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# MISOGYNY AND LAWLESSNESS IN AFGHANISTAN: THE WOMEN'S FIGHT FOR EQUAL RIGHTS

BY: SUSAN FAROOQI, ESQ.\*

## I. INTRODUCTION

The anguished final hours of Farkhunda Malikzada, a 27-year-old student of Islamic studies who was falsely accused of burning a Quran in a mosque, prompted a national protest in Afghanistan.<sup>1</sup> Farkhunda, while denying the false accusation, begged and pleaded for her life.<sup>2</sup> Her killers showed no mercy as they continued to beat her while others recorded the ordeal and later posted the clips on social media.<sup>3</sup> Hundreds of men watched the two-hour ordeal, all without any intervention. Among the mob of men were several police officers.<sup>4</sup>

Two days before the Afghan New Year, Farkhunda Malikzada promised her mother, Bibi Hajera, that she would help prepare for the festivities when she returned from her Quran reciting class.<sup>5</sup> Later that day, Farkhunda was on her way home when she got into an argument about the selling of charms and several other items with Zain-ul-Din, the caretaker at the Shah-e Du Shamshira mosque, located in the heart of Kabul.<sup>6</sup> Farkhunda thought of these charms as superstitious and un-Islamic and was trying to make this point to the man, when he began shouting his false accusations: "She burned the Quran!" A mob of young men gathered.<sup>7</sup>

Farkhunda, while denying that she burned the Quran, was pulled from the mosque by the mob of men. They pushed her to the ground and repeatedly beat her with sticks, stones, bricks, and their feet. "Kill her!" the men shouted. After she was dead, the men dragged

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<sup>1</sup> See Alissa J. Rubin, *Flawed Justice After a Mob Killed an Afghan Woman*, N.Y. TIMES (Dec. 26, 2015), <http://www.nytimes.com/2015/12/27/world/asia/flawed-justice-after-a-mob-killed-an-afghan-woman.html>.

<sup>2</sup> See Ali M. Latifi, *A Year Later, Afghans Reflect on a Mob Lynching of a Woman Falsely Accused of Burning Koran*, L.A. TIMES (Mar. 18, 2016, 10:24 PM), <http://www.latimes.com/world/asia/la-fg-afghanistan-killing-20160318-story.html>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See Zarghuna Kargar, *Farkhunda: The Making of a Martyr*, BBC NEWS (Aug. 11, 2015), <http://www.bbc.com/news/magazine-33810338>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

her corpse from the back of a Toyota hatchback and dumped her in a dry patch of the Kabul River and set it afire.<sup>8</sup>

One of the most disturbing aspects of Farkhunda's murder is that her killers were not religious or extreme in any sense, but ordinary Afghan men.<sup>9</sup> The murder did not take place in a remote village or dark area either—it took place in the heart of the capital, during daylight hours, among police checkpoints, embassies, ministries, and even the presidential palace.<sup>10</sup> Although originally sentenced to death, her attackers are now facing up to 20 years in prison, while the police officers who stood by and allowed her to die are still at large.<sup>11</sup>

Sadly, this story is just one of many that highlight the pervasive atmosphere of misogyny in Afghan society. After hearing Farkhunda's story, it is not surprising that Afghanistan was named one of the worst countries in the world for women to live.<sup>12</sup> Gender inequality pervades all aspects of life for Afghan women.<sup>13</sup> This is in large part due to the cultural and religious norms that remain prevalent and control how society operates.<sup>14</sup> Even though there have been great strides in advancing women's rights, there is still a long way to go to achieve complete gender equality.<sup>15</sup>

This pervasive gender inequality in Afghan society has become a socially accepted norm. Therefore, implementing real change will

<sup>8</sup> *Id.*; Latifi, *supra* note 2.

<sup>9</sup> Kargar, *supra* note 5.

<sup>10</sup> Latifi, *supra* note 2.

<sup>11</sup> *Id.*

<sup>12</sup> Owen Bowcott, *Afghanistan Worst Place in the World for Women, but India in Top Five*, *GUARDIAN* (June 14, 2011, 9:12 PM), <http://www.theguardian.com/world/2011/jun/15/worst-place-women-afghanistan-india> (citing a 2011 survey of worst places for women to live).

<sup>13</sup> *See id.* There are many aspects of Afghan life that contribute to significant gender inequality. For example, women are likely to die in childbirth because of the lack of antenatal care. There is also a high level of sexual violence, as well as lack of healthcare access and education for women. *See* Shannon Daley, *Closing the Gap between Law and Reality: Women's Constitutional Rights in Afghanistan*, 29 *CONN. J. INT'L L.* 329, 333 (2014).

<sup>14</sup> *See* Bowcott, *supra* note 12.

<sup>15</sup> *See* *Afghanistan has 'Long Way to Go' in Protecting Women from Violence – UN Report*, *UN NEWS* (Nov. 23, 2011), <https://news.un.org/en/story/2011/11/395912-afghanistan-has-long-way-go-protecting-women-violence-un-report> (“The 2009 Elimination of Violence against Women (EVAW) law criminalizes child marriage, forced marriage, selling and buying women for the purpose or under the pretext of marriage, baad (giving away a woman or girl to settle a dispute), forced self-immolation and 17 other acts of violence against women, including rape and beating. It also specifies punishment for perpetrators. ‘Judges, prosecutors and police in many parts of Afghanistan have begun to use the new law, which is a positive development but unfortunately only in a small percentage of violence against women cases.’”).

require a cooperative effort between the Afghan government, lawmakers, citizens, and the international community. Such drastic change will not happen overnight, but steps in the right direction will improve the process of advancing women's rights. Only then will women truly enjoy all the rights and privileges that accompany citizenship.

Even though the Afghan Constitution calls for equal rights for women in compliance with international human rights law, there are many Afghan women who are still required to rely on male family members for support.<sup>16</sup> The reason for this being that the constitutional guarantee of equal rights is neither enforced nor complied with. Therefore, the constitutional guarantee must have the force of law. To instill this force, Afghanistan should implement a Civil Rights Act, similar to the Civil Rights Act of 1964 in the United States. The Civil Rights Act in the United States was designed to combat invidious discrimination,<sup>17</sup> and Afghanistan should enact a similar statute to further safeguard women's rights and ensure enforcement of those rights. A Civil Rights Act in Afghanistan will hinder discriminatory policies that restrict women's free movement and access to employment, education, healthcare, and freedom of expression.

This Note examines some important areas where Afghan women face discrimination and explores how legislation, such as a Civil Rights Act, could ensure the protection of women's rights. Part II.A of this Note provides a historical perspective on Afghan women before the Taliban regime. Part II.B provides a brief history of the power struggle in Afghanistan that led to the rise of the Taliban, a group solely responsible for creating the misogynistic culture in Afghan society today. Part II.C discusses five basic fundamental rights that Afghan women have been deprived of under the Taliban regime and explains that the deprivation of those rights still has adverse effects on Afghan women today, even after the fall of the Taliban in 2001. These deprivations include restrictions on the freedom of movement; the right to employment; the right to education; the right to

<sup>16</sup> See *CBS Evening News: Taliban Rulers Impose Strict Islamic Laws on Women* (CBS television broadcast Oct. 10, 1996) (noting the large number of war widows who were the sole providers for their families until the Taliban banned them from working).

<sup>17</sup> 42 U.S.C. § 2000e-2 (2012) (prohibiting employment discrimination based on race, color, religion, sex, or national origin).

healthcare; and the right to expression, association, and assembly.

Part III uses a comparative approach to propose a Civil Rights Act in Afghanistan. Specifically, this Note proposes that Afghan women's rights advocates and political and legal leaders use the American Civil Rights law model as a guide. To demonstrate the similarity between the early struggle for women's rights in the United States and Afghanistan's struggle today, Part III.A discusses the shortcomings of the Nineteenth Amendment in the United States Constitution. Part III.B then discusses how the Civil Rights Act of 1964 in the United States led to further guarantees and rights for women. Part III.C discusses the shortcomings of the Afghan Constitution. Finally, Part III.D proposes a Civil Rights Act in Afghanistan that has a similar effect to the Civil Rights Act of 1964 in the United States. With the support of jurists, lawmakers, and government, change can be implemented to end female oppression in Afghanistan once and for all.

