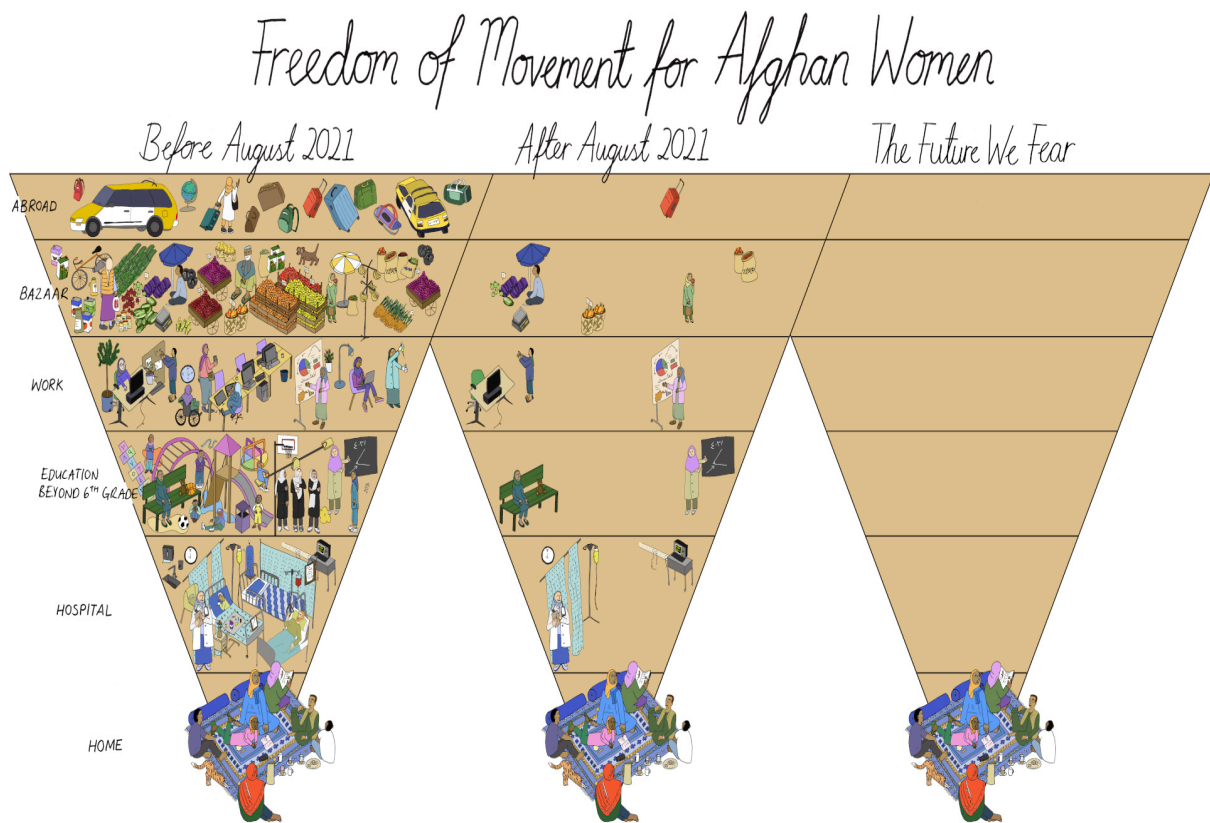




Women's Rights in Afghanistan: A Periodic Review

Women's Rights Team – June 2024



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INTRODUCTION

Afghanistan, a nation deeply marked by decades of conflict and complex social dynamics, finds itself at a crucial juncture in the context of women's rights. The progress made in recent years is under threat as the country faces the harsh realities of the Taliban's return to power which has imposed significant restrictions on Afghan women's education, freedom of movement, and overall well-being. This report explores the intricate history and current state of women's rights in Afghanistan, a narrative that weaves through Afghan culture, politics, and society, presenting a rich tapestry of resilience, struggle, and change.

From the multifaceted roles women played in traditional Afghan society to the devastating consequences of the Taliban's policies, the journey of Afghan women encapsulates a broader story of human rights, gender equality, and the relentless pursuit of dignity and justice. Despite confronting unprecedented challenges, the courage and resilience of Afghan women shine through, highlighting their fight for a more just future. The recent resurgence of the Taliban and its dire implications for women's rights have reignited global concern, emphasising the precarious nature of progress and the critical need for international solidarity and support.

