1-1-2009

Legal Reform to Advance the Rights of Women in Afghanistan within the Framework of Islam

Jennifer Kristen Lee

Follow this and additional works at: http://digitalcommons.law.scu.edu/lawreview

Part of the Law Commons

Recommended Citation
Available at: http://digitalcommons.law.scu.edu/lawreview/vol49/iss2/6
LEGAL REFORM TO ADVANCE THE RIGHTS OF WOMEN IN AFGHANISTAN WITHIN THE FRAMEWORK OF ISLAM

Jennifer Kristen Lee*

I. INTRODUCTION

Human rights abuses force Afghan women to live in terror.¹ Sixteen-year-old Nazia’s family wedded her to a forty-year-old man, Mumtaz, in September 2007.² Two weeks later, her husband beat her for no obvious reason.³ Mumtaz had become suspicious that Nazia met other men secretly, so he beat her until she fainted.⁴ He tied her down and broke her teeth with a stone.⁵ He poured boiling water on her feet.⁶ When Nazia subsequently did not cook dinner for him because she could not stand, he tied her up and beat her again.⁷ While enduring the violence, she felt an excruciating pain in her left and right ears and tasted blood flowing down

* Comments Editor, Santa Clara Law Review, Volume 49; J.D./M.B.A. Candidate, Santa Clara University School of Law and Santa Clara University Leavey School of Business 2010; B.A., Political Science, University of California, Berkeley. I wish to thank my family for their continual support and inspiration. I also wish to thank Professor Beth Van Schaack for her guidance and the editors of the Santa Clara Law Review for their hard work and thoughtful contributions.

3. Id.
4. Id.
5. Id.
6. Id.
7. Id.
her face. Mumtaz had cut off her ears and her nose with his knife. Nazia’s story, told from her hospital bed in Qalat, Afghanistan, serves as an example of the plight of women in Afghanistan and the human rights violations targeted at women.

Human rights abuses against Afghan women occur daily. Women face punishment such as public whippings, stonings, and imprisonment for inadvertently exposing their ankles or for wearing brightly colored shoes. Although Afghanistan’s current constitution (the “2003 Constitution”) and the international treaties to which Afghanistan is a signatory, enumerate equal rights for women and men, poor law enforcement, lack of awareness about women’s rights, and conservative traditions prevent the promise of equal rights from becoming a reality.

Despite these guarantees of women’s fundamental rights, significant challenges remain for Afghan women in terms of implementing the constitutional provisions, and reconciling the more conservative and male-dominated aspects of Afghan society with culturally pragmatic conceptions of gender equality. The 2003 Constitution also requires that

9. Id. (showing pictures of the mutilation).
10. Id.
12. See Nash, supra note 1.
13. See id.
14. Id.
16. See infra notes 105–09 and accompanying text.
17. See infra notes 87–90.
19. See, e.g., Nash, supra note 1 (explaining that women’s freedoms are restricted every day in Afghanistan).
Afghanistan abide by international conventions that it has signed,\textsuperscript{21} including the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"),\textsuperscript{22} yet Afghan women and girls continue to suffer from entrenched discrimination throughout the country.\textsuperscript{23} As a result, Afghanistan is currently a haven for severe human rights abuses against women and girls.\textsuperscript{24} Women are the victims of discrimination and human rights abuses because Islamic societies often interpret human rights for women to conflict with Islamic law.\textsuperscript{25} Afghanistan is one of these societies.\textsuperscript{26} Despite equal rights for women and men written in the 2003 Constitution, Afghan women are not afforded rights equal to men in practice, and they presently live in terror.\textsuperscript{27}

This comment addresses gender rights in Afghanistan, focusing on continuing human rights violations\textsuperscript{28} despite Afghanistan's international treaty obligations\textsuperscript{29} and prohibitions against discrimination in the 2003 Afghan Constitution.\textsuperscript{30} Part II.A discusses the historical treatment of

---


\textsuperscript{24} Id.


\textsuperscript{26} See supra notes 15–21 and accompanying text.

\textsuperscript{27} See Nash, supra note 1.

\textsuperscript{28} HRW, More Business Than Usual, supra note 23 ("Afghan women and girls continue to suffer from entrenched discrimination throughout the country.").

\textsuperscript{29} CEDAW: States Parties, supra note 22. Afghanistan acceded the Convention on the Elimination of All Forms of Discrimination against Women on March 5, 2003. Id.

\textsuperscript{30} See AFG. CONST. art. 7, available at http://afghanland.com/history/constitution.html ("The state shall abide by the U.N. charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights.").
women in Afghanistan and women's rights under the 2003 Afghan Constitution today.\textsuperscript{31} Afghan society has not adopted equality of rights into its everyday practice.\textsuperscript{32} This comment explains the legal infrastructure in place for enforcing these rights and insufficiencies of the justice system in Part II.B.\textsuperscript{33} Part II.C describes past successful programs which strengthened the judiciary and the rule of law in Afghanistan.\textsuperscript{34} The programs, however, did not focus on training judges to interpret international human rights law within the framework of Islam.\textsuperscript{35} Part II.D presents a brief background on Sharia (Islamic law), and explains why different, acceptable interpretations of women's rights in Sharia exist.\textsuperscript{36} This comment identifies in Part III the significant legal problem presented by infringement of women's rights in the context of a deeply discriminatory society in which women lack awareness and understanding of their rights.\textsuperscript{37} Part IV analyzes the way in which constitutions requiring equal rights have worked within the framework of Islam in Iran and Egypt.\textsuperscript{38} It then demonstrates how the 2003 Afghan Constitution may be interpreted in accordance with Islamic laws.\textsuperscript{39} The examples of the successful legal models in Egypt and Iran provide ideas for legal reform in Afghanistan and insight as to why the current Afghan judicial infrastructure is insufficient to promote equal rights for women and men.\textsuperscript{40} Part V presents a two-level proposal based on past successful legal models in which the judiciary interpreted Islamic law as consistent with equal rights under international human rights law.\textsuperscript{41} Specifically, this comment proposes action (1) to increase women's awareness and understanding of their rights, and (2) for equal rights to be interpreted and accepted in Islamic

\textsuperscript{31} See discussion infra Part II.
\textsuperscript{32} See infra Part II.A.
\textsuperscript{33} See infra Part II.B.
\textsuperscript{34} See infra Part II.C.
\textsuperscript{35} See infra Part II.C.
\textsuperscript{36} See infra Part II.D.
\textsuperscript{37} See infra Part III.
\textsuperscript{38} See infra Part IV.
\textsuperscript{39} See infra Part IV.
\textsuperscript{40} See infra Part IV.
\textsuperscript{41} See infra Part V.
society in accordance with Islamic law.\textsuperscript{42}