## II. BACKGROUND

This background section explores the history of women's rights in Afghanistan. First, this section looks at the origins of the oppression of women in Afghanistan by analyzing the rise of the Taliban regime and its effect on women's rights in the country. Then, this section looks at how women were treated under the Taliban regime, including the types of human rights violations under the regime, which include restrictions on the freedom of movement, the right to employment, the right to education, the right to healthcare, and the right to expression and assembly. This section also addresses the state of life for Afghan women in the post-Taliban era because the former Taliban rule continues to have adverse effects today.

### *A. A Historical Perspective On Afghan Women*

Afghan women did not always find themselves in such an oppressive and demeaning regime. Beginning in the mid-1950s,

Afghanistan experienced an extensive period of modernization.<sup>18</sup> During this period, women were encouraged to become economically active, and many women became doctors, teachers, and nurses.<sup>19</sup> Afghan women also held positions as lawyers, judges, and engineers.<sup>20</sup> The Constitution in 1964 permitted women to enter the sphere of politics and granted women the right to vote.<sup>21</sup> In the 1970s, women were thriving. There was a noticeable increase in educational opportunities, and the number of women faculty members at universities and in Parliament was on the rise.<sup>22</sup> A decree was entered in 1978 that secured equal rights for women.<sup>23</sup>

Then, in 1979, a civil war in Afghanistan broke out.<sup>24</sup> This civil war was the result of a clash between the progressive government and conservative insurgent groups that wanted to quash the reforms.<sup>25</sup> The Russian government, in an attempt to maintain the progressive government, invaded Afghanistan and attempted to quash the religiously conservative Mujahideen.<sup>26</sup> Although a long, ten-year battle raged on, the Soviets left Afghanistan in 1989.<sup>27</sup> When the Soviets left Afghanistan in 1989, however, this marked the end of women's advancement.<sup>28</sup>

### *B. Afghanistan's Internal Power Struggle: Rise of The Taliban Regime*

In 1989, when Soviet troops departed from Afghanistan, there was significant political unrest. The progressive government from

<sup>18</sup> Huma Ahmed-Ghosh, *A History of Women in Afghanistan: Lessons Learnt for the Future or Yesterdays and Tomorrow: Women in Afghanistan*, 4 J. INT'L WOMEN'S STUD. 1, 6 (2003).

<sup>19</sup> *Id.*

<sup>20</sup> See ROSEMARIE SKAINE, *THE WOMEN OF AFGHANISTAN UNDER THE TALIBAN* 21 (2001).

<sup>21</sup> Ahmed-Ghosh, *supra* note 18, at 6.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

1978, led by Nur Mohammad Taraki, fought against the Mujahideen, the religious conservatives.<sup>29</sup> Although Taraki was able to maintain power for some time, his group fell in 1992.<sup>30</sup> He lost the civil war, and the Mujahideen were the victors. Unfortunately, another group, the Taliban, had started to emerge in 1991.<sup>31</sup> Although the Taliban's origins are not completely clear, it started to wage war against the Mujahideen in 1992.<sup>32</sup> The Taliban, a group of conservative religious men, began to emerge as the victors of this civil war in 1994 when they captured the Afghan city of Kandahar.<sup>33</sup>

When the Taliban overthrew the Afghan government in 1999, they began enforcing strict separation between men and women. The reasons for this strict separation of men and women were twofold: the Taliban's religious rule and their strict interpretation of the Quran.<sup>34</sup> The Taliban took measures to effectively ban women from all areas of public life.<sup>35</sup> In addition to cutting off access to employment, education, and healthcare, the Taliban rigorously enforced dress and moral codes where women who violated these codes were severely beaten and punished.<sup>36</sup> The Taliban implemented a number of rules designed to suppress women and make them feel inferior.

The Taliban set out to repress women in society and to erase the highly esteemed status that women had achieved up to that point. The late Haron Amin, who served as Afghanistan's diplomat in the United Nations until 2001, once said that under Taliban regime, women "have become selfless physical nonbeings that have to live. They have become nonbeings, yet they exist. They exist. They breathe, but it's a life full of torture."<sup>37</sup> A statement by a Taliban minister shed further light on the position of women in society.

<sup>29</sup> See Hannibal Travis, *Freedom or Theocracy?: Constitutionalism in Afghanistan and Iraq*, NW. U. J. INT'L HUM. RTS., Spring 2005, at 1, 8-9.

<sup>30</sup> See Shannon A. Middleton, *Women's Rights Unveiled: Taliban's Treatment of Women in Afghanistan*, 11 IND. INT'L & COMP. L. REV. 421, 424 (2001).

<sup>31</sup> See *id.*

<sup>32</sup> See *id.*

<sup>33</sup> See *id.* at 424-25.

<sup>34</sup> See *id.* at 422, 426.

<sup>35</sup> Anastasia Telesetsky, Recent Development, *In the Shadows and Behind the Veil: Women in Afghanistan Under Taliban Rule*, 13 BERKELEY WOMEN'S L.J. 293, 296 (1998).

<sup>36</sup> *Id.* at 294.

<sup>37</sup> SKAINE, *supra* note 20, at 64.

The minister was quoted as stating “there are two places for a woman: one is the husband’s bed and the other is the graveyard.”<sup>38</sup> To systemically strip women of their human dignity, the Taliban implemented a number of restrictions that virtually served to place women in positions of servitude and dependence. Forbidding women to leave the house unaccompanied by a male relative, denying women employment and education, and cutting any and all access to healthcare are just a few measures the Taliban took to make women inferior.<sup>39</sup>

Women in Afghanistan face discrimination in almost all aspects of civil life. Rules are in place to keep the male and female sexes separate.<sup>40</sup> The Quran has been used to justify a great deal of discrimination against women in Islam.<sup>41</sup> Many jurists and scholars, using the text of the Quran, maintain that women are naturally inferior to men.<sup>42</sup> For example, certain jurists argue that the different treatment of men and women in the Quran justifies treating men and women differently.<sup>43</sup> They argue that the Quran treats women in an inferior way, for example, not allowing women to inherit property and requiring them to remain covered.<sup>44</sup> However, this interpretation is incorrect. While the Quran acknowledges biological sex differences between men and women, it does not assign different social roles to men and women and holds each to the same moral standards.<sup>45</sup> In fact, Prophet

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> “We Want to Live as Humans”: Repression of Women and Girls in Western Afghanistan, HUM. RTS. WATCH (Dec. 17, 2002), <https://www.hrw.org/reports/2002/afghnwmn1202/Afghnwmn1202.pdf>.

<sup>41</sup> Caroline B. Fleming, “Even in Dreams, They are Coming”: Islamic Fundamentalism and the Education of Women in Afghanistan, 11 WM. & MARY J. WOMEN & L. 597, 601 (2005).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 602-03.

<sup>44</sup> *Id.* at 604.

<sup>45</sup> Asma Barlas, *Muslim Women and Sexual Oppression: Reading Liberation from the Quran*, 10 MACALASTER INT’L 117, 131 (2001). The Quran holds both men and women to the same standards of moral behavior and promises both men and women the same reward for righteousness: “[f]or Muslim men and women, for believing men and women, for devout men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves). For men and women who guard their chastity, and for men and women who engage much in G-d’s praise for them has G-d prepared forgiveness and great



Muhammed (Peace Be Upon Him) advised the People in his last sermon: “Observe your duty to Allah (swt) in respect to the women, and treat them well.”<sup>46</sup>

### 1. The Restriction on the Freedom of Movement

#### *A. FREEDOM OF MOVEMENT UNDER THE TALIBAN REGIME*

The bleak reality for many Afghan women under Taliban rule was constant confinement in the home behind black windows, with no view of the outside world.<sup>47</sup> Many women who lived under the horrific Taliban regime were essentially ordered to de facto house arrest.<sup>48</sup> This was just one way the Taliban made women feel like second-class citizens. In the limited circumstances when women could leave the house, they were required to be covered head to toe in a burqa.<sup>49</sup> Even when wearing a burqa, women who did not have a male relative to accompany them were prohibited from leaving the house.<sup>50</sup>

One Afghan woman’s story is particularly disturbing and sheds light on the pervasiveness of the restriction on women’s movements. Layla, an Afghan woman, was five months pregnant when she departed from her home for a regular check-up at a nearby maternity clinic.<sup>51</sup> Upon leaving her house, she donned a burqa from head-to-toe, which only had a small panel that she

reward.” Quran 33:35. It is clear, that the Quran regards women and men as being equally responsible moral agents, not only from this verse, but also because the Quran designates believing women and men as each other’s awliya, i.e., mutual protectors, or mutually “in charge” of one another: “[t]he Believers, men and women, are [awliya], one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practice regular charity, and obey Allah and His Messenger. On them will Allah pour His Mercy: for Allah is exalted in power, wise.” Quran 9:71.