Emerged in the 1990s, the Taliban is a Sunni Islamist nationalist and pro-Pashtun movement which controlled the majority of Afghanistan between 1996 until October 2001. Its members formed a group together under the goal to transform Afghanistan into an Islamic state. The Taliban is mostly known for its violations to human rights especially towards women and girls. After the US-Taliban peace agreement (2020) followed by the withdrawal of American troops, on August 15th, 2021, the Taliban took over Kabul without substantial resistance from the Afghanistan government and military. Since Taliban administration seized over the nation around mid-August 2021, Afghanistan has undoubtedly had one of the the worst records in the world for women's rights.

As we delve into this complex narrative, the enduring spirit of Afghan women continues to inspire action towards safeguarding their fundamental rights and empowering them for a more equitable and just future. This exploration sets the stage for a deeper understanding of the historical context, challenges, and prospects for women's rights in Afghanistan, reflecting on the past to inform and inspire actions towards a more equitable and just future.

Kindly note that the actual name of one the interviewees referenced in this report has been hidden due to security issues and she will therefore be addressed as Ms. A.

1. HISTORICAL CONTEXT

A country known for its rich cultural heritage and turbulent political history, Afghanistan has witnessed many significant shifts in the status and rights of women over the centuries. From the traditional roles upheld for women before the 20th century to the impact of political changes and conflicts, the journey of Afghan women reflects a complex interplay of politics and power in the region.

1.1. ROLE OF WOMEN IN AFGHAN SOCIETY BEFORE THE 20TH CENTURY

In pre-20th-century Afghanistan, women played multifaceted roles within the societal framework. While patriarchal norms prevailed, Afghan women were not confined solely to domestic spheres. They actively participated in various aspects of community life, contributing to agriculture, artisanal crafts, and familial decision-making.

Afghanistan has been a country where women's status has been a subject of struggle for centuries, with the Taliban rule playing a significant role in the country's history. Rural Afghanistan, the root of tribal powers, has been marked by social traditions and economic underdevelopment. Women in rural Afghanistan have control over their lives and gender roles through patriarchal arrangements, derived from the Quran and tribal traditions. The success of democracy and poverty reduction in Afghanistan can only be ensured through the full participation of women, especially in rural areas. For example, the earliest settlers in Afghanistan namely the Pashtun tribal conventions and ideology regarding gender roles and women's positions were patriarchal. The code of conduct emphasises the importance of female sexual honour and conduct to be interwoven with male honour, with Pashtun women and girls responsible for a Pashtun man adhering to social traditions. A woman with a questionable reputation brings dishonour to her entire family, especially its males.

1.2 IMPACT OF POLITICAL CHANGES ON WOMEN'S RIGHTS

The early 20th century, however, marked a period of reform and modernisation in Afghanistan, with efforts aimed at modernising institutions and promoting education. During King Amanullah Khan's reign, from 1919 to 1929, there was the introduction of reforms, including the abolishment of purdah (seclusion of women), unveiling of women, and the establishment of girls' schools.

Since the 1920s, Amanullah Khan sought to empower women to create a sense of nationhood. He succeeded to the throne after his father's assassination in 1919, took inspiration from Türkiye's modernisation, and implemented changes such as advocating monogamy, education, and replacing the full-body burqa for women. His wife, Queen Soraya, also wore a wide-brimmed hat with a diaphanous veil.

Amanullah and Queen Soraya travelled to Europe to implement new laws that would benefit women. However, most attempts were met with strong opposition from tribal leaders, leading to his downfall. After the fall of the monarchy and increased development, women were in high demand in the workforce and joined medical and teaching professions. In the 1970s, more measures to protect girls' rights were adopted, including increasing marriage age and making education compulsory. However, this resulted in a massive backlash from religious tribal groups. The rise of the Mujahideen and the Taliban led to more emphasis on enforcing traditional Islamist rules and confining women to their homes. Subsequent political turmoil, including the Soviet invasion and the rise of the Taliban, further exacerbated the plight of Afghan women.

1.3 WOMEN'S EDUCATION AND EMPLOYMENT OVER THE DECADES

Despite setbacks, significant strides were made in women's education and employment during periods of relative stability. In the 1960s and 1970s, Afghanistan experienced a surge in women's participation in education and the workforce. Women have played a significant role in Afghanistan's history. Women contributed to the draft of the Constitution in 1964 and there were at least three women legislators in Parliament by the 1970s. They held various roles, including teachers, government workers, medical doctors, lawyers, judges, journalists, writers, and poets.

