eco-friendly behaviors and reduce their environmental footprint.

Renewable Energy and Clean Technologies

Afghan women can contribute to the transition towards renewable energy and clean technologies. In rural areas where access to electricity is limited, women can participate in initiatives promoting solar power, biogas, and other sustainable energy sources.²¹⁶ By adopting and promoting renewable energy solutions, Afghan women can reduce reliance on fossil fuels, mitigate greenhouse gas emissions, and improve energy access and affordability in their communities.

Sustainable Livelihoods and Green Entrepreneurship

Afghan women can engage in sustainable livelihood activities and green entrepreneurship, which can contribute to both economic

empowerment and environmental protection. Women-led initiatives in organic farming, eco-tourism, handicrafts made from recycled materials, and other environmentally friendly sectors can promote sustainable economic development while preserving natural resources and cultural heritage.

Policy Advocacy and Decision-making

Afghan women can actively participate in environmental policy advocacy and decision-making processes at local, regional, and national levels. By engaging in environmental governance, women can contribute their perspectives and experiences to shape policies, regulations, and strategies that prioritize environmental protection, climate resilience, and sustainable development. Their involvement in decision-making bodies can ensure that gender considerations are integrated into environmental policies and programs. It is important to recognize and address the challenges that Afghan women face in their engagement with environmental protection. These challenges include limited access to education and resources, social and cultural barriers, gender-based discrimination, and security concerns. To overcome these obstacles, it is crucial to promote gender equality and empower women through education, capacity building, and inclusive participation in environmental initiatives. Therefore, the role of Afghan women in environmental protection is crucial for achieving sustainable development in the country. Their involvement in conservation, environmental education, sustainable livelihoods, policy advocacy, and decision-making can contribute to the preservation of natural resources, climate resilience, and the well-being of Afghan communities. Empowering women and ensuring their active participation in environmental initiatives will lead to more inclusive, equitable, and effective environmental protection efforts in Afghanistan.

https://scholar.google.com/citations?view_op=view_citation&hl=en&user=_XhWcpEAAAAJ&citation_for_view=_XhWcpEAAAAJ:jgpk9vOjLEcC (last visited Jul 1, 2023).

²¹⁵ Impact of War on the Environment: A Critical Study of Afghanistan, https://scholar.google.com/citations?view_op=view_citation&hl=en&user=_XhWcpEAAAAJ&citation_for_view=_XhWcpEAAAAJ:QppYajjO_VYC (last visited Jul 1, 2023).

²¹⁶ Sayed Qudrat Hashimy & Prof (Dr) Ramesh, *Impact of War on the Environment: A Critical Study of Afghanistan*, (2023), <https://papers.ssrn.com/abstract=4352538> (last visited Jul 1, 2023).

CONCLUSION

The Constitutions of 1923, 1964 and 2004 in Afghanistan laid the foundation for certain rights and provisions to address education and citizens' concerns. Article 14 emphasized the right to education for all Afghan subjects, ensuring that education was accessible and free. Although foreigners were not permitted to operate schools, they were allowed to be employed as teachers. Article 15 stated that the government had the responsibility to control, supervise, and inspect all schools, promoting scientific and national education while respecting the beliefs and religions of protected and refugee subjects. Article 42 outlined the duties of the state and local councils, including suggesting improvements in various sectors such as industry, commerce, agriculture, and education, as well as addressing violations of basic rights. However, despite these constitutional provisions, Afghan women have long endured significant challenges and violations of their human rights. The victimology of Afghan women has been marked by gender-based violence, limited access to education, forced and child marriages, reproductive health challenges, restrictions on freedom and mobility, displacement, and a lack of legal protection. These issues have perpetuated their vulnerability and hindered their personal development, empowerment, and economic independence.

Moreover, Afghan disabled women face additional layers of discrimination and marginalization due to their gender, disability, and social context. They encounter limited access to healthcare, social stigma, barriers to education and employment, increased risks of violence and abuse, inadequate support services, and challenges as displaced individuals or refugees. The legal and policy frameworks in Afghanistan often fall short in addressing their specific rights and needs. Efforts to address the victimology of Afghan women and disabled women require a comprehensive approach that involves

improving accessibility, promoting inclusive education and employment opportunities, addressing social stigma, providing specialized healthcare services, and strengthening legal protections. Empowering these marginalized groups through their meaningful participation in decision-making processes is crucial to ensure their rights and voices are heard in policies and programs that affect their lives. It is important to acknowledge that this conclusion is based on information available up to September 2021, and the situation in Afghanistan may have evolved since then. Nonetheless, the challenges faced by Afghan women and disabled women emphasize the need for ongoing efforts to protect their rights, promote gender equality, and create an inclusive society that respects the dignity and well-being of all its citizens.

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