<sup>46</sup> Elizabeth Arif-Fear, *12 Quotes Depicting Women’s Equality in Islam*, VOICE OF SALAM (Dec. 11, 2015), <https://voiceofsalam.com/2015/12/11/12-quotes-depicting-womens-equality-in-islam/comment-page-1/>.

<sup>47</sup> SKAINE, *supra* note 20, at 64.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 63-64. A burqa is a full body covering that covers all of the woman’s face and body. A chadari is worn outside the burqa as an additional covering.

<sup>50</sup> Benazeer Roshan, Recent Development, *The More Things Change, the More They Stay the Same: The Plight of Afghan Women Two Years After the Overthrow of the Taliban*, 19 BERKELEY WOMEN’S L.J. 270, 273 (2004).

<sup>51</sup> Talya Friedman, Note, *Cures to the Enigmatic Taliban Plague: Legal and Social Remedies Addressing Gender Apartheid in Afghanistan*, 23 LOY. L.A. INT’L & COMP. L. REV. 81, 81 (2001).

could look out from.<sup>52</sup> Her eyes were not visible. Layla dressed herself with care in the burqa so her clothing underneath could not be seen. She experienced difficulty breathing on her way to the clinic and was in desperate need of relief. She lifted up her veil and inhaled deeply, relishing the fresh air. Suddenly out of nowhere, a Taliban militiaman appeared. He began screaming, "Why have you bared your face! Why have you bared your face!"<sup>53</sup> Before Layla even had the chance to speak, the Taliban struck her hard in the abdomen. Because Taliban rules forbid males from touching non-related females and there were no women nearby, no one came to Layla's assistance, and she tragically died as a result.<sup>54</sup>

From 1996 until 2001, when the Taliban controlled Afghanistan,<sup>55</sup> the atrocious treatment of women like Layla was common.<sup>56</sup> The Taliban were brutal in enforcing the dress code for women.<sup>57</sup> Reports of the Taliban beating women for minor infractions were common. Even the most minor infractions were punished severely.<sup>58</sup>

#### B. FREEDOM OF MOVEMENT FOR WOMEN IN THE POST-TALIBAN ERA

After the fall of the Taliban in 2001, women gained greater freedom of movement than before.<sup>59</sup> However, although women are now permitted to leave their homes unaccompanied by a close male family member, there are numerous restrictions that

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Mark A. Drumbl, *Rights, Culture, and Crime: The Role of Rule of Law for the Women of Afghanistan*, 42 COLUM. J. TRANSNAT'L L. 349, 350 (2004).

<sup>56</sup> See Ram Mashru, *Violence Against Women in Afghanistan Peaked in 2013*, DIPLOMAT (Jan. 14, 2014), <http://thediplomat.com/2014/01/violence-against-women-in-afghanistan-peaked-in-2013/>.

<sup>57</sup> *Report on the Taliban's War Against Women*, U.S. DEPT. ST. (Nov. 17, 2001), <https://2001-2009.state.gov/drl/rls/6185.htm>.

<sup>58</sup> *Id.*

<sup>59</sup> See Zama Neff, *Afghan Women and Girls Still Held Hostage*, HUM. RTS. WATCH (Oct. 23, 2003, 9:35 AM), <https://www.hrw.org/news/2003/10/28/afghan-women-and-girls-still-held-hostage>.

continue to impede their free movement.<sup>60</sup> Women are not permitted to walk or ride alone with a man who is not a close male relative, including riding in a car with a male taxi driver.<sup>61</sup> Although women may now drive cars, it is rare to see women driving in Afghanistan. The restriction of the burqa makes it difficult to gain the freedom of movement necessary to have equal rights since wearing a burqa obstructs their movement and vision whenever they leave their home.<sup>62</sup>

The financial cost of purchasing a burqa also serves as a practical restriction on women's movement.<sup>63</sup> Many women cannot afford a burqa; the cost of which is approximately two months' worth of wages if a woman was employed in a paying position.<sup>64</sup> As a result, poor women who cannot buy burqas cannot legally leave their homes and thus are unable to obtain many necessary services, such as medical services, food, and clothing; to take their children to school; to cultivate the land to grow their own food; and to perform other actions and get services that require them to leave their homes.<sup>65</sup> Therefore, the rules regarding burqas effectively restrict women's freedom of movement and confine them to their homes.

## 2. The Restriction on The Right To Employment

### *A. THE RIGHT TO EMPLOYMENT UNDER THE TALIBAN REGIME*

In addition to the restrictions on movement, Afghan women faced other challenges under the Taliban regime. Women were expressly prohibited from working outside the home under the Taliban regime.<sup>66</sup> The Taliban reduced the number of employed women from 62 percent when they first took power to a mere 20 percent shortly after their takeover.<sup>67</sup> One reporter's description

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* (discussing the treatment of women in Western Afghanistan and what protocols women must face to travel throughout the country without risk of negative repercussions).

<sup>62</sup> *Id.*

<sup>63</sup> Roshan, *supra* note 50, at 273.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Meri Melissi Hartley-Blecic, Note, *The Invisible Women: The Taliban's Oppression of Women in Afghanistan*, 7 *ILSA J. INT'L & COMP. L.* 553, 570 (describing the social climate for women under Taliban rule).

<sup>67</sup> Roshan, *supra* note 50, at 274.

paints an eerie picture of these displaced professionals: “women who had once been teachers and nurses [are] now moving in the streets like ghosts under their enveloping burqas, selling every possession and begging so as to feed their children.”<sup>68</sup> Excluding women from the workforce had devastating consequences. Many poor single women, desperate for money, were forced into prostitution as their only source of income.<sup>69</sup>

### *B. EMPLOYMENT IN THE POST-TALIBAN ERA*

The social climate regarding employment has remained the same in Afghanistan. Even after the overthrow of the Taliban, women who seek gainful employment face a great deal of discrimination and violence. Although the number of women in the workforce has increased, there are many women who have not joined the workforce.<sup>70</sup> The reason is that there are few employment opportunities for women to work outside the home.<sup>71</sup>

The reason for this dearth of job opportunities is twofold: first, with women leaving the workforce under the Taliban regime, men started taking up the jobs that women had previously held. Now that women are allowed into the workforce, new jobs have not magically materialized.<sup>72</sup> Second, Afghanistan’s culture still oppresses women, and part of that oppression includes preventing them from working.<sup>73</sup> As a result, only 16 percent of Afghan women participate in the workforce.<sup>74</sup> The few Afghan women who do pursue working careers are often faced with abuse and oppression. For example, women who are in the workplace often

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* (“The prohibition on employment had such a devastating effect that by 1998, researchers ‘saw a city of beggars—women who had once been teachers and nurses now moving in the streets like ghosts under their enveloping burqas, selling every possession and begging so as to feed their children.’ In some cases, destitute women without male providers turned to prostitution in order to provide for their families.”).

<sup>70</sup> Adrien K. Wing & Peter P. Nadimi, *Women's Rights in the Muslim World and the Age of Obama*, 20 *TRANSNAT'L. & CONTEMP. PROBS.* 431, 446 (2011).

<sup>71</sup> Tim Luccaro & Erica Gaston, *Women's Access to Justice in Afghanistan*, U.S. INST. PEACE (July 17, 2014), <https://www.usip.org/publications/2014/07/womens-access-justice-afghanistan>.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

face sexual harassment, lack of opportunities to advance, and institutionalized discrimination, like not allowing women to have paid maternity leave and other types of benefits that would help them advance in their careers.<sup>75</sup>

Another huge obstacle for women to integrate into the workforce is finding “culturally appropriate” employment.<sup>76</sup> The general idea behind “culturally appropriate” employment is that there is ingrained in Afghan culture a set of jobs that are appropriate for women.<sup>77</sup> It is “culturally appropriate” for a woman to be a teacher or a caregiver, but working in a managerial position is not a woman’s place.<sup>78</sup> To demonstrate this workforce oppression, consider the story of one Afghan woman who worked at the Ministry of Public Works as a financial assistant and was stabbed, then left for dead.<sup>79</sup> Months before this attack, the assailant had threatened the woman repeatedly because “[h]e didn’t like women working out of the house.”<sup>80</sup> The man who assaulted the woman holds beliefs that reflect a culturally ingrained notion that women do not belong in the workforce alongside men. Many people in Afghan culture consider it taboo for women to work alongside men.<sup>81</sup> Additionally, the few women who do manage to secure “culturally appropriate” employment become targets for the oppressors, and can face low wages, unreasonable hours, or long commutes.<sup>82</sup> These are just some of the challenges that Afghan women face when seeking employment outside the home.