II. BACKGROUND

A. Treatment of Women in Afghanistan from the Rule of the Soviet Union to the Present

Following civil war in Afghanistan in 1978, the Soviet Union took control of Afghanistan and created many opportunities for women, including aggressive literacy programs.\textsuperscript{43} Under the Soviet Union's Communist regime from 1979 to 1992, Afghan women enjoyed equal rights and social, economic, and political freedom.\textsuperscript{44} In the 1980s, the Communists enforced equal rights for women and men in a civil-war-torn Afghanistan.\textsuperscript{45} As a result, women held a greater number of business, law enforcement, and Parliament positions than they did prior to the civil war.\textsuperscript{46} Furthermore, education and employment became more socially acceptable for women.\textsuperscript{47} As a result, women assumed positions as lawyers, entertainers, and doctors.\textsuperscript{48} As part of this greater freedom, women saw more educational, employment, and professional opportunities.\textsuperscript{49} In 1979, female students even outnumbered male students at universities.\textsuperscript{50}

In 1992,\textsuperscript{51} the Communist regime fell and the Islamic State of Afghanistan assumed control.\textsuperscript{52} Subsequently, the

\begin{footnotesize}
\begin{enumerate}
\item See infra Part V.
\item See DEBORAH ELLIS, WOMEN OF THE AFGHAN WAR, at xvii–xviii (2000).
\item Id. at xvii; Shannon A. Middleton, Comment, Women's Rights Unveiled: Taliban's Treatment of Women in Afghanistan, 11 IND. INT'L & COMP. L. REV. 421, 423 (2001).
\item ELLIS, \textit{supra} note 43, at xviii.
\item Id.
\item Id.
\item Id.
\item Id.
\item Id.
\item Id.
\item See ELLIS, \textit{supra} note 43, at 60 (explaining that the Taliban was a product of twenty years of war in Afghanistan and that it grew out of the hopelessness of refugee camps along the Afghan border).
\item ELLIS, \textit{supra} note 43, at xviii.
\end{enumerate}
\end{footnotesize}
“rights and dignity of women went out the window.” The 1977 constitution that guaranteed equal rights for women and men was “thrown out.” The Islamic State of Afghanistan began to remove women’s rights systematically, and institutionalized various violations against women. In 1993, the Islamic State of Afghanistan ruled women must be completely covered, women could not wear perfume or make-up, and women’s freedom and mobility would be restricted. The justification for these rulings was that men become too excited by women and are tempted to stray from the Islamic way of life, and the restrictions on women reduce this temptation. In addition, other, more violent human rights abuses towards women occurred under the Islamic State of Afghanistan, such as torture, rape, and sexual abuse.

Interestingly, also in 1993, as part of the Vienna Declaration, Afghanistan formally reaffirmed its “faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women.” The Vienna Declaration also stressed the importance of eliminating violence against women and “any conflicts that may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.” Despite Afghanistan’s part in the Vienna Declaration, human rights abuses against

53. Id. at 42.
54. Id.
55. See id.
56. Id.
57. Id.
58. ELLIS, supra note 43, at 42.
60. World Conference on Human Rights, supra note 59, at 1.
61. Id. at 13.
women continued as the Taliban\(^{62}\) emerged as a volatile presence in Afghanistan.\(^{63}\)

Taliban rule, which lasted from 1996 to 2001,\(^{64}\) resulted in major setbacks for women.\(^{65}\) The Taliban developed as a political-religious force,\(^{66}\) and eventually seized the cities of Kandahar in 1994, Herat in 1995, and Kabul, Afghanistan's capital, in 1996.\(^{67}\) Before the Taliban captured Kabul, women made up seventy percent of teachers, forty percent of doctors, and generally worked in all areas of employment.\(^{68}\) After the Taliban fully seized power, it severely oppressed women's rights.\(^{69}\)

The oppressive Taliban policies violated United Nations treaties, but the Taliban asserted that the treaties' duties were inconsistent with religious law and cultural practices.\(^{70}\) The Taliban began by closing all schools for girls and forbidding women to work outside the house.\(^{71}\) The Taliban imposed rules on women, restricting their freedom of movement, dress, education, and employment.\(^{72}\) The women and girls who violated these rules received punishments, including beatings on the streets, amputation of limbs, and public executions.\(^{73}\) The Taliban justified its practices in accordance with its interpretation of the Quran,\(^{74}\) claiming to...

---


\(^{63}\) Friedman, supra note 51, at 83.

\(^{64}\) Hayes, Brunner & Rowen, supra note 62.

\(^{65}\) See ELLIS, supra note 43, at 62.

\(^{66}\) Friedman, supra note 51, at 84.

\(^{67}\) See ELLIS, supra note 43, at xix.

\(^{68}\) Id. at 62.

\(^{69}\) Middleton, supra note 44, at 422.

\(^{70}\) Friedman, supra note 51, at 94.

\(^{71}\) ELLIS, supra note 42, at xix.

\(^{72}\) See id. at 63.

\(^{73}\) Id. Although the Taliban also committed abuses against men, see id. at 64–65, many of the Taliban's punishments focused on women. Id. at 64. For example, the Taliban required that all windows of houses with women be painted so women would not be seen, and it cut off a woman's thumb because she wore nail polish. Id.

\(^{74}\) See Middleton, supra note 44, at 458.
follow a pure, fundamentalist Islamic ideology. Taliban leaders enforced the law as they saw fit and prohibited differing interpretation. The plight of Afghan women living under the Taliban regime became an issue of global concern.

After the terrorist attacks on the World Trade Center and the Pentagon on September 11, 2001, and the subsequent United States military invasion of Afghanistan in October 2001, the Taliban regime collapsed. This development presented women with the opportunity to fight for gender equality.

On December 5, 2001, the Bonn Agreements mandated that the Transitional Administration of Afghanistan set up a Constitutional Commission to draft a new constitution. The Constitutional Commission’s mandate was to ascertain the Afghan people’s desires, both within the country and abroad, regarding their new constitution. The thirty-five member commission drafted the new constitution. Seven of the thirty-five commission members were women, which ensured the “participation of women in the constitution-making process.” As part of the drafting commission, Afghan women were finally able to play a role in addressing women’s fundamental rights in the 2003 Constitution.

The 2003 Constitution made significant progress for the

75. Friedman, supra note 51, at 92.
76. Middleton, supra note 44, at 458.
77. Mosadiq, supra note 20, at 29.
78. Id.
79. See id. at 29–30.
80. “The Bonn Agreements speak of the right of the [Afghan] people ... to freely determine their own political future in accordance with the principles of Islam, democracy, pluralism, and social justice.” Id. at 30. “The Bonn Agreements envisaged that the new Constitution would meet international standards and provide for democracy and the rule of law, respect human rights, create independent institutions aimed at ending the tragic conflict in Afghanistan and promote national reconciliation and lasting peace and stability.” Id.
81. Id.
83. Id.
84. Mosadiq, supra note 20, at 30.
85. UN Welcomes Inauguration of Afghanistan’s Constitutional Commission, supra note 82.
86. Mosadiq, supra note 20, at 30.
development of women’s rights in Afghanistan. It explicitly states, “The citizens of Afghanistan—whether man or woman—have equal rights and duties before the law.” Furthermore, the constitution preserves an extensive system of fundamental rights, liberties, and duties for all citizens. Article 6 of the 2003 Constitution states that Afghanistan is “obliged to create a prosperous and progressive society based on social justice, protection of human dignity, protection of human rights, realization of democracy, and to ensure national unity and equality among all ethnic groups and tribes and to provide for balanced development in all areas of the country.” In sync with equal rights, the 2003 Constitution obligates Afghanistan to promote women’s education.

