The purpose of this paper is to provide a brief examination of the legal status of women in Afghanistan, focusing on Afghan national law and Islamic sharia law. The first section reviews the rights of women in Afghanistan during the past century and continues with a look at the current laws relevant to women in the country; the second section provides a brief overview of sharia law and its impact upon Afghan women; and the final section looks in greater detail at examples of women who navigate daily through the intersection of Afghan and sharia law. This paper is not intended to provide an exhaustive discussion of all Afghan judicial practices and sharia law but rather seeks to provide the reader with a basic understanding of the legal status of women in Afghanistan. More comprehensive information is available at www.cimicweb.org.\(^1\) Hyperlinks to original source material are highlighted in blue and underlined in the embedded text.

The legal and social status of women in Afghanistan has undergone significant changes over the last century. Following the independence of Afghanistan from British rule in 1919, King Amanullah Khan acceded to the throne and ruled until 1929, introducing some important reforms to the country, including the banning of the Muslim veil for women and the establishment of co-educational schools. He was quoted as saying:

“Religion does not require women to veil their hands, feet and faces or enjoin any special type of veil. Tribal custom must not impose itself on the free will of the individual.”

Queen Soraya, King Amanullah’s wife, a powerful advocate for women’s rights in Afghanistan, also founded the first magazine for Afghan women called Guidance for Women, while the King’s sister, Kobra, created the Organisation for Women’s Protection. The changes during the 1920s upset many tribal and religious leaders and ultimately led to the King’s downfall, followed by a short four year rule by King Mohammad Nadir Shah which ended in his assassination.

King Mohammad Zahir Shah was the son of King Mohammad Nadir Shah and he began his forty year rule in 1933 at the age of 19, introducing social and legal changes at a more gradual pace. The king wrote Afghanistan’s first constitution in 1964\(^2\) within which he declared equality and natural rights for all

---

\(^1\) A Cimicweb user account is required to access some of the links in this document.

\(^2\) The Afghan 1964 Constitutional articles related to women include: 25, 26, 34 and 37.
citizens, promising a “prosperous and progressive society.” During this time women gained many freedoms including access to education, unveiling in public, and the right to work and move freely in the cities. This period was known for its openness and tolerance but the changes were largely restricted to urban areas while women in rural areas still lived according to traditional customs.

In July 1973 Mohammad Daoud Khan seized power in a military coup and abolished the monarchy and previous constitution. He wrote a new constitution in 1976\(^3\) that called for the elimination of torture and discrimination, ensured access to education, and promoted equality. However, there were no real changes for the treatment of women during this period.

A violent coup took place in 1978 ending the rule of Daoud Khan and introducing the time of Soviet influence. The Democratic Republic of Afghanistan emerged and the People’s Democratic Party of Afghanistan ruled the country from 1978-1992, backed by the Soviet Union. In 1987\(^4\) they published a constitution including laws that guaranteed women the right to health care, equality, liberty, work, education, and social security. However, the constitution also asserted that “no law shall run counter to the principles of the sacred religious of Islam” and “the hereditary right to property shall be guaranteed by law on the basis of Islamic Shari'at.” These articles allowed for the abuse of women in cases of inheritance and anything the government deems “counter to the principles of [...] Islam.”

Despite the wording in the constitution, the Soviet-backed government offered some basic rights to women. They issued decrees requiring women to go to school and participate in the workplace, while the “bride price” was abolished and the legal age for marriage was raised. The Soviet-backed government had very little tolerance for religious and tribal practices and values. This lack of cultural respect unsettled people in rural areas and stirred up resentment against the Soviets and their cultural ordinances. Following the collapse of the Soviet Union, the Soviets pulled out of Afghanistan in 1989 and the remaining Afghan government structure soon followed with the ousting of President Najibullah in 1992 by Afghan resistance fighters or mujahedeen.\(^5\)

A civil war ensued between the various factions of the mujahedeen, and the country fell under the control of various faction leaders. There was no established constitution during this time, though women were still allowed to work and get an education during the first part of mujahedeen rule under Burhanuddin Rabbani. However, these freedoms were strictly limited to cities. Women elsewhere in Afghanistan suffered under rules imposed by other Mujahedeen factions, and frequently became the