During the 1960s, the Afghan government oversaw rural development programs, sending female nurses in Jeeps to immunise residents from diseases like cholera. However, the subsequent conflicts reversed many of these gains. In 1979 the Soviet military invaded Afghanistan to support a pro-Soviet government marking the beginning of the Soviet war years and a dark period in Afghan history. In 1980, Babark Karmal was installed as Afghanistan's Soviet-backed ruler, leading to a *jihad* against Soviet forces. This led to the death of one million Afghan civilians and 15,000 Soviet soldiers. Millions of Afghans fled to neighbouring Pakistan as refugees. In 1988, the Geneva peace accords were signed by Afghanistan, the Soviet Union, and the U.S. In 1989, the last Soviet had to leave Afghanistan.

The Taliban regime then came into power in 1996 and started imposing many draconian restrictions on women's rights, banning them from education, employment, and public life. Women were forced to wear *burqas* and faced severe penalties for violating Taliban decrees. This was the first period of Taliban rule in Afghanistan, causing a major setback in women rights.

The history of women's rights in Afghanistan is a testament to the resilience and struggles of Afghan women despite political upheavals and external interventions. From the traditional roles they occupied before the 20th century to the progress achieved and setbacks endured over the decades, Afghan women have continuously fought for their rights and agency.

2. TALIBAN RESURGENCE AND ITS IMPACT ON WOMEN'S RIGHTS

In 2022, the world fearfully watched the resurgence of the Taliban in Afghanistan. Among the most vulnerable victims of this resurgence were Afghan women, whose hard-won rights and freedoms were in a precarious position. The Taliban's return to power poses a grave threat to the fundamental rights and dignity of Afghan women. From legal restrictions and social upheaval to psychological trauma and physical violence, the ramifications of the Taliban's reign are manifold and dire.

Under the draconian rule of the Taliban, Afghan women face a steep regression in their legal rights and freedoms. The imposition of strict *Sharia* law threatens to strip women of their autonomy and agency, relegating them to second-class citizens in their own country. Arbitrary restrictions on dress, movement, and behavior curtail women's basic freedoms and personal liberties, leaving them vulnerable to persecution and discrimination. Moreover, the Taliban's oppressive regime denies women access to justice and legal recourse, perpetuating a cycle of impunity and injustice. Afghanistan is facing the world's most severe women's rights crisis, ranked last on the Women, Peace, and Security Index. This situation may never have occurred since the adoption of the Universal Declaration of Human Rights 75 years ago, except during the Taliban's control from 1996 to 2001.

The Taliban's resurgence has unleashed a wave of social upheaval and economic uncertainty, further exacerbating the plight of Afghan women. With the collapse of basic services and infrastructure, women are disproportionately affected, bearing the brunt of poverty, unemployment, and food insecurity. The closure of schools and workplaces deprives women of vital opportunities for education and economic empowerment, trapping them in a cycle of dependence and destitution. Moreover, the erosion of social networks and support systems leaves women isolated and vulnerable, exacerbating their marginalisation and disenfranchisement. Taliban restrictions have compounded the financial crisis for women, as they are no longer allowed to work. The Taliban's takeover of Afghanistan has led to a financial crisis, with the economy collapsing and the banking system freezing. The Central Bank of Afghanistan, under Taliban control, has been cut off from the international banking system and access to foreign currency reserves. The International Monetary Fund prevented Afghanistan from accessing credit and assets, and past UN Security Council resolutions imposing sanctions on the Taliban for terrorism-related actions prevent the Central Bank of Afghanistan from receiving new paper Afghan currency.

Much of the state bureaucracy is no longer functioning due to workers fleeing or fearing return to work, and the Taliban authority lacks funds to pay workers. Some humanitarian aid provided by United Nations agencies and nongovernmental organisations has gradually restarted but remains severely curtailed due to Taliban restrictions, logistical difficulties, security concerns, staff evacuations, closures, and legal uncertainties. The financial crisis has affected daily lives in various ways, with rising power cuts and intimidation from Taliban authorities. Many women have been in hiding, moving locations frequently, and facing threats from the Taliban.