The 2003 Constitution also expands women’s representation in the legislature by increasing the mandatory number of seats for women in Parliament. The constitution doubles the number of required seats for women in the Wolesi Jirga (the “House of People”). The previous law required one woman per province; the constitution now calls for two. As a result, women presently comprise twenty-five percent of the Wolesi Jirga. In the Meshrano Jirga (the “House of Elders”), the president appoints one-third of the members. Under the 2003 Constitution, half of the presidential appointments to the Meshrano Jirga must be

89. See AFG. CONST. art. 6, available at http://afghanland.com/history/constitution.html.
90. Id.
93. Id.
94. Id.
95. Id.
96. Id.
97. Id.
women. As these numbers illustrate, the 2003 Constitution substantially increases women's representation in Parliament.

Despite the provisions of the new constitution, Afghan women continue to face intimidation, discrimination, and violence. While the 2003 Constitution gives women equal rights, it also states, "[i]n Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam." This language subjects secular laws to adjudication by religious laws, and in practice, makes women's rights "vulnerable to the extremist interpretations of Islam."

One of the international conventions Afghanistan has signed and acceded to is the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW"). Member states to CEDAW accept a positive obligation to

99. See supra text accompanying notes 91–98.
104. Id. Afghanistan signed CEDAW on August 14, 1980, but acceded to it on March 5, 2003. CEDAW: States Parties, supra note 22. CEDAW was adopted in 1979. RHONA K. M. SMITH, TEXTBOOK ON INTERNATIONAL HUMAN RIGHTS 178 (3d ed. 2007). CEDAW seeks to be an international bill of rights for women. Id. at 179. It states that discrimination against women "violates the principle of equality or rights and respect for human dignity." Id. (quoting Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. Doc. A/34/46 (Dec. 18, 1979)). CEDAW requires member states to eliminate discrimination against women in the enjoyment of all civil and political, economic, social, and cultural rights. Id. at 179–80. Discrimination is defined in CEDAW Article 1 as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a bases of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.

Id. at 180 (quoting Convention on the Elimination of All Forms of Discrimination against Women, supra, art. 1. State parties agree to pursue a policy elimination and prohibiting discrimination against women. Id.
ensure the development and advancement of equal rights.\textsuperscript{105} CEDAW prohibits gender discrimination in public \textit{and} private realms.\textsuperscript{106} Under the 2003 Constitution, the Afghanistan Independent Human Rights Commission\textsuperscript{107} works to enforce CEDAW by assessing women's situations in governmental agencies and prisons, and by recommending amendments and additions to laws.\textsuperscript{108} Presently, CEDAW is without sanctions, but has an optional protocol that provides a mechanism for consideration of individual complaints.\textsuperscript{109} Even though Afghanistan has not signed the optional protocol, under the 2003 Constitution, Afghans must abide by CEDAW because CEDAW is an "international convention that Afghanistan has signed."\textsuperscript{110}

In addition to constitutional protections for gender rights, Afghanistan supports a number of related international human rights laws and is a member of international treaties.\textsuperscript{111} Afghanistan is a signatory to the Universal Declaration of Human Rights (the "UDHR"),\textsuperscript{112} the U.N. Charter,\textsuperscript{113} the International Covenant on Civil and Political Rights,\textsuperscript{114} and international treaties\textsuperscript{115} that define human

\begin{thebibliography}{115}
\bibitem{105} SMITH, \textit{supra} note 104, at 180.
\bibitem{106} \textit{Afghan Women Win Victories in New Constitution}, \textit{supra} note 91.
\bibitem{107} SALLY ENGLE MERRY, \textit{HUMAN RIGHTS AND GENDER VIOLENCE} 72 (2006).
\bibitem{109} See \textit{MERRY, \textit{supra} note 107, at 72.
\bibitem{110} See \textit{infra} notes 120-25.
\bibitem{111} See \textit{infra} notes 112-15.
\bibitem{112} The Universal Declaration of Human Rights (the "UDHR"), written in 1948, articulates "accepted standards of rights which inalienably attach to all human persons." SMITH, \textit{supra} note 104, at 27.
\bibitem{113} The United Nations Charter states the aims and functions of the United Nations. \textit{Id.} at 24. The Charter was adopted in 1945 in San Francisco, and became effective on October 24, 1945. \textit{Id.} The Preamble to the Charter states the United Nations' aims of reaffirming the "equal rights of men and women," and emphasizes the inherent dignity and worth of the individual. \textit{Id.}
\bibitem{115} Afghanistan signed and ratified the following international human rights treaties: the Covenant on Civil and Political Rights (ratified on Apr. 24, 1983); the Covenant on Economic, Social, and Cultural Rights (Apr. 24, 1983); the Covenant on the Elimination of Racial Discrimination (Aug. 5, 1983); the

However, Afghanistan also is a signatory to the Vienna Convention on the Law of Treaties, which declares that “[a] State party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” Therefore, Afghanistan cannot use its religious law as justification for its failure to comply with international human rights laws. The Vienna Convention on the Law of Treaties and the Afghan Constitution, taken together, specify that Afghanistan is responsible for the United Nations

---

116. Sunder, supra note 100.
118. Sunder, supra note 100.
120. Friedman, supra note 51, at 94–95.
122. Friedman, supra note 51, at 94–95; see Vienna Convention, supra note 121, part III, sec. 1, art. 27.
123. See supra notes 54–58.
covenants it has expressly ratified. Further, they show that Afghanistan has an explicit duty to abide by other accepted principles and norms of international law.

Despite the 2003 Constitution and international treaties and conventions, the discriminatory nature of Afghanistan's legal infrastructure and justice system prevent equal rights from being effectively enforced. The lack of effective enforcement of these rights makes Afghanistan an unsafe environment for Afghan women.