---

\(^3\) The Afghan 1976 Constitutional articles related to women include: 4, 5, 8, 10, 12 and 27.
\(^4\) The Afghan 1987 Constitutional articles related to women include: 2, 4, 7, 15, 16, 29, 33, 40, 41, 52, 56 and 57.
\(^5\) The Afghan government issued a constitution in 1990 that was largely the same as the 1987 Constitution but with the removal of select articles including article 7.
victims of rape and sexual assault. Various factions, including the Taliban, imposed restrictions on women in order to show their commitment to Islam. In certain provinces women were barred from leaving the house, and prevented from accessing education, healthcare and employment.

In 1996 the Taliban reached Kabul and by 1998 they occupied nearly 90% of the country. The Taliban did not publish an official constitution but issued decrees, many of which directly related to the treatment and rights of women. These decrees prohibited women from leaving their houses without a burqa and a male escort and restricted women to visiting only female physicians. Women could no longer pursue an education, work or have access to adequate health care and at the same time faced an increased risk of rape, violence and forced marriage.

Following the 2001 US-led coalition invasion of Afghanistan, Afghan and international leaders met in December 2001 to draft the ‘Bonn Agreement’, which proposed the establishment of an interim Afghan Government and set the basis for the formation of the Independent Human Rights Commission (AIHRC) and the Ministry of Women’s Affairs (MoWA). The Afghan Constitution of 1964 was used as an interim legal guiding document for the transitional administration until new elections and a new constitution were drafted.

The current Afghanistan Constitution of 2004 contains the following provisions related to women:

| Article 7 | The state shall observe the United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights. |
| Article 22 | Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law. |
| Article 43 | 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. [...] |
| Article 44 | The state shall devise and implement effective programs to create and foster balanced education for women, improve education for nomads as well as eliminate illiteracy in the country. |
| Article 48 | Work is the right of every Afghan. [...] |
| Article 52 | The state shall provide free preventative healthcare and treatment of diseases as well as medical facilities to all citizens in accordance with the provisions of the law. [...] |
| Article 53 | [...] The state shall guarantee the rights of retirees, and shall render necessary aid to the elderly, women without caretaker, disabled and handicapped as well as poor orphans, in accordance with provisions of the law. |
| Article 54 | Family is the fundamental pillar of the society, and shall be protected by the state. The state shall adopt necessary measures to attain the physical and spiritual health of the family, especially of the child and mother, upbringing of children, as well as the elimination of related traditions contrary to the principles of the sacred religion of Islam. |
| Article 83 | Members of the House of People shall be elected by the people through free, general, [...]

---

6 The Rule of Law in Armed Conflict Project (RULAC) provides a list of international treaties that Afghanistan has signed. The United Nations Development Fund for Women (UNIFEM) also hosts a list of Afghan Government Commitments to Women. This includes the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and UN Security Resolution 1325, which promotes the inclusion of women in peace and reconciliation processes.
secret and direct balloting. [...] The elections law shall adopt measures to attain, through the electorate system, general and fair representation for all the people of the country, and proportionate to the population of every province, on average, at least two females shall be the elected members of the House of People from each province.

Members of the House of Elders shall be elected and appointed as follows:
1. From amongst each provincial council members, one individual shall be elected by the representative for a 4-year term;
2. From amongst district councils of each province, one individual elected by the respective councils, for a 3-year term;
3. The remaining one third of the members shall be appointed by the President, for a 5-year term, from amongst experts and experienced personalities, including two members from amongst the impaired and handicapped, as well as two from nomads.

The President shall appoint 50 percent of these individuals from amongst women. [...] 

According to the 2004 Afghan Constitution, Islam is the “official religion of the state” and “no law can be contrary to the beliefs and provisions of the sacred religion of Islam”. Both Shi’a and Sunni followers of Islam have equal recognition in the country with roughly 80% of individuals identified as Sunni Muslim and the majority of the remaining population identified as Shi’a Muslims.