For Afghan women, the Taliban's return to power evokes painful memories of past trauma and oppression. The pervasive atmosphere of insecurity and instability takes a toll on women's mental health and well-being, fueling anxiety and depression. Perhaps the most harrowing consequence of the Taliban's resurgence is the resurgence of gender-based violence (GBV) and discrimination against Afghan women. The constant threat of GBV and discrimination exacerbates women's psychological distress, leaving them feeling helpless and powerless in the face of relentless oppression. The Taliban's misogynistic ideology perpetuates a culture of impunity and intolerance, where women are routinely subjected to brutal acts of violence, including forced marriage, domestic abuse, and honor killings. Moreover, the systematic discrimination and marginalisation of women deny them access to essential services such as healthcare and education, exacerbating their vulnerability and endangering their lives.

The Taliban's resurgence in Afghanistan represents a grave threat to the rights and dignity of Afghan women. It has multifold effects, having legal, social, psychological, and physical consequences for the women. Empowering Afghan women through education, economic opportunities, and legal protections is not only a moral imperative but a strategic imperative for building a more stable, prosperous, and inclusive society in Afghanistan and beyond. The Taliban has been relentlessly attacking women and girls' human rights in Afghanistan for over two years, violating every aspect of these rights. Afghan women are facing surveillance, harassment, assault, arbitrary detention, torture, and exile to oppose these abuses. It is the international community's responsibility to support their struggle, as the events in Afghanistan have deep implications for gender equality worldwide.

3. LEGAL FRAMEWORK

The legal framework for Afghan women in Afghanistan is explored in this paper, which includes the implementation and enforcement of relevant laws. Women have been treated as secondary individuals and for most of the history of Afghanistan, especially in the Taliban period, the majority of their rights have been violated and suppressed. Most Afghan legal analysts and studies highlight the significance of interpreting the laws to reflect the rights of women in the historical context of Afghanistan, together with international treaties guaranteeing women's rights, and the context of Islamic law on women's rights and standing.

3.1 HISTORICAL OVERVIEW OF THE LAW

3.1.1. Pre-Taliban and Taliban Rule

During the pre-Taliban era, women in Afghanistan enjoyed a significant degree of freedom and equal rights, particularly in urban areas. In 1964, the government introduced the first ever democratic constitution in Afghanistan which incorporated equality between men and women. During this time, women were allowed to go outside without being harassed, participate in social, economic and political activities, and access to education. They also had the freedom to choose their own career and the way they should be dressed.

In mid-1978, a coup overthrew King Zahir Shah. The situation for women became significantly dark and oppressive. When the communist People's Democratic Party of Afghanistan (PDPA) took over the government, women and their fundamental rights and freedom were regarded as the symbol of a new communist democracy in Afghanistan.

In January 1979, President of Afghanistan Nur Muhammad Taraki, passed reformatory laws and decrees. Women's rights were his government's achievement. These included the creation of a minimum marriage age of 16, equal rights between men and women in marriage, and relinquishing the need for women to follow their husband's orders. Parliament passed a law which required that the bride and groom declare in front of the judge that they marry consensually, by their own volition.

Initially prepared to bring peace, the Taliban were welcomed by many Afghans who were tired of the corruption and power of the feuding warlords. Members of the Taliban movement were largely Pashtun. Gradually, their oppressive and extremist nature, including their harsh treatment of women, became more obvious.

From 1996, under Taliban rule, all women were virtually excluded from public life. They were forced to wear the *burqa*, a long head-to-toe robe with a crocheted mask. However, previously in rural areas many women had not gone out without the *burqa* because of lasting social tradition. This period also marked the end of any decent education opportunities for girls, as they were banned from any type of schooling. Additionally, women were not allowed to work. In the public health sector, female doctors, nurses, or teachers who had been previously employed lost their jobs and had to stay at home. The only exception was made for some women nurses and doctors with the permission of the Taliban leaders who were running some treatment in a few narrow rooms of their house as secret health centers. This was dangerous because if the Taliban found out, the women in question and their male family members could have been severely punished. Children as young as ten were forced to watch various punishments that led to psychological trauma.

International Human Rights Law, especially the violation of the Universal Declaration of Human Rights, had been ignored by the Taliban's oppressive policies against women. The media encouraged the campaign on enabling the Afghan women to regain their liberty and promoted the restoration of a quality of life for women, not only to alleviate the perpetual suffering but also to enable the development of a democracy to promote and respect human rights.

3.1.2. Post-Taliban Era and Taliban Resurgence (2021- Present)

The Ministry of Justice established a Gender Unit to ensure that gender perspectives are integrated into the legal system and to provide support for the implementation of gender-related laws and policies.