<sup>75</sup> Amie Ferris-Rotman, *Violence Stalks Women Workers in Afghanistan*, REUTERS (Sept. 29, 2012, 6:50 AM), <https://www.reuters.com/article/us-afghanistan-women-security/violence-stalks-women-workers-in-afghanistan-idUSBRE88S07720120929>.

<sup>76</sup> Wing & Nadimi, *supra* note 70, at 446.

<sup>77</sup> Alyssa Cogan, *Women Breaking Down Barriers in Southern Afghanistan*, MERCY CORPS (Mar. 8, 2014), <https://www.mercycorps.org/articles/afghanistan/women-breaking-down-barriers-southern-afghanistan>.

<sup>78</sup> *Id.*

<sup>79</sup> Ferris-Rotman, *supra* note 75.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* (explaining the belief that unrelated men and women should not work together).

<sup>82</sup> *Id.*

### 3. The Restriction on the Right to Education

#### *A. THE RIGHT TO EDUCATION UNDER THE TALIBAN REGIME*

Before the Taliban rose to power in Afghanistan, women enjoyed unrestricted access to education. In fact, about 50 percent of students in Afghan schools were women.<sup>83</sup> As part of the Taliban's overarching mission to degrade and suppress women, it precluded women from accessing education. Rules were passed that prevented girls over the age of eight from receiving an education.<sup>84</sup> While other nations governed by Sharia law have attempted to improve education for women, the Taliban has done just the opposite.<sup>85</sup> Between 2007 and 2009, the Taliban bombed, burned, and closed down 640 schools in Afghanistan, 80 percent of which were for women.<sup>86</sup>

#### *B. WOMEN AND EDUCATION IN THE POST-TALIBAN ERA*

After the fall of the Taliban in 2001, many schools have reopened to allow female students.<sup>87</sup> However, these schools have been bombed by insurgents, teachers have been attacked, and students have received threats.<sup>88</sup> Insurgents who oppose education for women have caused many female schools to be shut down once again.<sup>89</sup>

Even before the Taliban rose to power in Afghanistan, the lack of access and rights to education have plagued Afghan women for hundreds of years.<sup>90</sup> Historically, religious and familial traditions have caused Afghan women to be married off at a young age,

<sup>83</sup> Roshan, *supra* note 50, at 274.

<sup>84</sup> *Id.* at 273-74.

<sup>85</sup> KATARINA TOMASEVSKI, EDUCATION DENIED: COSTS AND REMEDIES 166-67 (2003). Sharia law is governed by the Quran, and is generally applied in countries under Islamic Rule. However, countries such as Iran and Saudi Arabia (both of which apply Sharia law), have adequate education for women, including universities that have women students.

<sup>86</sup> Carolyn Kissane, *The Way Forward for Girls' Education in Afghanistan*, 13 J. INT'L WOMEN'S STUD. 10, 18 (2012).

<sup>87</sup> *Id.* at 11-12.

<sup>88</sup> Drumbl, *supra* note 55, at 358.

<sup>89</sup> *In Afghanistan, Women and Girls Strive to Get an Education*, UN WOMEN (July 9, 2013), <http://www.unwomen.org/en/news/stories/2013/7/afghani-women-strive-to-get-an-education>.

<sup>90</sup> Kissane, *supra* note 86, at 10.

before they could complete formal education.<sup>91</sup> These early marriages are often followed by early pregnancies, which make it even more difficult for young women to obtain a formal education. Although contraception is now more readily available to Afghan women, these traditions and values are ingrained in Afghan culture.<sup>92</sup> Furthermore, the requirement of male escorts and the inability for women to lead independent lives has made them largely dependent on men.

The Afghan Constitution provides that education is a basic right for all.<sup>93</sup> The practical obstacles to accessing education mentioned, however, make this right somewhat illusory. The right to an education is not borne out for many women.<sup>94</sup> Only 26 percent of the entire Afghan population is literate, and only 12 percent of Afghan women have the ability to read.<sup>95</sup> Of the nearly 4.2 million Afghan children that do not have access to schools, most of these children are girls.<sup>96</sup>

Unfortunately, the Afghan government exacerbates the issue by placing roadblocks for girls' education. For example, because there are no coeducational schools, the government regularly closes girls' schools as opposed to boys' schools.<sup>97</sup> Thus, parents seeking education for their daughters would have to pay for private education for their female children. In addition, many families refuse to have their daughters taught by male teachers,<sup>98</sup> which creates more barriers to education, because 63 percent of teachers are male.<sup>99</sup> This creates a catch-22 where women are left uneducated, unless they can be educated by other women.<sup>100</sup>

<sup>91</sup> *Id.*

<sup>92</sup> Lydia Morrish, *The Birth Issue: Condoms, Abortions and Birth Control in Afghanistan*, KONBINI, <http://www.konbini.com/us/lifestyle/birth-issue-condoms-abortions-birth-control-afghanistan> (last visited May 3, 2018).

<sup>93</sup> Kissane, *supra* note 86, at 14.

<sup>94</sup> *In Afghanistan*, *supra* note 89.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Afghanistan: Girls Struggle for an Education*, HUM. RTS. WATCH (Oct. 17, 2017, 2:00 AM), <https://www.hrw.org/news/2017/10/17/afghanistan-girls-struggle-education>.

<sup>99</sup> U.N. Comm. on the Elimination of Discrimination Against Women, Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women: Combined Initial and Second Periodic Reports of State Parties: Afghanistan, ¶ 171, U.N. Doc. CEDAW/C/AFG/1-2 (Dec. 21, 2011).

<sup>100</sup> *See In Afghanistan*, *supra* note 89.

Lack of access comes in a variety of forms. For example, some women live in rural areas and do not have access to schools. Parents may send their male children out of the rural areas to be educated, but they are less likely to take this risk with girls because of the dangers in society for Afghan women and girls. Older girls face even greater challenges to obtaining an education.<sup>101</sup> Because of the increased risk of sexual violence, their families are more likely to keep older girls out of school than they are their younger siblings.<sup>102</sup>

In recent years, progress has been made to provide greater access to education for women. According to a report, the percentage of women attending universities is increasing every year.<sup>103</sup> In 2009, women comprised 24.8 percent of the university student body population.<sup>104</sup> A huge impediment that is preventing many girls and women from attending school, however, is the continued threat of violence.<sup>105</sup> These threats come in two forms: people attacking the school and people attacking the students at the school.<sup>106</sup> Inadequate safety and security pose very real threats for women who want to get an education.<sup>107</sup>

While there are still challenges that women face, increased access to education has provided many Afghan girls with hope. Twelve-year-old Zeinab's mother stated, "I am very happy my daughter can go to school and not be blindfolded by illiteracy like I am. I dream that she becomes a doctor or an engineer and can serve the people and the nation of Afghanistan."<sup>108</sup>

<sup>101</sup> *Killing You is a Very Easy Thing for Us: Human Rights Abuses in Southeast Afghanistan*, HUM. RTS. WATCH (July 28, 2003), <https://www.hrw.org/report/2003/07/28/killing-you-very-easy-thing-us/human-rights-abuses-southeast-afghanistan>.

<sup>102</sup> *Id.*

<sup>103</sup> *In Afghanistan*, *supra* note 89.

<sup>104</sup> *Id.*

<sup>105</sup> *Killing You is a Very Easy Thing for Us*, *supra* note 101.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> Caroline McGuire, 'I Sold Bread on the Streets from Dawn until Dusk and Would Make Just 10p': Inspiring Stories of Afghan Girls Whose Lives Have Been Turned Around by Education, DAILY MAIL (Mar. 8, 2015, 5:40 PM), <http://www.dailymail.co.uk/femail/article-2985184/I-sold-bread-streets-dawn-dusk-make-just-10p-Inspiring-stories-Afghan-girls-lives-turned-education.html>.