B. Afghanistan’s Present Legal Infrastructure and Problems with the Enforceability of Women’s Rights

The absence of the rule of law in Afghanistan prevents the implementation and enforcement of equal rights. Promoting the rule of law is essential for economic, social, and human rights. The problems with Afghanistan's present legal infrastructure include (1) the lack of a functioning system to effect justice through the courts, (2)
the low quality of judicial personnel, \(^{131}\) (3) the highly factionalized institutions within the justice sector, \(^{132}\) and (4) the Afghan people’s lack of awareness of the law. \(^{133}\)

1. Lack of a Functioning System to Effect Justice through the Courts

Since the fall of the Taliban, Afghanistan has made little progress toward building a functioning justice system. \(^{134}\) Afghanistan has appointed many judges and prosecutors, written laws, and held occasional trials. \(^{135}\) Despite these aspects that create the appearance of a complete justice system, the system does not function. \(^{136}\) The country “has many laws, but no implementation.” \(^{137}\) Although Afghan and international officials often refer to promotion of the rule of law as one of the highest priorities in the reconstruction process, these officials fail to address the necessary measures with urgency. \(^{138}\)

Afghanistan’s court system suffers from a lack of structure. \(^{139}\) Court management is “archaic or non-existent.” \(^{140}\) The central judicial and prosecutorial authorities often have no technical means of communicating with colleagues in the provinces, and personal or political connections sway judicial appointments without regard to legal training or other qualifications. \(^{141}\) Furthermore, there are effectively no means to enforce decisions. \(^{142}\) And, despite a theoretical right to counsel, there are virtually no defense lawyers in the country. \(^{143}\) Lastly, the structure of the court

---

\(^{131}\) See infra Part I.B.2.

\(^{132}\) See infra Part I.B.3.

\(^{133}\) See infra Part I.B.4.

\(^{134}\) U.S. INST. OF PEACE, supra note 128, at 5.

\(^{135}\) Id.

\(^{136}\) Id.

\(^{137}\) Id.

\(^{138}\) Id. For example, in 2003, the United States spent around $13 million for rule of law activities, including judicial reform, constitutional and independent human rights commissions, and $110 million for police training. Id. That is, the amount of money focused on judicial reform is insignificant compared to the amount spent on police. See id.

\(^{139}\) Id.

\(^{140}\) U.S. INST. OF PEACE, supra note 128, at 5.

\(^{141}\) Id.

\(^{142}\) Id.

\(^{143}\) Id.
system is failing because Islamic law, not secular law, is the basis of court decisions.  

2. Low Quality of Judicial Personnel

The second problem with the justice system is the low quality of judicial personnel due to corruption and lack of training in secular law. Judicial corruption is widespread. Bribery and pressure from commanders, which commonly influence judges and prosecutors, degrade the integrity of the justice system.

In addition to corruption, lack of proper training in secular law lowers the quality of judges. Proper training of legal professionals is "vital to reform the judiciary and improve the rule of law in the country." Many judges appointed in the post-Taliban period, including some in the Supreme Court, do not have a secular legal education. These judges were educated in madrassas that did not provide a legal education, but instead focused on Islamic studies. In addition, judges historically have had little access to legal texts. Currently, they remain unfamiliar with the written law and routinely make decisions without reference to it.

At the end of 2007, the Afghan Supreme Court, supported by the Chief Justice and the judiciary, created a "Bench Book," an easy-to-use manual for judges providing technical

---

144. See id. at 5, 7.
145. Id. at 7.
149. Id.
150. See id.
151. See IDLO, IDLO Support New Training Center, supra note 147.
152. Id.
154. Id. Madrassas are Islamic religious schools that often limit education to learning the Quran through repetition. ELLIS, supra note 43, at 60.
156. See id.
157. Id.
158. Id.
guidance on Afghan law and procedure. During its development, the Afghanistan Independent Human Rights Commission and the International Development Law Organization also created a Glossary on Human Rights (the "Glossary"). The Glossary will improve comprehension of human rights theory and issues with legal practitioners and legal students in Afghanistan. However, even with improvements resulting from the new Bench Book, the Glossary, and international law, judges are still not competent in secular law and procedure.

3. Highly Factionalized Institutions within the Justice Sector

The third problem is that the justice system is highly factionalized. The three main permanent institutions—the Ministry of Justice, the Supreme Court, and the Attorney General's office—have refractory relations with one another arising from political and personal concerns. The institutions are co-equal in nature, yet contribute unequally to the rebuilding process because of the lack of clear guidelines regarding their respective roles. This has created a culture of political turf-consciousness. The Judicial Reform Commission (the "JRC"), created under the Bonn Agreement to guide reform, became a fourth faction. The JRC's role remains unclear; as a result, the permanent institutions have not responded in a manner conducive to

160. The International Development Law Organization is an international, inter-governmental organization with a mandate to promote the Rule of Law and good governance in developing countries, countries in economic transition and countries emerging from post-conflict situations. IDLO, IDLO Support New Training Center, supra note 147.
161. IDLO, Key Legal Resources, supra note 159.
162. Id.
164. Id. at 6.
165. Id.
166. Id. (noting that the police perform a central role in the justice rebuilding process while the Ministry of the Interior has an inactive role).
167. Id.
168. Id.
The Italian government, a leader of the post-war reconstruction donor effort, is a fifth faction. These factions hamper the rebuilding and reform process by consuming resources and pursuing political agendas.

4. Afghan People Are Not Knowledgeable about the Law

The last challenge to the functioning of Afghanistan’s justice system is the lack of clarity regarding what laws exist in the country. Applicable law is difficult to determine because of the numerous regime changes, new constitutions, and new basic laws since 1964. The legislation from different periods created overlap and contradictions among laws. In addition, the majority of Afghans have little or no understanding of their rights or the legal and justice system. Many women are unaware of their rights under the Afghan Constitution or Islamic law. Even legal professionals are confused about the applicable law because of delays in compilation and dissemination of the law. Through knowledge of the law, Afghans will be able to identify human rights violations, and hopefully develop strategies to protect their rights.

170. Id.
171. Id.
172. See id.
180. Id.
C. Past Attempts to Strengthen the Rule of Law in Afghanistan

To strengthen the rule of law in Afghanistan, programs in the last several years strove to enhance the capabilities of legal professionals by training judges, prosecutors, the Ministry of Justice, and the National Assembly in substantive law and technical and judicial skills. One such program provided Supreme Court training for the judicial entrance exam to judicial candidates, procedural and legal training to prosecutors in the Office of the Attorney General, and secular law education to members of the Ministry of Justice and the National Assembly. In March 2005, a major, thirty-three-month program began to build the legal and judicial sectors of Afghanistan. The program consisted of building legal aid capacities through training public defenders and technically assisting in criminal procedure, adding more judicial and prosecutorial training, and holding a two-day conference on gender and criminal justice.

In addition to the programs described above, other training centers and programs for establishing professional legal education are now in place. Afghanistan's first National Legal Training Center establishes standards for professional legal education and provides access to legal

181. See IDLO, Strengthening the Rule of Law in Afghanistan, http://www.idlo.int/ROI/external/Rdetails.asp?IDActivity=3213 (last visited Oct. 28, 2008) [hereinafter IDLO, Strengthening the Rule of Law]. One example of a program to train judges and prosecutors, implemented by the International Development Law Organization, included specialized training in civil, criminal, and commercial law and procedure for 245 judges between 2005 and 2007. Id. Other programs have been implemented, such as training for the Afghan Supreme Court. Id.