In terms of education, significant progress has been made in increasing access to education for Afghan girls. The number of girls attending school has significantly increased

since the fall of the Taliban regime. Efforts have been made to improve infrastructure, provide training for teachers, and develop curriculum materials that promote gender equality. However, challenges still remain, particularly in rural areas where cultural norms and security concerns limit girls' access to education.

In the economic sphere, there have been efforts to promote women's participation in the workforce and entrepreneurship. The Afghan government, with support from international partners, has implemented programs to provide vocational training, access to credit, and business development services for women. These initiatives aim to empower women economically and contribute to their financial independence.

Despite these changes, significant challenges persist in ensuring the full realisation of women's rights in Afghanistan. GBV, including domestic violence, forced marriage, and honor killings, remains a serious issue. Discrimination and social norms continue to limit women's participation in public life and decision-making processes. Access to justice for women, particularly in rural areas, is limited due to a lack of awareness of their rights and a lack of resources and support services.

While progress has been made in improving the legal rights and socio-economic status of Afghan women, the resurgence of the Taliban in Afghanistan in August 2021 has reignited global concerns over the fate of women's rights within the country. Following their takeover, the Taliban initially suggested a more lenient approach towards women's freedoms compared to their previous rule in the 1990s. However, these initial promises have gradually been overshadowed by the reintroduction of stringent measures, reflecting the group's strict interpretation of *Sharia* law. This shift has led to restrictions on women's education, employment, and participation in public life, raising alarms about the regression of decades worth of progress in women's rights in Afghanistan. The international community watches closely as the situation unfolds, with the Taliban's actions suggesting a potential return to the oppressive regime that once isolated Afghanistan from the rest of the world.

The historical trajectory of women's rights in Afghanistan has always been a delicate balance between the forces of modernisation and the weight of traditionalist views. The early 21st century marked a period of hopeful advancement, with significant legal and social reforms aimed at improving the status of women. However, the Taliban's return to power has put these gains at risk, highlighting the fragile nature of progress in contexts of political instability and conservative backlash. The future of Afghan women remains uncertain, influenced by the domestic policies of the current regime as well as the international community's readiness and capability to drive positive change. As Afghanistan navigates this critical juncture, the perseverance of women's rights advocates, both within and outside the country, remains a crucial factor in the ongoing struggle for equality and freedom.

Ms. A., an Afghanistan lawyer who agreed to be interviewed for its Afghanistan report, describes matters concerning Afghanistan and women's rights both before and after the Taliban regained power. The strategies Afghan women use to counter the Taliban's restrictions on their rights highlight a striking contrast between the progress made during 20 years of more liberal governance and the current setbacks. Ms. A's descriptions of strategic protests, the establishment of home schools, and advocacy through social media illustrate the

resilience and ingenuity of Afghan women under extreme repression. Furthermore, the substantial progress in education and women's public participation over the past two decades, as detailed by Ms. A, underscore the profound negative impact of the Taliban's resurgence on these achievements.

3.2 CONSTITUTION AND WOMEN'S RIGHTS

Article 22 of Afghanistan's Constitution provides that "the citizens of Afghanistan – whether men or women – have equal rights and duties before the law", and in order to "enhance the economic, social, political and cultural life of women", the State is obligated to provide the necessary facilities for the "realisation of women's rights", as per Article 83. As per the Preamble of the Constitution,

The state is committed to creating a prosperous and progressive society based on social justice, preservation of human dignity, protection of human rights, realisation of democracy, fulfillment of public interests, and attainment of public pleasure.

This implies an obligation for the State to constantly work on the protection and maintenance of human rights of its citizens, which includes protection and promotion of women's rights (Qazi Zada, 2021).

The Constitution of Afghanistan, the supreme law of the State, includes several key provisions that support and promote women's rights and gender equality. Notably, in Afghanistan, international treaties and conventions are not recognised as a primary source of law and have to be incorporated into local laws to become enforceable. However, "the State shall abide by the UN Charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights" (Article 7).

3.3 GENDER EQUALITY LAWS

Under the resurgence of Taliban rule, the operational landscape for international treaties and conventions regarding women's rights, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), has been significantly altered. While Afghanistan's ratification of CEDAW in the past marked a commitment to addressing gender discrimination and promoting women's rights on an international standard, the Taliban's governance has led to a stark shift in this trajectory (Nazish, 2024).