The opportunity to obtain an education has offered many girls and their families optimism: the hope for a brighter future. These families hope that their daughters will be able to get well-paying jobs and possibly even leave the country once they have an education. At the very least, these families hope that education will give their daughters freedom not to suffer as they have under the Afghan government.

#### 4. The Restriction on The Right To Healthcare

##### *A. THE RIGHT TO HEALTHCARE UNDER THE TALIBAN REGIME*

Women's healthcare in Afghanistan reached a crisis level during Taliban rule. The Taliban prevented women from accessing adequate healthcare because they were prohibited from seeing male physicians.<sup>109</sup> In September 1997, Taliban officials systematically enforced a previously-ignored policy of segregating male and female medical patients into different hospitals.<sup>110</sup> All female hospital personnel were prohibited from working in the twenty-two hospitals in Kabul.<sup>111</sup> The single medical facility where women were permitted to work contained only thirty-five patient beds and lacked electricity, clean drinking water, essential medical supplies, and surgical equipment.<sup>112</sup> In restricting women's ability to attend medical school or practice medicine, the Taliban effectively ensured that women were denied access to healthcare.<sup>113</sup> This resulted in the stark reality that women had very few places to turn to receive medical treatment.<sup>114</sup>

The lack of adequate medical care had a devastating effect on Afghan women. Pregnant Afghan women were left without any prenatal, postnatal, or emergency care and services.<sup>115</sup>

Consequently, Afghanistan has an astonishingly high maternal mortality, with thousands of women dying from simple-to-treat

<sup>109</sup> Jessica Pfisterer, *Letting the Pillar of Society Fall: Failing Health Care and Maternal Mortality in Afghanistan*, 12 *GEO. J. GENDER & L.* 61, 63 (2011).

<sup>110</sup> Stephanie Dubitsky, *The Health Care Crisis Facing Women Under Taliban Rule in Afghanistan*, 6 *HUM. RTS. BRIEF* 10, 10 (1999).

<sup>111</sup> *Id.*

<sup>112</sup> Hartley-Bleic, *supra* note 66, at 573-74.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> Pfisterer, *supra* note 109, at 65.

pregnancy complications.<sup>116</sup> The causes of this high maternal mortality rate are numerous and include poor nutrition, lack of education and access to contraceptives, and lack or unavailability of emergency medical services.<sup>117</sup>

The inadequate healthcare had the greatest adverse impact on women who lived far away from healthcare facilities.<sup>118</sup> Significantly, rural poor women fared much worse than women who lived near urban centers. These women had virtually no access to birth control and other contraceptive family planning healthcare services.<sup>119</sup> Lack of access to safe birth control methods is detrimental to the lives of many women. Family planning would allow women to get married without fearing that children would prevent them from continuing their education.<sup>120</sup> It would also give women the freedom to limit the size of their families.<sup>121</sup> By limiting family size, women (and men) could ensure that they have adequate resources to raise their children.<sup>122</sup> Thus, it would decrease poverty and allow families to have the resources necessary to take care of their children.<sup>123</sup> In fact, many Afghan women expressed that pregnancy is a tremendous problem in managing their own lives.<sup>124</sup>

#### *B. HEALTHCARE FOR WOMEN IN THE POST-TALIBAN ERA*

Women's healthcare in Afghanistan is beginning to improve. Now, 60 percent of healthcare facilities have at least one female

<sup>116</sup> *Id.* at 73 (stating "two Afghan women die for every 100 who give birth" due to pregnancy-related complications).

<sup>117</sup> *Id.* at 62.

<sup>118</sup> NEAMATOLLAH NOJUMI ET AL., *LIFE AND SECURITY IN RURAL AFGHANISTAN* 75 (2009).

<sup>119</sup> *Id.*

<sup>120</sup> *Family Planning: A Growing Empowerment Opportunity for Women in Afghanistan*, UNFPA (Mar. 11, 2013), <http://afghanistan.unfpa.org/news/family-planning-growing-empowerment-opportunity-women-afghanistan>.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> NOJUMI ET AL., *supra* note 118, at 77.

<sup>124</sup> *Id.*

caregiver.<sup>125</sup> Even with these improving numbers, there are still many challenges that Afghan women seeking medical care face.<sup>126</sup> One of the most difficult hurdles women must overcome is the cost of paying for a physician.<sup>127</sup>

Afghan women living in rural areas are the most disadvantaged because of the scarcity of female doctors in those regions.<sup>128</sup> And unfortunately, many women are still dying from pregnancy complications due to lack of adequate healthcare.<sup>129</sup> Additionally, a continuing scarcity in access to birth control and other contraceptive devices means complications still arise from multiple pregnancies.

## 5. The Restriction on The Right To Expression, Association and Assembly

### *A. THE RIGHT TO EXPRESSION, ASSOCIATION AND ASSEMBLY UNDER THE TALIBAN REGIME*

The Taliban regime did not protect the right to free expression, association, or assembly.<sup>130</sup> One manifestation of the freedom of expression is the way a person dresses and looks. According to the beliefs of the Taliban stated in documents published on the

<sup>125</sup> John R. Acerra et al., *Rebuilding the Health Care System in Afghanistan: An Overview of Primary Care and Emergency Services*, 2 INT'L J. EMERGENCY MED. 77, 81 (2009).

<sup>126</sup> Melissa Charbonneau, 'Woman of Courage' Recipient Lobbies for Women's Health Care in Afghanistan, BUSH CTR. (Mar. 18, 2014), <http://www.bushcenter.org/publications/articles/2014/03/woman-of-courage-recipient-lobbies-for-womens-health-care-in-afghanistan.html>.

<sup>127</sup> *Id.*; see *Labor Force Participation Rate, Female (% of Female Population Ages 15+)* (Modeled ILO Estimate), WORLD BANK, <https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS> (last visited May 4, 2018) (stating, only 19 percent of Afghan women participate in the workforce because most, if not all, of these women are forced to accept low-paying jobs which prevents access to adequate healthcare); see also Raza M. Khan, *Canadian Physician Describes Healthcare in Afghanistan*, MOD. RELIGION, <http://www.themodernreligion.com/jihad/afghan/physician.html> (last visited May 4, 2018) (stating doctors, both male and female, are leaving Afghanistan in large numbers as the monthly salary of a doctor is only 6000 Afghan Rupees, the equivalent of approximately \$100).

<sup>128</sup> *Id.*

<sup>129</sup> Pfisterer, *supra* note 109, at 66.

<sup>130</sup> See, e.g., Shannon A. Middleton, Note, *Women's Rights Unveiled: Taliban's Treatment of Women in Afghanistan*, 11 IND. INT'L & COMP. L. REV. 421, 422-23 (2001). See generally SANGH MITRA & BACHCHAN KUMAR, *ENCYCLOPAEDIA OF WOMEN IN SOUTH ASIA* (2004).

official Taliban website, women must hide their physical attractiveness so men are not sexually attracted to them.<sup>131</sup> To hide their physical attractiveness, the Taliban forced women to wear the burqa.<sup>132</sup>

The Taliban also deprived women of their freedom of association rights.<sup>133</sup> Women were not allowed to engage in social activities. Women were denied civil and political rights by being barred from associating in large groups.<sup>134</sup> When the Taliban resisted foreign interference, Afghan women protested with signs which stated: "Taliban law is not Islamic law."<sup>135</sup> In 1996, over 150 women peacefully protested the Taliban closing women's bathhouse; the Taliban reacted by beating, jailing, and turning a firehose on the women.<sup>136</sup> One woman, Najiba Sara Biabani, stood up against the Taliban.<sup>137</sup> She created a radio show to inform Afghans about "land mines, narcotics, health, hygiene, women's rights, education, and domestic problems."<sup>138</sup> The Taliban threatened her, and she eventually went into hiding.<sup>139</sup>

#### *B. EXPRESSION, ASSOCIATION, AND ASSEMBLY IN THE POST-TALIBAN ERA*

Even after the Taliban's regime, Ismail Khan's role in the Afghan government has continued systematic discrimination against women.<sup>140</sup> He implemented a number of measures designed to suppress women's speech, including restrictions on

<sup>131</sup> See Adam Scott Kunz, Note, *Public Exposure: Of Burqas, Secularism, and France's Violation of European Law*, 44 GEO. WASH. INT'L L. REV. 79, 82-83 (2012).

<sup>132</sup> See *id.*

<sup>133</sup> Middleton, *supra* note 130, at 422-23.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 444.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 445.