182. IDLO, Canadian Government Grants, supra note 129, at 2. The program provided training to 176 judicial candidates for the judicial entrance exam and training to 180 judges. Id. It further trained 340 prosecutors in the Office of the Attorney General for over 320 hours each, the equivalent of one year in school. Id. Additionally, the program concentrated on training students at the University of Kabul in commercial, criminal, and constitutional law, as well as members of the Ministry of Justice and National Assembly. Id.

183. Id.

184. Id.

careers within the government. Afghanistan also implemented a three-year Action Plan for Peace, Reconciliation and Justice (the "Action Plan") in June 2005, focusing on strengthening the rule of law, fostering good governance, and preventing future human rights violations. The Action Plan contains five main elements, including actions to strengthen state institutions through reform, improving the integrity of civil servants, reforming the judiciary, and preventing human rights violators from holding public office. Although the programs described above have focused on training the judiciary, they have not focused on interpreting international human rights law within the framework of Islam.

D. Brief Explanation of Islamic Law as Referred to in the 2003 Afghan Constitution

To improve the problems with the current Afghan justice system under both the 2003 Constitution and the framework of Islam, particularly within the realm of women’s rights, it is

186. IDLO, IDLO Supports New Training Center, supra note 147.
189. The five main elements of the Action Plan on Peace, Reconciliation and Justice in Afghanistan are (1) acknowledgement of the suffering of the Afghan people, (2) ensuring credible and accountable state institutions, (3) truth-seeking and documentation, (4) promotion of reconciliation and national unity, and (5) establishment of effective and reasonable accountability mechanisms. Afghanistan Indep. Human Rights Comm., supra note 187.
190. UNITED NATIONS MISSION ASSISTANCE IN AFGHANISTAN, supra note 187; see Afghanistan Indep. Human Rights Comm., supra note 187.
191. See generally supra Part II.C (describing past plans to improve the rule of law in Afghanistan without a focus on reconciling equal rights for women with secular law).
important to understand the fundamentals of Islamic law and the reasons for differing interpretations of Sharia. The 2003 Constitution states, "no law can be contrary to the beliefs and provisions of the sacred religion of Islam." Sharia, or the Islamic code of law, relies on four sources: the Quran, the word of the Prophet; imja, specific personal or political issues analyzed by Islamic scholars; and qiyas, legal precedent made by a Sharia judge.

The original sources of Islam—the Quran and the word of the Prophet—gave more rights to women than those recognized by many scholars of Islamic law. However, numerous other Islamic scholars subscribe to the idea that framers of Islamic law misrepresented or partially represented the rights of Muslim women. These progressive scholars argue that conservative Muslim scholars who "glorified the degraded status of modern Muslim women" as being "beneficial" to these women did not produce sufficient authority from the Quran nor from the word of the Prophet to warrant their claims. However, this idea will have minimal impact unless shared by Muslim society at large.

Another reason for differing interpretations of Islam is that various acceptable interpretations of Sharia arose after the death of the Prophet Muhammad, when Muslims divided into two groups—the Sunni and the Shia. Both groups developed their own schools of law, agreeing on certain

192. See generally MERRY, supra note 107, at 4–6 (arguing that changes must be culturally sensitive to be accepted).
196. The word of the Prophet Muhammad consists of statements on various religious, moral, social, cultural, and legal issues. Id.
197. Provins, supra note 194, at 518.
198. Id.
199. SYED, supra note 195, at viii.
200. See id.
201. Id. at viii–ix. Hadith is the word of the Prophet Muhammad. Id at 5.
202. Id. at viii.
203. Provins, supra note 194, at 518.
fundamental issues, but differing in their interpretations of Sharia. The different interpretations have resulted in different rules on many points of law. The conflict between a conservative interpretation of Sharia and gender rights for women contributes to the legal problem addressed in this comment.

III. IDENTIFICATION OF THE LEGAL PROBLEM

This comment addresses the problem of continued discrimination against women in Afghanistan despite the existence of women's equal rights enumerated in the 2003 Constitution, in the Universal Declaration of Human Rights, and in the Convention on the Elimination of All Forms of Discrimination Against Women. This problem is compounded by Afghan women's lack of awareness and understanding of their rights and of the procedural mechanisms by which women can enforce their rights. These problems demand the attention of the international legal community. As Afghanistan and other post-conflict Islamic countries develop legal infrastructures and adopt constitutions requiring adherence to Islamic law, conflicts in interpretation between women's rights and Islamic law may result in additional human rights abuses against women.

This comment will present recommendations based on examples of successful legal models as to how a progressive court with integrity and independence can interpret Islamic law consistent with equal rights under international human rights law. More specifically, this comment will present recommendations: (1) to effect implementation of the constitutional provisions guaranteeing equal rights to women

---

204. Id.
205. Id.
206. See supra notes 200–01 and accompanying text.
207. See supra notes 1–20 and accompanying text.
208. See supra notes 80–99 and accompanying text.
209. See supra note 112 and accompanying text.
210. See supra note 22 and accompanying text.
211. See supra note 18 and accompanying text.
212. See supra note 109 and accompanying text.
213. See generally supra notes 1–20 and accompanying text (describing the atrocities against Afghan women).
214. SMITH, supra note 104.
215. See infra Parts IV.C–D.
and men; and (2) to reconcile the more conservative, male-dominated aspects of Afghan society with culturally pragmatic conceptions of gender equality. Strengthening the rule of law in Afghanistan to protect equal rights for women is essential because “there can be no sustainable peace and security in Afghanistan without respect for the rule of law.”

IV. ANALYSIS

A. Evaluation of Past Programs to Strengthen the Rule of Law in Afghanistan

Although many programs in Afghanistan have focused on developing the rule of law generally and training the judiciary, they have not focused on protecting women from Afghan society’s long history of entrenched discrimination. The programs fail to resolve the disconnect between Afghanistan’s traditional culture and the idea of equality between women and men. These programs have not achieved improvements in women’s rights because gender discrimination and violence are naturalized and traditionalized customs.

Afghanistan, like many Islamic countries, fails to achieve progressive change because of its traditional practices, patriarchal culture, and ancient ways. Past programs would have achieved greater progress in improving women’s rights if gender rights were framed within Islam. Accordingly, past training and education programs for the judiciary have established a legal infrastructure, but to improve gender rights in Afghanistan, reform should build on

216. See infra Part V and discussion infra Part IV.
217. See infra Part V and discussion infra Part IV.
218. HRW, Slow Progress, supra note 185 (quoting Sam Zarifi, research director at Human Rights Watch).
219. See supra Part II.C.
220. See supra Part II.C.
221. See MERRY, supra note 107, at 35.
222. See id. at 90 (explaining that the Afghan customs of gender discrimination and violence have naturalized and traditionalized the practices).
223. See id.
224. See id. (explaining that to change gender violence from “natural acts” to “crimes,” reframing the meaning of violence with cultural specificity is necessary to legitimize a new understanding).
national and local cultural practices\(^{225}\) that are rooted in Islam.\(^{226}\) Reforms consistent with Islamic law will gain acceptance among Afghans and achieve quicker success.\(^{227}\)

\*B. Reframing Constitutionally Mandated Rights for Women within the Framework of Islam*

For Afghanistan, reframing constitutionally mandated equal rights within the boundaries of Islam would not be radical because women had such rights in the past.\(^{228}\) As discussed above, women in Afghanistan enjoyed social, economic, educational, and political freedoms under the Soviets.\(^{229}\) This illustrates that Afghan people at one time have interpreted and accepted equal rights as compatible with their Islamic religious beliefs.\(^{230}\)

However, current interpretation of Islamic law and cultural practices in Afghanistan stifle women's rights under the 2003 Constitution.\(^{231}\) Women's rights in Afghanistan turn on the judiciary's conservative interpretation of Sharia, and this interpretation may be either in accordance with or incompatible with secular law.\(^{232}\) For example, numerous verses of the Quran\(^{233}\) on restrictions, privacy, and seclusion

\(^{225}\) See id. at 91 (recognizing the importance of building on existing practices and religious systems).