With the Taliban's interpretation of *Sharia* law taking precedence over any other form of legislation, including the Afghan Constitution which recognises international treaties as part of national law (Article 11), the direct applicability of CEDAW and similar treaties by the Afghan judiciary faces substantial obstacles. The regime's strict adherence to their version of Islamic law undermines the principles of CEDAW, which seeks to eliminate discrimination against women in all forms, including in political and public life. Under Taliban rule, the opportunities for women to vote, be eligible for election, participate in government policy

formulation, hold public office, and represent their country internationally, as advocated by CEDAW, are severely curtailed (Nazish, 2024).

The principle of preference, where Afghan laws take precedence over international and customary laws, is overshadowed by the Taliban's prioritisation of *Sharia*. This situation complicates the judiciary's ability to refer to or rely on CEDAW even in the absence of national laws on specific issues concerning women's rights. Moreover, the willingness of judges to apply such international laws in cases related to women's rights is profoundly impacted under the current regime, with the overarching governance model not supporting or permitting references to international standards that conflict with the Taliban's interpretations (Nazish, 2024).

The essential need for promoting the legal framework related to women's rights, especially the standards set forth by CEDAW among legal professionals, including judges, prosecutors, and lawyers, faces unprecedented challenges. Continuous and systematic training on these laws, crucial for creating a foundation for the effective implementation of international standards in Afghanistan, is hindered by the Taliban's stance on women's rights and their governance (Nazish, 2024). In this context, the resurgence of Taliban rule presents a critical barrier to the progress and enforcement of women's rights as outlined by CEDAW, reflecting a significant regression in gender equality efforts and the broader human rights landscape in Afghanistan (Nazish, 2024).

Ms. A's interview regarding the major legal challenges Afghan women faced even before the Taliban's resurgence provides context to the difficulties in implementing gender equality laws like CEDAW. Her experience in the legal profession, where gender inequality in opportunities was blatant, mirrors the broader issues of gender discrimination that CEDAW aims to address. However, the Taliban's strict adherence to their interpretation of *Sharia* law further complicates the applicability of such international treaties, making it nearly impossible to challenge or overturn laws limiting women's rights, as Ms. A points out. Her observations underscore the complexities of advocating for gender equality in a regime that systematically undermines women's rights.

3.4 LEGAL PROTECTIONS FOR WOMEN UNDER TALIBAN RULE RESURGENCE

The resurgence of Taliban rule in Afghanistan has severely compromised the enforcement of legal frameworks designed to protect women's rights. Despite Afghanistan's ratification of CEDAW in 2003, which obligated the state to ensure 'substantive equality' for women, the Taliban's strict interpretation of Islamic law, or *Sharia*, takes precedence. This diminishes the relevance of international agreements like CEDAW and national laws aimed at promoting women's rights, as these are often in conflict with the Taliban's religious views. (Qazi Zada, 2021).

The legal assertion that, in cases of contradiction, *Sharia* will prevail over other laws, presents a significant barrier to achieving gender equality in the country. This principle has

led to a situation where constitutional guarantees of equality stand in a subordinate position to *Sharia*, aligning with the Taliban's ideological stance rather than the progressive framework envisaged by international and domestic laws promoting women's rights. Reports have consistently highlighted widespread discrimination against women, along with violence and human rights abuses, factors that are exacerbated by the Taliban's control. These issues stem from various sources, including poverty, the influence of self-serving warlords, and now more prominently, the Taliban's governance, which shows reluctance or inability to protect and promote the rights of women and girls citizens. Under Taliban resurgence, these challenges are amplified, as the informal justice systems, reinforced by the Taliban's ideology, overshadow the formal legal mechanisms, severely limiting the scope for implementing and upholding laws designed to protect women's rights (Qazi Zada, 2021).

Ms. A's description of the deteriorating situation for women under Taliban rule, where even the minimal gains made towards gender equality are being reversed, underscores the profound impact of the Taliban's governance on women's legal protections. Her accounts of the systematic violation of women's and girls' rights, including the closure of human rights organisations and the erasure of women from the public sphere, highlight the challenges in protecting women under a regime that prioritises *Sharia* over international agreements and domestic laws designed to protect women's rights.