<sup>138</sup> *Id.* (citation omitted).

<sup>139</sup> *Id.*

<sup>140</sup> See, e.g., Karima Bennoune, *A Peace of Her*, 19 UCLA J. INT'L L. & FOREIGN AFF. 63, 67-68 (2015). Ismail Khan is a politician in Afghanistan, who served as Minister of Water and Energy from 2005 to 2013. He is widely known as a warlord because of his rise to power during the Soviet-Afghan War. See *Ismail Khan*, WIKIPEDIA (June 19, 2018), [https://en.wikipedia.org/wiki/Ismail\\_Khan](https://en.wikipedia.org/wiki/Ismail_Khan).

women and girls participating in many public forums.<sup>141</sup> For example, he has prevented women from participating in public discussions regarding government decisions, and has prevented women from participating in the political process.<sup>142</sup> He limited women's ability to form organizations, including corporations, non-profits, and community organizations.<sup>143</sup> He penalized any speech concerning women's rights.<sup>144</sup> Khan's influence has been particularly hostile towards women's rights advocates, cancelling an International Women's Day celebration where 500 attendants were expected.<sup>145</sup>

In the aftermath of the Taliban rule, a media law was passed to ensure greater freedom of the media.<sup>146</sup> This law attempts to allow individuals to express themselves and associate freely.<sup>147</sup> Nonetheless, many articles may be government-censored as no one has the right to say anything against "national interests."<sup>148</sup> That is to say, no one is permitted to say anything against the government or anything that is seen as an attempt to overthrow or contradict its rule.<sup>149</sup>

While the rights to free expression and association were hailed as a great advance for the women in Afghanistan, these rights have increasingly come under threat.<sup>150</sup> In 2014 alone, there were approximately 68 attacks against journalists.<sup>151</sup> Of these attacks, many were against those covering that year's presidential election, which carried great implications for the future of women's rights and what the country could do to improve the status of women.<sup>152</sup> Despite the very real prospect of persecution, many

<sup>141</sup> Bennoune, *supra* note 140.

<sup>142</sup> *See id.* at 70-71.

<sup>143</sup> *See* Cheshmak Farhournand-Sims, *Unfulfilled Promises: Women and Peace in Post-Taliban Afghanistan*, 62 INT'L J. 643, 659, 662 (2007).

<sup>144</sup> *See id.* at 644.

<sup>145</sup> *See, e.g.,* Germany in Afghanistan, *Ms. Zarmina Mohmand Receives. . . – Germany in Afghanistan*, FACEBOOK (Mar. 13, 2017), <https://www.facebook.com/germanyinafghanistan/posts/1367349296657948>.

<sup>146</sup> Waheed Warasta, *Freedom of Expression in Afghanistan*, DOMINION (Jan. 29, 2008), <http://www.dominionpaper.ca/articles/1634>.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *World Report 2015: Afghanistan*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2015/country-chapters/afghanistan> (last visited May 4, 2018).

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

courageous women have dared to speak up for what they believe in.<sup>153</sup> Women take a huge risk by speaking their minds freely in Afghanistan. “Mena,” a student at Herat University, explained, “Men and women’s ideas are equal. Men should be respectful of women’s ideas. But I don’t know anyone who speaks her ideas freely now.”<sup>154</sup> Women who have been brave enough to speak out and publicly promote women’s rights have been targeted.<sup>155</sup> Women who speak out suffer various fates depending on the severity of their infraction; while some women are beaten to death, others face various forms of sexual violence.<sup>156</sup> In other cases, women who speak out lose their jobs or face other similar consequences.<sup>157</sup>

In 2007, Malalai Joya, a female delegate in the Afghan assembly, was ejected from the Afghan constitutional convention when she spoke out and declared that the warlords of the nation were criminals.<sup>158</sup> After speaking her mind and expressing that “they were the ones who destroyed our country,” Joya was denounced, her microphone was turned off, and she was escorted out of the building.<sup>159</sup> Thus, the government silenced her, in line with the institutionalized silencing of women in Afghanistan.

### III. A COMPARATIVE APPROACH: USING THE UNITED STATES AS A ROADMAP FOR ENACTING A CIVIL RIGHTS ACT IN AFGHANISTAN

Afghan women’s rights advocates and political and legal leaders should use the American Civil Rights law as a guide to implement a Civil Rights Act in Afghanistan. This section demonstrates the similarity between the early struggle for women’s rights in the

<sup>153</sup> Paul Watson, *Speech Upsets Afghan Assembly*, L.A. TIMES (Dec. 18, 2003), <http://articles.latimes.com/2003/dec/18/world/fg-afghan18>.

<sup>154</sup> Neff, *supra* note 58.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> Maseeh Rahman, *In Attacking Islamic Warlords, Afghan Woman Spoke for Many*, SCMP (Dec. 21, 2003, 12:00 AM), <http://www.scmp.com/article/438912/attacking-islamic-warlords-afghan-woman-spoke-many>.

<sup>159</sup> *Id.*

United States and Afghanistan's struggle today. Specifically, this section discusses how the Civil Rights Act of 1964 in the United States led to further guarantees and rights for women and how a Civil Rights Act in Afghanistan will have an effect similar to that of the Civil Rights Act of 1964 in the United States.

*A. The United States: Shortcomings of The Nineteenth Amendment*

Although the United States is a champion for freedom and equality, women did not always enjoy equal rights. For a long time, African American males fared better than women. The Reconstruction Amendments gave newly freed African Americans equal rights of citizens.<sup>160</sup> However, many believed it was unnecessary to grant women the right to vote because they were represented by their husbands or male heads of household.<sup>161</sup> It was not until the passage of the Nineteenth Amendment to the Constitution that women were granted the right to vote.<sup>162</sup> The newly acquired right to vote, while a victory for women, did not place women on entirely equal footing with their male counterparts.

After the adoption of the Reconstruction Amendments, women in the United States began to fight for the right to vote. This was known as the Women's Suffrage Movement.<sup>163</sup> After nearly 75 years, the women's rights movement culminated in the passage of the Nineteenth Amendment in 1920.<sup>164</sup> Many women believed that with the right to vote, they would soon enjoy

<sup>160</sup> See U.S. CONST. amends. XIII, XIV, XV (abolishing slavery and giving civil rights to African Americans after the end of the Civil War in the United States).

<sup>161</sup> Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 947, 951 (2002).

<sup>162</sup> U.S. CONST. amend. XIX.

<sup>163</sup> The formal women's rights movement began in 1848 with a Call to a Woman's Rights Convention discussing the social, civil and religious conditions of women. Approximately three hundred women convened for two days and published the "Declaration of Sentiments and Resolutions." Regarding suffrage, it "[r]esolved, [t]hat it is the duty of the women of this country to secure to themselves their sacred right to the elective franchise." *Declaration of Sentiments and Resolutions, Seneca Falls: Stanton and Anthony Papers Online*, RUTGERS, <http://ecssba.rutgers.edu/docs/seneca.html> (last visited May 4, 2018).

<sup>164</sup> See Gretchen Ritter, *Jury Service and Women's Citizenship Before and After the Nineteenth Amendment*, 20 LAW & HIST. REV. 479, 479 (2002).

the same rights and privileges as male citizens.<sup>165</sup> After the Nineteenth Amendment was passed, however, it had very little impact on improving the status of women in society.

One of the major shortcomings of the Nineteenth Amendment was its extremely limited scope. Many women hoped that the amendment would be sweeping in nature and extend rights far beyond that of voting.<sup>166</sup> But as history would reveal, this was not the case. The Nineteenth Amendment simply codified the principle that the government could not interfere with the right to vote with respect to gender.<sup>167</sup> Therefore, the subordination of women did not end simply because women received the right to vote under the Nineteenth Amendment.<sup>168</sup>

At the same time, the U.S. Supreme Court refused to extend to women all rights that were enjoyed by men. In 1874, as a precursor to the women's suffrage movement, the Supreme Court declared that women were second-class citizens and not entitled to the full spectrum of political rights.<sup>169</sup> Although the Nineteenth Amendment effectively overturned the *Minor* decision that had excluded women from voting rights, the subsequent Supreme Court jurisprudence reflected sexism and reluctance to enforce truly equal rights for women. The Court continued to deny

<sup>165</sup> *Id.* at 479-80.