\(^{226}\) See id. (arguing that reforms need to be rooted in existing practices and religious systems if they are to be accepted).

\(^{227}\) See MERRY, supra note 107, at 90.

\(^{228}\) See Middleton, supra note 44, at 423 see also supra notes 43–50.

\(^{229}\) See supra notes 43–50 and accompanying text.

\(^{230}\) See generally supra notes 43–50 (describing freedoms and rights that Muslim women enjoyed in Afghanistan under the rule of the Soviet Union).

\(^{231}\) See infra notes 240–43 and accompanying text.

\(^{232}\) See generally infra text accompanying notes 234–36 (illustrating an example of the way in which one's interpretation of Sharia effects restrictions on women).

\(^{233}\) SYED, supra note 195, at 109 (specifically verses 32, 33, 53, 54, and 55 of the thirty-third sura, or chapter, of the Quran). References to works translated into English are based on works by eminent scholars and supported by English translations of the Quran and authentic Hadiths. *Id.* at xi. Hadiths are statements made by the Prophet Muhammad (pbuh) on religious, moral, social, cultural, and legal issues. *Id.* at 5. But, the Quran is the “supreme and ultimate authority and a guide for all Muslims in all matters.” *Id.* The authority of the Hadith is next to that of the Quran. *Id.* However, despite the Prophet Muhammad’s clear warning to ignore any Hadith that was in conflict with the Quran, many Islamic jurists and theologians give the Hadith precedence. *Id.* at 6.
referred to the Prophet’s wives.\textsuperscript{234} In practice, however, the judiciary interpreted these to apply to ordinary Muslim women.\textsuperscript{235} Conservative Muslims expand Sharia’s restrictions on the Prophet’s wives to Muslim women in the area of politics, restricting women from running for office or participating in the political process.\textsuperscript{236}

Further supporting the argument that one’s interpretation of the Sharia affects women’s rights, two of the finest and most respected translators\textsuperscript{237} of the Quran support the idea that the Quran not only recognizes, but \textit{insists} on equal status for women.\textsuperscript{238} According to a progressive reading of the Quran, women can obtain the same spiritual level as men and may attain the same “good qualities” as men,\textsuperscript{239} such as strength, nobility, the ability to make decisions independently, and a position as head of state.\textsuperscript{240} Therefore, acceptable and respected interpretations of the Sharia exist that are compatible with equal rights for women.\textsuperscript{241}

Furthermore, dialogue groups and coalitions that discuss different interpretations of Sharia will promote progressive views of the Quran.\textsuperscript{242} For example, liberal groups can argue that the Quran does not prevent women from holding leadership positions.\textsuperscript{243} Although the traditional groups will disagree, bringing light to the idea opens the doors to discussion and diversity of ideas.\textsuperscript{244} So, although there are

\textsuperscript{234} Id. at 109. These verses use the expression “hijab,” which refers to the veil that was taken when a woman became the wife of the Prophet. \textit{Id.} Therefore, the seclusion of women and the veiling of their body applied only to the wives of the Prophet. \textit{Id.}

\textsuperscript{235} See id.

\textsuperscript{236} Id. at 109 (illustrating an example of the way one’s interpretation of Sharia affects restrictions on women).

\textsuperscript{237} The two respected translators of the Quran referred to here are Abdullah Yusef and Mohammed Ali. \textit{Id.} at 121–22.

\textsuperscript{238} Id.

\textsuperscript{239} SYED, \textit{supra} note 195, at 121–22.

\textsuperscript{240} Id.

\textsuperscript{241} See \textit{supra} notes 237–40 and accompanying text.


\textsuperscript{243} SYED, \textit{supra} note 195, at 126.

\textsuperscript{244} See generally id.
ideological differences between religious conservatives and seculars, debating and considering varying perspectives will promote more progressive Islamic jurisprudence.

In order for new interpretations and progressive ideologies to be accepted, legal reform programs in transition and post-conflict areas such as Afghanistan must be culturally sensitive and structured to gain legitimacy with the people. The problem is more complicated than eliminating the custom of discrimination; it also involves eliminating the application of the custom of discrimination in court cases. Two Islamic countries, Iran and Egypt, have successfully promoted international human rights for women in a culturally sensitive way structured to gain legitimacy from the people.

C. Iran’s Acceptance of Women’s Rights within the Context of Islamic Beliefs

Iran is an example of a state that has promoted women’s rights within an Islamic framework. Following the Islamic Revolution in 1979, women in Iran saw dramatic setbacks in their legal rights. In the 1990s, religious feminist leaders emerged to advance theological justifications for legal improvements for women. These leaders’ ideas inspired two types of activists: those who supported an Islamic government and those who supported a secular government. Within the secular group, women further divided between those who believed in a liberal interpretation of Sharia and those who believed in non-cooperation, testing and pushing the limits of religious law by refusing to comply

245. Religious conservatives believe that a woman cannot partake in politics. Id. at 126.
246. Seculars are at the opposite end of the spectrum from religious conservatives on issues such as women’s political participation. Coleman & Samdani, supra note 242.
247. See id.
248. See MERRY, supra note 107, at 4.
249. Id.
250. See infra Parts IV.C–D.
252. Id.
253. Id.
with behavior codes.255

Women's coalitions in Iran foster the exchange of ideas between Muslims with diverse views.256 Religious scholars and international Islamic groups can be invited to participate in the discussions, or the discussions can be formed by Islamic circles in the community.257 As a result of women's coalitions discussing varying interpretations of Sharia, this movement has gained legitimacy and has been particularly successful in the sensitive area of family and domestic relations.258