4. CHALLENGES FACED BY WOMEN IN AFGHANISTAN

Ms. A states that despite the promises of Zabihullah Mojahid, Afghan chief spokesman for Taliban, during his first news conference in August 2021 to assure that there will be neither violence nor prejudice against women, The Taliban regime gradually and systematically violated women's rights and airbrushed women from the public sphere over the last two years. The Taliban has released 80 edicts, 54 of which specifically target women and girls. In September 2021, they abolished the Ministry of Women's Affairs and replaced it with the Ministry of Promotion of Virtue and Prevention of Vice, which had existed under their previous government to monitor behaviour and impose a rigid interpretation of *Sharia* law. Despite their claims to 'preserve' women's rights in alignment with the *Sharia* Law, the Taliban began restricting citizens' rights with the women being their primary focus. Approximately in 28 months, the Taliban have decimated Afghan women's and girls' rights, putting severe limitations on their education, work and freedom. The Taliban's policies against women, along with the empowered patriarchal culture, have placed Afghanistan at the bottom of the 2023 Women, Peace and Security Index according to GIWPS. Women and girls faced several forms of discrimination under the reign of the Taliban. These include the 'crime' of self-identification as a girl and were prohibited to attend school, study, work, leave the house with a male companion, show their skin in public, receive healthcare from men and participate in politics or speak publicly. They were erased from the public sphere and confined to their houses. The residents of Kabul were instructed to cover their ground and first-floor windows to prevent outsiders from seeing the women inside the house. Women who did leave the house had to fully cover themselves in *burqas* and be escorted by a male companion, showcasing their lack of independence. Besides, they implemented their interpretation of Islamic *Sharia* law.

On the other side of the equation, have the possibility to conduct domestic abuse, harm, and even kill any female member of the family without penalties. Women who have been raped or subjected to other types of abuse may face accusations of “moral crimes” and adultery, which may be punishable by death. Even men defending women’s rights and acting against the order are at risk.

Taking away their independence and potential to flourish in the society, the future generations of girls have been severely damaged by the actions of the Taliban. After they came back to power in August 2021, the Taliban rapidly cut-off most of the international aid which has further contributed to the humanitarian disaster in the region.

4.1 GENDER-BASED VIOLENCE AND DISCRIMINATION

During the interview, Ms. A employs the term “gender apartheid” in order to illustrate Taliban’s behavior and restricting efforts towards women and girls. Similar to South Africa, the Taliban made efforts to control women, marginalise them from their ordinary lives, and to systematically oppress their rights by imposing policies.

A reality behind the gender-based policies, is increased discrimination and violence against women under Taliban rule. The Taliban eliminated institutional and legal protections for women, which has returned them to their abusers, or has forced them to remain in situations where GBV occurs. Traditional marriage customs (betrothal, polygamy, *baad*, and the exchange of unmarried girls between families) are widely used in Afghanistan, which can frequently result in, or contribute to, scenarios of forced marriages or violence against women.

Even prior to the Taliban's takeover, one of every three girls was compelled to marry under the age of 18. Additionally, an increasing number of parents are marrying their young daughters in exchange for dowry to prevent famine or to prevent them from marrying a Taliban fighter in the future, as an act of protection. Women who resist these injustices risk severe penalties such as enforced disappearance, arbitrary arrest, and torture, while the Taliban continues to suppress women's rights advocates by employing threats, beatings, and upholding abusive conditions prior/post detention of women and girls. For instance, most recently, they have initiated extensive detentions for women and girls by accusing them of not wearing ‘proper *hijab*’. Safehouses, which offer alternative ways of protection to women, are shut down and non-governmental organisations providing safety and guidance frequently work underground. As the Taliban seized power in 2021, they freed criminals systematically, the majority of whom had been arrested for gender-based crimes. The Taliban’s failure to acknowledge their rights has allowed deeply rooted and conventional perceptions to reappear in Afghan culture, provoking a revival in various types of gender-based violence.

4.2 LIMITATIONS ON FREEDOM AND PERSONAL RIGHTS

Afghanistan is the only nation in the world where girls are forbidden from education beyond elementary level. They have been prohibited from continuing their education beyond the sixth grade. Some courses continue to be taught online, but female students are no longer authorised to take exams. Additionally, it is the only state, as affirmed in the speech of Nad Al-Nasif, UN Deputy High Commissioner for Human Rights, during the 53rd Session of Human Rights Council, that forbids women from working out of their homes and in numerous industries, including international organisations such as the UN. After the Taliban assumed control over the nation in August 2021, they ordered women to stay at home since their foot troops were not used to seeing women outside the house and were not trained to respect women.