<sup>166</sup> *Id.* at 482 (stating the women wanted the right to serve on juries, rights to equal pay and employment discrimination, and rights against other discrimination that was perpetrated against women throughout history).

<sup>167</sup> Sarah B. Lawsky, Note, *A Nineteenth Amendment Defense of the Violence Against Women Act*, 109 YALE L.J. 783, 786 (2000).

<sup>168</sup> Joellen Lind, *Dominance and Democracy: The Legacy of Woman Suffrage for the Voting Right*, 5 UCLA WOMEN'S L.J. 103, 192 (1994).

<sup>169</sup> See generally *Minor v. Happersett*, 88 U.S. 162 (1875). On October 15, 1872, Virginia Minor applied to register to vote in Missouri. The registrar, Reese Happersett, turned down the application, because the Missouri state constitution read: "Every male citizen of the United States shall be entitled to vote." Mrs. Minor sued in Missouri state court, claiming her rights were violated on the basis of the Fourteenth Amendment. The U.S. Supreme Court, in an 1874 unanimous opinion found: (a) women are citizens of the United States, and were even before the Fourteenth Amendment passed; (b) the right of suffrage—the right to vote—is not a necessary privilege and immunity to which all citizens are entitled; (c) the Fourteenth Amendment did not add the right of suffrage to citizenship privileges; (d) women's suffrage was explicitly excluded in nearly every state either in the constitution or in its legal code. No state had been excluded from joining the Union for lack of women's voting rights, including states re-entering the Union after the Civil War, with newly written constitutions. Thus, *Minor* reaffirmed the exclusion of women from voting rights.



women equal rights by interpreting the Nineteenth Amendment narrowly, stating that dependency was a woman's natural condition.<sup>170</sup>

While more women began participating in civil society by voting, they still faced an uphill battle.<sup>171</sup> They suffered discrimination at the hands of private individuals and were met with discrimination in the workforce by being forced to accept low paying jobs.<sup>172</sup> The traditional and normative roles of women remained unchallenged for the first half of the twentieth century, severely limiting the possibility of women achieving equal status alongside men.<sup>173</sup> Specifically, men generally still believed that women belonged at home, taking care of children, leading to employers discriminating against women and passing them up for promotions and job opportunities on account of their gender and societal norms.<sup>174</sup> This societal norm has changed, and today, it is well settled law that employers are forbidden to make employment decisions based on sex.<sup>175</sup>

#### *B. The United States: Ending Discrimination With The Civil Rights Act of 1964*

In the United States, widespread discrimination in the workplace along racial and gender lines led to the passage of Title VII of the Civil Rights Act of 1964.<sup>176</sup> Title VII of the Civil Rights Act of 1964 made it unlawful for employers to discriminate on the basis of gender.<sup>177</sup> Title VII has played a central role in

<sup>170</sup> *Bradwell v. Illinois*, 83 U.S. 130, 141 (1873).

<sup>171</sup> *Lind*, *supra* note 168, at 192.

<sup>172</sup> *Id.*

<sup>173</sup> Sara Evans, *Women in American Politics in the Twentieth Century*, GILDER LEHRMAN, <http://ap.gilderlehrman.org/history-by-era/womens-history/essays/women-american-politics-twentieth-century> (last visited May 4, 2018).

<sup>174</sup> *See id.*

<sup>175</sup> Peter Brandon Bayer, *Mutable Characteristics and the Definition of Discrimination Under Title VII*, 20 U.C. DAVIS L. REV. 769, 787 (1987).

<sup>176</sup> Katie J. Colopy et al., *Gender Discrimination in the Workplace: "We've Come a Long Way, Baby"*, 49 *ADVOC.* 11, 11 (2009) (explaining how the Civil Rights Act of 1964 helped achieve gender equality in the workplace).

<sup>177</sup> 42 U.S.C. § 2000e-2(a)(1) (2012) ("It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . ."). Gender equality was added to the Act as an afterthought.

helping women make significant progress in removing entrenched barriers to employment. As a result, more women are participating in the workforce than ever before.<sup>178</sup> The scope of this Act was broad and covered all types of discrimination women might face in the workplace, including gender discrimination.

Prior to the passage of Title VII of the Civil Rights Act of 1964, women faced some of the same issues as women in Afghanistan.<sup>179</sup> For example, just like in Afghanistan, women in the United States faced discrimination in the workplace, including sexual harassment and gender discrimination related to pregnancy.<sup>180</sup> With the passage of Title VII of the Civil Rights Act of 1964, federal statutory law created rights and remedies for women, allowing them to file suit against an employer or potential employer for employment discrimination. To enforce the law, the Equal Employment Opportunity Commission was created.<sup>181</sup> Through Title VII, women in the United States gained legal equality in the workplace.

### *C. Afghanistan: Shortcomings of The Afghan Constitution*

Similar to the Nineteenth Amendment of the United States Constitution, the 2004 Afghan Constitution includes explicit and implicit provisions that promote equal rights for women.<sup>182</sup> The Afghan Government passed its Constitution in 2004, after the fall of the Taliban regime.<sup>183</sup> It postulates a legal framework that

<sup>178</sup> Colopy et al., *supra* note 176, at 11.

<sup>179</sup> *Id.*

<sup>180</sup> Mina Habib, *Afghan Women Demand Action on Workplace Harassment*, IPWR (Nov. 4, 2015), <https://iwpr.net/global-voices/afghan-women-demand-action-workplace> (“Nahid has been trying to find a job in the Afghan media, so far without success. Every time she goes for an interview, employers make it clear she will only get the job in exchange for sexual favours.”).

<sup>181</sup> *About the EEOC: Overview*, EEOC, <https://www.eeoc.gov/eeoc/index.cfm> (last visited May 4, 2018) (“The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information.”).

<sup>182</sup> *See generally* THE CONSTITUTION OF AFGHANISTAN Jan. 26, 2004.

<sup>183</sup> *Id.*

provides rights for its citizens.<sup>184</sup> One example of rights granted for women is found under Article 53, which extends state financial support for “women without caretaker[s].”<sup>185</sup> Gender-neutral provisions of the Constitution also guarantee equal rights to women. Article 33 gives women the right to political participation, specifically the right to participate in the election of their representatives.<sup>186</sup> The education of women is also a stated objective in Article 44 of the Constitution; specifically, it states that the government will try to have equal education for women, and also eliminate illiteracy in the country.<sup>187</sup> Women seem to enjoy significant rights under the 2004 Constitution.

While the codification of these rights is a tremendous success, some of these rights fail to be realized in practical terms.<sup>188</sup> Although the Afghan Constitution purports to protect women’s equality, the courts and society at large often ignore these rights.<sup>189</sup> For example, women bring cases to the enforcing bodies, specifically the courts, only to have their claims denied.<sup>190</sup> In addition, many conservatives within the Afghan communities do not recognize women’s rights and continue to subject women to unequal treatment; for example, they choose to hire male rather than female workers, and they do not report or recognize discrimination when it occurs against women.<sup>191</sup>

A Constitution is only effective if there is a mechanism for enforcing its provisions.<sup>192</sup> Thus, courts must enforce those rights the Constitution provides. While the Constitution does provide some protections for women, as the history after the passage of the Nineteenth Amendment in the U.S. demonstrates, bare minimum protections are insufficient to affect sweeping change. Although the Constitution may foster equality as an ideal, without

<sup>184</sup> *Id.* arts. 22-59.

<sup>185</sup> *Id.* art. 53.

<sup>186</sup> *Id.* art. 33.

<sup>187</sup> *Id.* art. 44.

<sup>188</sup> ANASTASIYA HOZYAINOVA, U.S. INST. OF PEACE, SHARIA AND WOMEN’S RIGHTS IN AFGHANISTAN 2 (2014).

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> Ruth Gavison, *What Belongs in a Constitution?*, 13 CONST. POL. ECON. 89, 90 (2002) (stating that if a constitution is “merely declaratory, and do[es] not involve effective mechanisms of enforcement, [the constitution] may be a part of the credo, rather [than] ‘real’ affirmation of ‘rights’”).

the joint cooperation of judges, lawmakers, and law enforcement, equal rights for women are simply words on paper.<sup>193</sup> Women for Afghan Women (WAW), an advocacy group that was responsible for opining on the constitutional provisions to protect women's rights, would have preferred that the Constitution provide "full inclusion of women in the judiciary system" to ensure women had an equal opportunity to influence and contribute to the political process.<sup>194</sup> By ensuring that women are part of the political process and have a say in the legal process, violations of constitutional rights are appropriately remedied and curbed.