Iranian women have made further progress by building coalitions across the ideological spectrum and by promoting more progressive Islamic jurisprudence.259 The coalitions set up dialogue groups between Shiite and Sunni women to discuss various interpretations of Sharia.260 Within these dialogue groups, women with differing perspectives discuss various interpretations of Sharia and disseminate them through media, such as the radio or women-oriented publications.261 Just as women's coalition groups increase the exchange of diverse interpretations of Sharia, educating women about the law through radio or publications equips them with knowledge of the law and exposure to a diversity of interpretations.262 In Iran, these media exposed women to issues of shared concern, and closed gaps between females with ideological differences.263 Dialogue groups and dissemination of the law in Iran, where women previously were not well-informed of the law, provided education to build the capacity of women leaders.264

D. Egyptian Courts' Interpretations of Sharia as Consistent with International Human Rights Laws

Egypt is another country that successfully promotes
women's rights within an Islamic framework.\footnote{See infra Part IV.D.} Egypt, like Afghanistan,\footnote{See supra note 102 and accompanying text.} adopted a constitution that requires the law of the state to respect fundamental Islamic norms.\footnote{Clark B. Lombardi & Nathan J. Brown, \textit{Do Constitutions Requiring Adherence to the Sharia Threaten Human Rights? How Egypt's Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law}, 21 \textit{AM. U. INT'L L. REV.} 379, 379 (2006).} However, unlike Afghanistan, Egypt has been successful because Egypt's Supreme Constitutional Court (the "SCC") over the last twenty years has developed a creative new theory of Islamic law by "interpreting the Sharia norms to be consistent with the international human rights norms and with liberal economic policies."\footnote{Id. at 380.} Egypt's constitutional Islamic provisions requiring the law of the state to respect Islamic law, or "Islamization," resulted in twenty years of innovative lawmaking based on Sharia principles.\footnote{Id.} Notwithstanding the progressive results of the SCC, the Egyptian public has embraced and accepted the SCC's legal interpretations.\footnote{Id.} Therefore, a progressive court can frame state law within the boundaries of Islamic law in a way that is consistent with democracy and international human rights.\footnote{Id. at 396–406.}

Examining the method of Egypt's SCC more closely, the SCC decided cases based on two Islamic legal theories: classical and modern.\footnote{Id. at 398.} Under classical theory, different scholarly interpretations of the Sharia can co-exist and be equally valid.\footnote{Id. at 397.} Classical jurists recognize that trustworthy scriptures do not provide rules to resolve every conceivable question.\footnote{Id. at 400.} To interpret Islamic law under classical theory, the SCC looks to four sources of Sharia: the Quran, the word of the Prophet, precedent, and the scholarly consensus.\footnote{Id. at 399.} Classical jurists also recognize five particularly important interests or benefits: religion, reason, life, progeny, and

\begin{itemize}
  \item \footnote{Lombardi & Brown, supra note 267, at 396.}
  \item \footnote{Lombardi & Brown, supra note 267, at 398.}
  \item \footnote{Id. at 400.}
  \item \footnote{Id. at 397.}
\end{itemize}
property. So, if a classical jurist wants to analogize a law to a scriptural ruling, he would need to identify which of the five interests the scriptural ruling promoted and ask whether it advanced that interest. Furthermore, classical theorists believe that one could go to heaven if he or she follows one of the accepted doctrines of Islamic law. Based on the above-described examples, classical theory thus supports the idea that there are several correct, but “competing and ever-evolving,” interpretations of Islamic law.

The other influential theory of Sharia is modern theory, which requires Muslims to respect traditional interpretations of Islamic law to the extent that the interpretations consider utility and custom. According to modernists, Sharia contains specific, universally applicable principles and favored social goals. When the SCC tries to identify the rules of Sharia that the state must not contravene, it searches for principles that are absolutely certain with respect to their authenticity and meaning. Most scripts, however, are neither binding nor absolutely clear.

After considering the classical and modern theories, the SCC subsequently addresses two policy considerations: goals that the court believes specific types of law should promote, and goals that all laws must promote or, at least, not impede. The SCC believes that as a rule, laws must serve the general goals of the Sharia by not harming society.

In sum, the SCC balances three ideas in its cost-benefit analysis to interpret constitutional laws within the framework of Islam: (1) the classical idea that Sharia seeks to promote five interests above all others, (2) the modernist idea that law must promote the universally applicable principles of Sharia, and (3) a commitment to legal policy

276. Id. at 401. A sixth category sometimes considered is honor. Id.
277. Id.
278. Id. at 403.
279. Lombardi & Brown, supra note 267, at 403.
280. Id. at 399–400.
281. Id. at 406.
282. Id. at 418–19.
283. Id. at 420.
284. Id. at 421.
285. Lombardi & Brown, supra note 267, at 422.
286. Id. at 401.
287. Id. at 406.
considerations that are just and socially beneficial.\textsuperscript{288}

The SCC's process analyzed above permits judges to check legislation against accepted, traditional Islamic norms and against social utility.\textsuperscript{289} As a result, in some cases, the SCC has "struck down" laws that were "fundamentally unjust to some segment of society" after weighing the benefits and harms of the law.\textsuperscript{290} For example, the SCC has ruled in favor of women's rights to divorce and to collect alimony from their ex-husbands.\textsuperscript{291} To reach this decision, the SCC reasoned that the Islamic scriptures do not establish a clear rule, and that a cost-benefit analysis favors departure from the previous law.\textsuperscript{292}

Egypt's SCC demonstrated its interpretation of human rights in accordance with Sharia\textsuperscript{293} when it ruled that a law requiring females to wear headscarves worked against the general goal of maximizing social benefit.\textsuperscript{294} The SCC first analyzed the Quran and concluded that God had unambiguously commanded women to cover some parts of their bodies, but had not clearly stated which parts.\textsuperscript{295} Then, the SCC analyzed the five specific goals of Islam\textsuperscript{296} and determined that veiling serves the goal of modesty.\textsuperscript{297} The court lastly considered the harm to society and decided that the headscarf impeded women's abilities to work and engage in public activities.\textsuperscript{298} The court's decision worked within the framework of Islam and was consistent with the international human right of women to participate in society.\textsuperscript{299}

As illustrated above, in the context of women's rights, the SCC's three levels of analysis\textsuperscript{300} enable interpretation of

\begin{itemize}
\item \textsuperscript{288} Id. at 423.
\item \textsuperscript{289} Id.
\item \textsuperscript{290} Id. at 424.
\item \textsuperscript{291} Lombardi & Brown, supra note 267, at 425.
\item \textsuperscript{292} Id.
\item \textsuperscript{293} See id. at 380.
\item \textsuperscript{294} Id. at 427.
\item \textsuperscript{295} Id. at 427–28.
\item \textsuperscript{296} See Coleman & Samdani, supra note 242.
\item \textsuperscript{297} Lombardi & Brown, supra note 267, at 428. The SCC considered honor and modesty as the same category. See id.
\item \textsuperscript{298} Id.
\item \textsuperscript{299} See id. at 429 (suggesting that although the court did not mention this point, it is perhaps significant that a woman's right to participate in society is an international human right).
\item \textsuperscript{300} See supra notes 295–98 and accompanying text.
\end{itemize}
Islamic law to promote all aspects of human welfare and the enjoyment of human rights. A number of Islamic legal thinkers argue that God commanded people to understand his texts in light of evolving human reason. According to these scholars, the Sharia requires evolving interpretations and application, much in the same way liberal jurists approach secular law. In conclusion, conservative Muslims in Egypt have accepted the SCC’s approach to Islamic legal interpretation because the respected Muslim judiciary interpreted secular law in accordance with Sharia.

