

The Evolution of Women's Rights/Civil Liberties in Afghanistan
Ethan Davis
Undergraduate Student Panel
Utah Valley State College
Orem, Utah

Abstract

Prior to the institution of a new government (2003) and a new constitution (2004) in Afghanistan, the country was a place where the Taliban had control of about 2/3 of the government. The Taliban government, a hardline version of Islam, did not allow women in the country to work, vote, have the same education as men if any, in fact they were not considered equal citizens of the nation in most regards. With the newly instated government and constitution, Afghan women should now technically have the right to previously stated restrictions in as much as those rights do not conflict with the "Sacred Religion of Islam." This research will attempt to discover and evaluate how far these new rights are actually allowed now and what kind of potential that gives the female citizens of the country for future growth in having equal rights to men.

The Evolution of Women's Rights/Civil Liberties in Afghanistan

Because of the newly instated government in Afghanistan and the lauded equal rights for women in that country, certain questions have been raised. This paper will attempt to delve into the truth about what rights a government inseparable from the religion of Islam allows for women and if those rights are or are not being implemented.

In reviewing material of this sort, it will be necessary to understand that Afghanistan is a self proclaimed Islamic State. This means that the laws and interpretations of laws of the government and those of Islam are inseparable. In finding where these two governing powers stand in regards to women's rights it is necessary to review their respective laws. Also let it be known that there were a few constitutions drafted before the most recent one in 2004. The one drafted before that on in 1990 had many of the same laws, however they were not being followed.

Before those current laws are reviewed, it would be best to look at what laws were not being respected in regards to women during the Taliban dominated government. During that government which came to power in the early 90's; women were not allowed to attend school, women were not allowed to work except in specific fields like the medical field when exceptions were made out of necessity, women were required to be completely covered when out in public covered by a burqa and were often beaten if any skin showed, also women were not allowed to leave home without a male escort who was a relative. Women were also not able to receive a fair portion of an inheritance. Women were often forced into marriages and were not given the same rights as men in regards to divorce. A man could divorce a woman whenever he wanted, a woman had to get the permission of her husband to divorce and had almost no ability to get a divorce should the husband refuse. In the religion of Islam, men can have up to four wives, however there are circumstances which brought about that law and stipulations therein which were not being followed. All of these are rights that the Afghanistan women should have been

enjoying according to the prior constitution, but were not able to because of the Taliban military/political force in place throughout the 90's.

The Laws Concerning Human Rights in Regards to Afghan Women

The 2004 constitution of Afghanistan is very specific in regards to the human rights that Afghan women should have. That constitution contains in its preamble these words:

Preamble:

We the people of Afghanistan: ... Respecting the United Nations Charter As well as the Universal Declaration of Human Rights; ... And in order to: ... Form a civil society void of oppression, atrocity, discrimination as well as violence, based on rule of law, social injustice, protecting integrity and human rights, attaining people's freedoms and fundamental rights; ...

Have, herein, approved this constitution ... (Wolesi Jirga, 2005, <http://www.jemb.org/eng/legislation.html>).

Article Twenty-Two

Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden.

The citizens of Afghanistan, man or woman, have equal rights before the law.

Article Forty-Three

Education, being the right of all citizens of Afghanistan, shall be offered up to the B.A. level in the state educational institutions free of charge by the state.

Article Forty-Four

To create and foster balanced education for women...the state shall devise and implement an effective plan.

Article Eighty-Three

Members of the House of the People shall...(provide that) at least two females shall be elected members of the House of the People from each province.

Article Eighty-Four

The President shall appoint fifty percent of these individuals (Members of the House of Elders) from amongst women (Wolesi Jirga, 2005, <http://www.jemb.org/eng/legislation.html>).

Women's Rights according to Islam

In her paper Dr. Zieba Shorish-Shamley reviews women's rights as they are laid out in the Quran and in the Hadiths of the Prophet. A few of Dr. Shorish-Shamley's most important findings will be presented here:

Equality according to the Quran, Sura 4:1

O mankind! Reverence your Guardian-Lord who created you from a single person, created, of like nature, his mate, and from them twain scattered (like seeds) countless men and women- Fear Allah, through whom ye demand your mutual (rights) and (reverence) the wombs (that bore you): For Allah ever watches over you.

Education from the Prophet's Hadiths

Seeking knowledge is a duty of every Muslim, man or woman.”

A mother is a school. If she is educated, then a whole people are educated.”

The Prophet's wife, Ayisha, was a famous Muslim scholar. It has been stated in some Islamic reports that the Prophet told Muslims to go to Ayisha for guidance and learning of religious duties.

Marriage and Divorce

“Islamic Law forbids the marriage of a woman by force. The girl's and boy's consent is necessary. Although the parents play a major role in deciding a girl's or a boy's choice of mates, the final decision is up to the girl and the boy. For example, According to Ibn Abbas, a girl came to the Prophet and said that her father had forced her into marriage without her consent. The prophet gave her the choice of either continuing the marriage, or invalidating it.”

Also according to Dr. Shorish-Shamley's findings, “The rights of women concerning divorce are also recognized in Islam. Women have the same rights as those of men.” Also when it comes the subject of men being allowed to marry up to four wives, that religious practice came about after the war of Uhud when there were a lot of widows and orphans. It was only to be practiced if the man had the means to provide for extra women and children (Shorish-Shamley, 2005, <http://www.afghan-web.com/articles/womenrights.html>).