The National Action Plan for the Women of Afghanistan (NAPWA) was drafted in 2008 as the main document to support the implementation of commitments outlined in the constitution and international treaties. NAPWA is a ten year plan of action and the primary resource for gender mainstreaming in Afghanistan’s government institutions. It focuses on six sectors: security; legal protection and human rights; leadership and political participation; economy, work and poverty; health; and education. The NAPWA vision is “of a peaceful and progressive country where women and men enjoy security, equal rights and opportunities in all aspects of life”. As part of NAPWA, the Declaration of Essential Rights of Afghan Women was signed by President Karzai in January 2002 and provides the basis for equality between men and women in Afghanistan.

The implementation strategies for priority areas of NAPWA focus on the use of the Ministry of Women’s Affairs to provide leadership and policy advice as well as the appointment of a ‘lead person’ for NAPWA within each Ministry and the establishment of provincial representatives to the Department of Women’s Affairs (DOWAs). The provincial governor oversees the Provincial Plan of Action for Women as part of the Provincial Development Plan (see diagram below explaining the NAPWA implementation mechanism).
In April 2009, President Karzai signed the Shi’a Personal Status Law, also known as the “Shi’a family law”, applicable to all Shi’a followers in Afghanistan. The constitution states in Article 131 that “Shi’a jurisprudence shall be applied by courts in cases involving personal matters”. The Shi’a family law provoked domestic and international debates because of its controversial provisions relating to the status of women. Key articles include: that a man does not need to financially support his wife unless “he has access to her”; under-age girls can be forced into marriage; wives may not inherit houses or property from husbands though men can inherit from their wives; men get custody of children in the event of a divorce; and a female virgin of any age is considered a minor and needs the permission of her guardian to get married.

According to the British Foreign Office, there has, however, been some progress for women in Afghanistan, with the recent passage of a law on the Elimination of Violence Against Women in July 2010. This new law applies to all communities in Afghanistan and takes precedence over other laws. It also criminalises a range of violent acts, including “baad” (the exchange of women and girls as a form of dispute resolution), stalking, polygamy and underage marriage. The July 2010 Kabul International Conference in Afghanistan also provided a forum for the discussion of women’s issues in Afghanistan, and in the official communiqué released after the conference it was promised that women are to be included in any peace and reconciliation process, while reaffirming commitments made in the NAPWA.

Macro Processes and Mechanisms

What is sharia law and what does its implementation mean for the women of Afghanistan? As previously stated, according to the current constitution Islam is the official religion of Afghanistan and no law may contradict its teachings. To understand Afghanistan’s legal system, it is therefore important to have a better understanding of Islamic law, or fiqh, and the concept of sharia.

Sharia in Arabic means “path” and is intended to guide the daily lives of Muslims and act as a resource for their daily activities, family matters, religious obligations and financial dealings. For hundreds of years following the death of the prophet Mohammed, his life and way was recorded by religious scholars, collectively forming the hadith. Sharia law is derived from a combination of sources, specifically the Koran, the hadith, Islamic scholars, and through community consensus. The manner in which each of those four components is weighted defines the various schools of Islamic belief, which include the Sunni schools of Hanbali, Maliki, Shafi’I, Hanafi, and the Shiite school of Ja‘fari.

---

7 For additional information on Afghan women and the reconciliation process see CFC Social Well-Being August 2010 Report on Women and the Reconciliation Process.
8 The Council on Foreign Relations backgrounder ‘Islam: Governing Under Sharia’ explains this topic in greater detail and was referenced for this discussion.
The Hanbali school is regarded as the most orthodox form of Islam and the Hanafi school is regarded as the most liberal. In Afghanistan, the majority Sunni population follows the Hanafi school of jurisprudence, while the Taliban follow the Hanbali school.

Sharia contains categories of offences that have a specific punishment according to the Koran. These are known as hadd punishments, judicial matters and reciprocal measures. The five hadd crimes are: (1) unlawful sexual relations (2) false accusation of unlawful sexual relations (3) drinking of wine and sometimes other alcohol (4) theft and (5) highway robbery. The punishment for hadd crimes may include flogging, stoning, amputation, exile or execution. The more contentious issues surrounding sharia include how Islamic schools of belief interpret sharia law relating to female genital cutting (mutilation), adolescent marriages, polygamy and inheritance, as these interpretations can come into conflict with the Afghan constitution and international treaties. Advocates for the sharia law system consider this jurisprudence the only ‘rule of law’ available to people if the state is unable to enact a transparent and fair system of government.