Egypt’s example demonstrates that a “progressive court with judicial prestige and independence can develop and apply a theory that interprets Islamic legal norms to be consistent with democracy [and] international human rights.” Both Egypt’s and Afghanistan’s constitutions specify adjudication by Islamic law. That is, they both place importance in Sharia. Furthermore, both Constitutions do not explain explicitly what the principles of Islam are. Afghanistan can draw from Egypt’s example because the justices of Egypt’s SCC interpret Islamic law by combining a commitment to Islamic law and a commitment to constitutionalism. Although there is a need for more systematic case studies examining the methods of constitutional Islamization and judges in constitutional courts who interpret Islamic law, the two examples of Iran and Egypt discussed above provide valuable information that can be applied in Afghanistan.

301. Lombardi & Brown, supra note 267, at 429.
302. Id. at 432.
303. Id.
304. Id. at 433.
305. Id. at 417.
306. Id.
309. See Lombardi & Brown, supra note 267, at 389–90.
310. Id. at 390.
311. See id. at 393.
312. Id. at 385.
313. Id. at 383.
314. See discussion supra Part IV.
Because of the systematic, unequal treatment of women in Afghan society, necessary improvements in women's rights are long overdue. The tradition of gender violence and gender discrimination has perpetuated these practices. Changing these perceptions is at the heart of the human rights project in Afghanistan concerning violence against women.

In order to address gender discrimination and gender violence in Afghanistan, legal reform must address cultural beliefs and frame constitutional laws as consistent with Islamic law. Strict interpretations of Sharia make international human rights law conflict with Islamic religious law. As a result, the strict interpretations of Sharia permit and encourage violence against women. Protecting women requires substantial shifts in beliefs about gender as well as changes in the institutions that govern women's lives.

Afghanistan should adopt the following two-part plan. First, Afghanistan should involve Egyptian judges to train the Afghan judiciary in not only the law, but on progressively interpreting the law within the frameworks of Islam and international human rights. Second, it should provide education to the women of Afghanistan so that women gain awareness of their rights and set up dialogue groups, as in Iran, for discussion regarding different interpretations of Sharia. A judiciary that interprets secular law in accordance with Islamic law will strengthen the rule of law in Afghanistan, and disseminating the laws to women equips them with knowledge and exposes them to a diversity of interpretations on issues impacting them.

315. See supra Part I.
316. See generally supra Part I.
317. MERRY, supra note 107, at 35.
318. Id.
319. Id.
320. See discussion supra Part IV.B.
321. See MERRY, supra note 107, at 35.
322. Id.
323. See supra Part IV.B.
324. See supra Part II.A.
325. See supra Part IV.C.
326. See supra Part IV.D.
327. See supra Part IV.C.
Although there are training programs in place for the judiciary in Afghanistan, the focus has been on teaching judges and attorneys the law. Following the example of Egypt, women's rights under the Afghan Constitution can be protected without provoking serious public outrage among Muslims, even conservative Muslims, if framed within the boundaries of the Sharia. Accordingly, Afghanistan should train its judges, with respected Islamic judges from Egypt as teachers, when deciding whether a constitutional law is allowed under Islamic law by engaging in a goals analysis and a harm/utility analysis. By creating an analytical process like that of the SCC in Egypt, Afghan judges will be able to consider the many possible and accepted interpretations of the Sharia and evaluate which ones promote or harm the general and specific goals of the law. This type of training is beneficial because Afghans resist imported culture; this would instead bring women's rights within the context of Islamic culture.

In addition to training judges, Afghanistan must educate women of their rights. This may be accomplished by creating a type of Bench Book for Afghan people, informing women of their rights under the constitution and the procedure for filing complaints with the Afghanistan Human Rights Commission. Following Iran's example, this written information should be disseminated throughout Afghanistan, but because some women are illiterate, the information should also be communicated through other channels such as the radio and public speakers. As in Iran, religious scholars and international coalitions should be invited to

328. See supra Part IV.A.
329. See supra Part IV.A.
330. See supra Part IV.
331. See supra Part IV.D.
332. See supra Part IV.D.
333. See supra note 268.
334. See supra Part IV.D.
336. See supra Parts IV.C–D.
337. See supra note 18.
338. See supra notes 159–63.
339. See supra notes 159–63.
speak on interpretation of Sharia regarding women's rights. Further following Iran's example, dialogue groups in Afghanistan could also meet in local communities to disseminate this information.

Educating women about their rights and remedies is the first step toward empowering women to stand up for their rights. As discussed above, educating women in Iran brought many different viewpoints on women's rights to the table. In Afghanistan, educating women will also create a dialogue between people who hold different beliefs, so that many different viewpoints can be considered and reconciled. This may be done in the hope that the "legitimate rights conferred on women by Islam will automatically cancel out the current deprivations they suffer, which are contrary to Islam." 

VI. CONCLUSION

Afghanistan is still a haven for gender violence and discrimination despite equal rights enumerated in the Afghan Constitution. The Afghan Constitution requires that Afghanistan abide by the UDHR, the U.N. Charter, and other international treaties to which Afghanistan is a signatory. However, these rights are unrealized in practice due to problems with the judiciary, such as lack of training and corruption, and the lack of awareness among the Afghan people of the law.

To remedy these problems, Afghanistan should interpret its 2003 Constitution in accordance with Islamic laws following the examples of Iran and Egypt. Afghanistan should train the judiciary not only on secular law, but on how to interpret the 2003 Constitution and international law in accordance with Sharia. If feasible, respected Islamic judges

341. Id.
342. Id.
343. Id.
344. Id.
345. SYED, supra note 195, at ix.
346. See supra note 87 and accompanying text.
347. See supra notes 112–13.
348. See supra Part II.B.2.
349. See supra Part II.B.4.
350. See supra Part IV.C.
351. See supra Part IV.D.
from Egypt should provide guidance to Afghanistan's judges. Furthermore, Afghanistan should simultaneously disseminate information like the Bench Book\textsuperscript{352} to increase women's awareness and understanding of their rights and the procedural mechanisms to report infringement upon their rights.

As Afghanistan continues to develop and strengthen its legal infrastructure within the framework of Islamic law, progressive interpretation of the Sharia is necessary in order for constitutional laws to be accepted and followed by Muslims.\textsuperscript{353} As the people of Afghanistan become more aware of the laws that govern their state and as they accept that women's rights principles can co-exist with Islamic principles, women's participation in society and politics will improve. This would be a large and overdue step for Afghanistan.

\textsuperscript{352} See supra note 161.

\textsuperscript{353} See generally discussion supra Parts IV.B–D.