Employment

Whereas employment and public office were concerned, Dr. Shorish-Shamley found many instances in the recorded history of Islam where women were merchants, employers, advisors, consultants, as well as being appointed to an office of managing the marketplace. During times of conflict women also engaged in combat (Shorish-Shamley, 2005, <http://www.afghan-web.com/articles/womenrights.html>).

In fact from many of Dr. Shorish-Shamley's findings, Islam had originally greatly liberated women from the prior discriminations and atrocities common in Arab culture. From her findings, women were considered to be a necessary evil. Many of the holy texts from Arab culture looked down upon the birth of a girl. In many cases females were killed at birth. Women of that time were also sold as a commodity. When Islam originally came to Afghanistan, it liberated women from many of the atrocities they had been experiencing. It wasn't until different factions and sects of Islam started breaking off and interpreting the Qur'an differently that women began to become subjugated again.

Women's Rights according to History

So it would appear that throughout the history of Afghanistan, the women there have experienced a kind of evolution cycle. They were subjugated originally by the Arabs, then liberated, empowered and revered in the origins of Islam in that country.

Then again they became subjugated for many years, by hardline followers of Islam until recent efforts to liberate them once more. This time around they are bearing a strong resemblance to their women ancestors, but this time with pens instead of swords.

In a recent report by the Integrated Regional Information Networks (IRIN), it was stated that:

“Of more that 8 million Afghans who voted in the presidential poll in October 2004, more than 40 percent were female.” Also, “Currently there are three women ministers and several others with leading government positions in Karzai’s new cabinet.” In addition it was stated that, “Despite the very tense situation for women in the country, more than 200 women attended the emergency Loya Jirga [grand assembly] in early 2002 and 102 of the 500 delegates of the constitutional Loya Jirga in [December 2003] were women.”

(IRIN, 2005, <http://www.afghan-web.com/woman/morewomenpolitics.html>)

Also Habiba Sarobi was appointed by President Karzai as the first ever female provincial governor in 2005. “Her appointment is part of a national initiative to promote women to positions of power.”

(2005, http://www.afghan-web.com/woman/female_governor.html)

Unfortunately, though the Afghan women are making great victories in obtaining their rights in some parts of the country, the majority of the country is still not recognizing the Afghan women’s rights. In voting and taking office or even becoming educated, many women are still not participating because their husbands either don’t believe that it’s correct for them to do that or they are afraid for their wife’s safety because many other’s have not accepted the reaffirmed laws concerning women’s rights. The government has made laws that in theory align with Islamic beliefs, but when other the results of other laws not being enforced conflict with some of the new laws, it makes it almost impossible for women in the more rural parts of the country to enact their human rights. For example:

Girls are only allowed to go to mosques between five and eight years old to learn the holy book of Qoran. When they turn nine [the age they are considered to be approaching puberty] they are not allowed to go out of their houses as parents believe that they should not be seen by other men, meaning that they cannot go to school either. According to UNICEF, on average 60 percent of girls under 11 - more than 1 million - are still not attending lessons.

(IRIN, 2005, <http://www.afghan-web.com/woman/encouragegirlsschool.html>)

In addition to not being allowed by their parents because of “indecenty,” girls are commonly forced into marriages at a young age. Even though the legal marrying age for girls is 16 (18 for boys), “The practice of resolving conflicts between families by giving daughters or sisters to the aggrieved party remains common in Afghanistan,” (<http://www.afghan-web.com/women/forcedmarriages.html>).

UNIFEM stated in a recent publication that, “Among other things, the Supreme Court (of Afghanistan) has barred married women from attending high school- in a country where girls as young as 9 years old are routinely forced to marry...” (UNIFEM, 2004, <http://216.119.99.79/CountryProfiles/AC/Afghanistan/tabid/108/Default.aspx>).

In addition to these types of damning effects on women's rights in Afghanistan, there are still those who think that they are above the law as far as just respecting a woman's right to personal safety. Just last November, 2006, "A commander and his 11 men gang-raped a 22-year-old woman in Shahre Buzurg district of the northeastern Badakhshan province on Nov.28....Qari Jehangir, husband of the victim, says the armed men raped his wife and when his 2 children were crying one of them peed in their mouth. The victim had been threatened to death by the commander not to complain," (RAWA, 2007, <http://www.rawa.org/gangrape.htm>).

Though organizations like UNIFEM, UNICEF, and RAWA (The Revolutionary Association of the Women of Afghanistan) are striving to keep schools where girls can be educated open both publicly and privately, and though many women are being appointed to governmental positions, as well as President Karzai himself publicly denouncing many of the injustices towards women in Afghanistan, many problems still remain. Until the government passes laws that will protect women's rights *and enforce them*, there will continue to be injustice towards the women of Afghanistan.

The government and its inseparable religion of Islam both uphold the rights of women. Unfortunately many of the Afghans outside of the major cities continue to choose a more hardline translation of the mutually worshipped Quran. The only way for those who would subjugate women, and continue to abuse them, to be stopped is for hard law from the top down to be enforced stating loud and clear that these injustices will no longer be tolerated now and forever.

It is further recommended that the US forces stay in place at least as a blockade from the injustices of the fascist Islamic supporters until the local Afghan forces are strong enough to support the laws that would allow human rights for all Afghans.

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