#### *D. Afghanistan: Civil Rights Act Proposal*

A Civil Rights Act in Afghanistan would go beyond the Constitution's mere assertion of equal rights for women and would help to ensure that, in practice, those rights are respected and upheld. The proposed Civil Rights Act in Afghanistan shall read as follows:

To enforce the constitutional right of equal rights for women, to confer jurisdiction upon the Supreme Court to provide injunctive relief against discrimination, to protect rights in public facilities and public education, to establish a Commission on Equal Employment Opportunity,

Be it enacted by the Afghan Loya Jirga, that this Act may be cited as the "Civil Rights Act of Afghanistan"

(a) It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to her compensation, terms, conditions, or privileges of employment, because of such individual's sex;

(b) No person in Afghanistan shall, on the basis of gender, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program

<sup>193</sup> Isaac Kfir, *Feminist Legal Theory as a Way to Explain the Lack of Progress of Women's Rights in Afghanistan: The Need for a State Strength Approach*, 21 WM. & MARY J. WOMEN & L. 87, 134 (2014).

<sup>194</sup> Laura Grenfell, *The Participation of Afghan Women in the Reconstruction Process*, 12 HUM. RTS. BRIEF 22, 23 (2004).

(c) Whenever the Attorney General receives a complaint in writing signed by an individual to the effect that she is being deprived of or threatened with the loss of her right to the equal protection of the laws, on account of her gender, and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief, the Attorney General is authorized to institute for or in the name of Afghanistan a civil action in any appropriate court against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(d) The commission on Equal Employment Opportunity shall-

(1) Investigate allegations in writing under oath or affirmation that certain citizens are being deprived of their right to expression, movement, employment, healthcare, education on the basis of gender;

(2) Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of gender;

(3) Appraise the laws and policies of the Government with respect to denials of equal protection of the laws under the Constitution because of gender;

(4) Serve as a national clearinghouse for information with respect to denials of equal protection of the laws because of gender, including but not limited to the fields of education, healthcare, expression, employment, the use of public facilities, or in the administration of justice;

The reason why a similar statute would work in Afghanistan is due to the striking similarities between the U.S. government structure and Afghanistan's government structure. To elaborate, Afghanistan is an Islamic Republic and its Constitution separates the government into three branches—an executive, legislative and judicial branch.<sup>195</sup> The Afghan Constitution also establishes

<sup>195</sup> Abdullah Qazi, *Branches of Government*, AFG. ONLINE, <https://www.afghan-web.com/government-politics/branches-of-government> (last updated Jan. 26, 2016).

a Grand Assembly or *Loya Jirga*. The *Loya Jirga* convenes to: make decisions on issues related to independence, national sovereignty, territorial integrity, and supreme interests of the country; amend provisions of the Constitution; and prosecute the President.<sup>196</sup>

In Afghanistan, the President is the head of the executive branch and the Parliament, or National Assembly, comprise the legislative branch.<sup>197</sup> The National Assembly consists of an upper and lower house.<sup>198</sup> The lower house is the *Wolesi Jirga* (the House of People) and the upper house is the *Meshrano Jirga* (House of Elders).<sup>199</sup> Members of the *Wolesi Jirga* are elected by the people through free, general, secret, and direct elections. Members of the *Meshrano Jirga* are elected and appointed as follows: i) from among the members of each provincial council, the respective council elects one person for a period of four years; ii) from among the district councils of each province, the respective councils elect one person for a period of three years; iii) the President from among experts and experienced personalities.<sup>200</sup> The judicial branch consists of the Supreme Court, High Courts, and Appeal Courts.<sup>201</sup> Similar to the Supreme Court of the United States, the Supreme Court of Afghanistan is composed of nine members—but are appointed by the President for a period of ten years with the approval of the *Wolesi Jirga*.<sup>202</sup> Further and similar to the United States, Afghanistan has an Attorney General who is appointed by the President and serves as the chief legal advisor of the government and acts on its behalf to bring justice.<sup>203</sup>

The Afghan government should incorporate rights and prohibitions against discrimination in the workplace in its Civil Rights Act, similar to that of Title VII of the Civil Rights Act

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *History - Attorney General's Office*, ATTY GEN.'S OFF., <http://ago.gov.af/en/page/about-us/history> (last visited May 5, 2018).

of 1964. Excluding women from participation in the workforce has perverse effects on Afghan society, particularly on the women who are widowed.<sup>204</sup> When women are effectively prevented from seeking gainful employment, they cannot afford to support their children and must resort to begging on the streets.<sup>205</sup> Although the Act would not instantly change the way an entire culture perceives women, achieving economic independence is an important step towards equal rights for women. When women achieve economic independence, as they have in the United States, for example, there are fewer pressures for women to get married, have children, and engage in other activities that make them beholden to men or their families.<sup>206</sup> Women in the United States have achieved economic independence, which has allowed them to start businesses and become independent.

Increasing the number of women in the workforce, along with improving educational opportunities for women, would have a spillover effect into the political sphere. The more independent and educated women there are in Afghanistan, the more active women can become in changing the political landscape. This is exactly what happened in the United States. As women became important fixtures in the workforce, they began to rise up in the industries and become decision makers. Consequently, the United States started to have a culture that was more favorable to women. Similar outcomes could happen in Afghanistan with a Civil Rights Act that prohibits employers from discriminating, making it easier for women to join the workforce.

While there is a constitutional provision requiring equal access to education, a Civil Rights Act would require coeducational facilities. For example, requiring all schools to provide education for women and men in the same building.

An additional provision the Afghan government should incorporate in its Civil Rights Act is similar to Title IV of the Civil Rights Act of 1964, which promotes the desegregation of public schools and gives the Attorney General enforcement authority.<sup>207</sup> This section would be more powerful than the current Article in

<sup>204</sup> Shefali Desai, Note, *Hearing Afghan Women's Voices: Feminist Theory's Re-Conceptualization of Women's Human Rights*, 16 ARIZ. J. INT'L & COMP. L. 805, 825 (1999).

<sup>205</sup> *Id.*

<sup>206</sup> See Gullafroz Shahrstani, *Afghan Women: The Half Forgotten of the Society*, ASIAN PRESS INST. (Dec. 10, 2013), <http://www.asianpressinstitute.org/?p=843>.

the Afghan Constitution, because there is a specific political body responsible for enforcement. By having a person in the government who could enforce education equality, Afghanistan could more adequately ensure that the provisions of its Constitution are being complied with. Public schools from the primary education level to the university/college level would be prohibited from discriminating against women, and actual enforcement would be implemented. As previously discussed, women in Afghanistan still experience difficulty accessing education. The oppression of the Taliban regime (prohibiting girls and women from obtaining an education) served to perpetuate gender inequality.<sup>208</sup>

The highly patriarchal society of Afghanistan, while firmly rooted in culture and religion, is open to change. Muslim jurists and Muslims alike believe that justice and equality are fundamental values of Islam.<sup>209</sup> Although Islam and the Quran are often used to defend the oppression of women, many modern scholars and feminists believe the Quran in fact protects and advances the rights of women.<sup>210</sup> Many Muslim feminists acknowledge that while the Quran treats women differently, this is not the same as inequality.<sup>211</sup>

#### IV. CONCLUSION

The history of the United States offers an example of the progression of women's rights. But it is important to note that the change did not happen overnight. The change was gradual and sometimes painstakingly slow. When women finally did win the right to vote, women faced great resistance by many people who did not believe men and women were inherently equal. However, the women's rights advocates did not give up. With the passage of the Civil Rights Act of 1964, women have made enormous strides towards achieving full equality.

<sup>209</sup>Ziba Mir-Hosseini, *Muslim Women's Quest for Equality: Between Islamic Law and Feminism*, 32 CRITICAL INQUIRY 629, 629 (2006).

<sup>210</sup>Barlas, *supra* note 45, at 134.

<sup>211</sup>*Id.* at 125-26.



The American model can offer a roadmap for Afghan women's rights advocates to follow. While the U.S. example is not perfect, it provides context for women's rights and the promotion of women in the workplace as well as in other positions of power. Although achieving equality is a difficult goal, it can be done with dedication and perseverance. With the support of jurists, lawmakers, and government, change can be implemented to end female oppression in Afghanistan once and for all.