According to the New York Times, historically, Islamic societies had legal systems based on a “balance of powers between a ruler subject to law and a class of religious scholars who interpreted and administered that law”. However, this system of scholarly interpretation was undermined with the codification of sharia law during the rule of the Ottoman Empire in the 19th century. With a written source available for legal matters, scholars were left to interpret family law matters and Sultan Abdulhamid II suspended the newly formed Ottoman legislature of religious scholars and ruled as the sole power. The modern day application of sharia law with respect to government systems varies across the Muslim world. Sharia courts exist in both Muslim and non-Muslim countries and in the West it is primarily used to settle family or business disputes.

The Organisation of the Islamic Conference (OIC) hosted a conference in Cairo in August 1990 to discuss human rights issues in Islam. The ‘Cairo Declaration on Human Rights in Islam’ contained various articles related to women, including Article 1 (a): All men are equal in terms of basic human dignity and basic obligations and responsibilities, without discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. […]; Article 3: In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old men, women and children. […]; and Article 6: Woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform, and has her own civil entity and financial independence, and the right to retain her name and lineage.

In Afghanistan the 2004 constitution stipulates that Islamic judicial reviews must be carried out to ensure laws that are not in accordance with Islamic law and practices are overturned.
For women in Afghanistan, a combination of legal and societal constructs influence the manner in which they behave in personal and private matters. The Afghan government started an initiative in Balkh province in 2009 to educate its citizens about the rights of women. The Ministry of Haj and Religious Affairs and the Ministry of Women's Affairs have partnered to encourage mullahs and religious elders to discuss forced marriage, early marriage, gender based violence, and inheritance issues within the context of Islamic texts. Islamic feminism is also increasingly visible in Afghanistan, with women advocating for advancement of their rights through religion, according to the National.

In recent years, women in larger cities such as Kabul have been entering professions within the arts – such as digital design – that enable greater creativity, while allowing them to stay “behind the scenes”, out of the more socially controversial public forum. There is also a renewed focus on the health needs of women. In Paktiya province for example, the first hospital dedicated solely to gynaecology was opened in Gardez in August 2010. In the Shib Koh district of Farah province meanwhile, the sub-governor requested the creation of an all-female shura to better understand the needs of women in the district. This initiative was facilitated by the Female Engagement Team (FET) of the Provincial Reconstruction Team (PRT) in Farah. However, despite these advances, the application of women’s rights is still lacking in parts of Afghanistan, particularly Helmand province, according to a recent ISAF report. Outside of the provincial capital, Helmand lacks the presence of women in decision-making bodies, with no prominent female politicians, community leaders or businesswomen and no female judges or lawyers. Additionally, the use of daughters to settle family disputes, and the practice of forced and early marriage continues in the province.

The Ministry of Women’s Affairs reported 1,940 cases of violence against women in the past three years, including forced marriages and physical attacks, among other violent acts, according to a Pajhwok Afghan News article. There also continue to be threats made to women who try to engage with civil society, participate in schooling or work outside the home. So-called ‘night letters’ are delivered by the Taliban in response to women who go against their beliefs, and attacks are often carried out on girls’ schools, with the most recent taking place last week. The upcoming 18 September parliamentary elections offer an opportunity for women to exercise their right to vote and participate in the political leadership of the country, although their ability to run as candidates and access voting facilities without physical and verbal abuse remains an ongoing challenge, according to the US Institute for Peace (USIP).

Women’s rights in Afghanistan are enshrined in the country’s constitution, various national action plans and sharia jurisprudence. Government programmes to increase knowledge of women’s rights nationwide are key opportunities to broaden women’s understanding of and access to these laws. However, Afghan women’s rights activists fear that growing conservatism in Afghan society, coupled with the ideals of the Taliban - as evidenced by the suppression of women during their rule - will result in women’s rights being sacrificed to achieve peace.

Please visit our Social Well-Being discussion boards.