Taliban authorities also implemented restrictions of gendered segregation. Women are not permitted to visit parks, gyms or public bathhouses (*hammams*). Taking into consideration that approximately 79 percent of the households in Afghanistan, according to the UN, lack direct access to heating and/or water, bathhouses constitute the only opportunity where they can wash themselves. Indeed, most women face worsening medical conditions. Increasingly common are vaginal infections which are worsened by the lack of proper sanitation.

The restrictions on education and employment both endanger women's capacity to support themselves and their families as well as hinder their access to essential services of healthcare and justice. Ms. A finds the restrictions to cause mental health problems amongst women and girls and an increase in suicide attempts due to the loss of hope regarding the current and future situation. Only women judges, lawyers, prosecutors, teachers in female secondary schools, medical workers, governmental, and private sector workers are permitted to work. Women of other professions have no other resources to feed their children. Their capacity to work beyond health and education is almost completely banned.

The overall impact of the Taliban's orders and attitude has resulted in isolation of Afghan women in their houses. The imposed changes include the suspension of Afghan constitution, the replacement of the ministry of Women's Affairs with the ministry for the Propagation of Virtue and Prevention of Vice, the order to remain in their houses for professional and working women until further notice, the prevention of women from long-distance road-trips of more than 72 km without a male relative or *mahram*, and the application of a rigid dress code for women. Additionally, examples of bans regarding women's freedoms, domestic violence, forced marriages, and annulment of divorces led to the deterioration of women's mental health and caused an increase in suicide rates.

At the end of December 2021, the Ministry of Promotion of Virtue and Prevention of Vice released a new rule for transport providers across Afghanistan, prohibiting women from long-distance road-trips (72 km) without being accompanied by a male relative, *mahram*. This decision limiting women's freedom of movement has also restricted women's presence in public spaces in some provinces without a *mahram*. This could lead to detainment by the Taliban in several provinces, which is plausible to lead to a detainment by the Taliban in several areas. In March 2022, the Taliban Health Ministry reportedly ordered that female

patients who did not wear the *hijab* should not receive healthcare. Drivers were ordered not to take female passengers without a *hijab* covering their hair. Around the same period, the Ministry declared national directives requiring gender separation in the Taliban government ministry offices and preventing female workers from entry without a *hijab*.

Following the instruction to take separate classes between boys and girls from the first grade to the sixth grade with female teachers with female students and the reverse for the male students with male teachers, in early September 2021, the Taliban Ministry of Education published a decree establishing guidelines for female students stating that courses must be gender-segregated. Additionally, male and female students were required to attend university through separate doors or at different times, and female students may only be taught by female lecturers or old males recognised as “trustworthy”. Furthermore, female students, instructors, and educational personnel were required to follow the Islamic dress code defined by *Sharia*, including black *abaya* robe, *hijab* covering hair, body, and most of the face, and gloves to cover their hands. In October 2022, the Taliban stated that women will only be permitted to study specific academic subjects at public universities.

In May 2022, the Ministry of Promotion of Virtue and Prevention of Vice issued a new order urging women not to leave the house unless they had a “real necessity/need” as well as to follow a rigorous dress code claiming that women must be covered from head to toe, recommending the *burqa* as ‘the good and full *hijab*’ to conceal their hair, face and body and assigning the male guardian legally accountable for surveilling their clothes.

4.3 ECONOMIC HARDSHIPS AND POVERTY

Taliban’s authority marked several obstacles for women’s professional opportunities causing unemployment or allowances to work only from home except for some women who still have jobs, who must be escorted on their way to work by a *Mahram*. Many women experienced deeper levels of poverty due to the restricted working condition. This decision has hampered the humanitarian aid deliverance particularly in the more rural areas where societal norms were dominant, making it impossible for organisations to respond to the needs of many women in precarious conditions caused by gendered economic, cultural, and practical difficulties leading to lack of food security. Due to scarcity, women are mostly subjected to malnutrition and worsening health conditions.

4.4 IMPACT OF TALIBAN RESURGENCE ON WOMEN'S RIGHTS

Women are protesting in various ways. They began their protests in their houses by covering their faces. They attempted to create homeschools, various learning opportunities for illiterate women and girls, restaurants, tailoring businesses, and carpet swing shops to offer working alternatives for women and girls who have lost their jobs, are deprived from education, or who are the “breadwinners” of their families. Meanwhile, many women activists and university lecturers, both in and out of the country, are protesting through social media to permit Afghan women and girls to learn; creating spaces in Twitter to discuss

potential solutions for women and girls, or speaking on worldwide forums/platforms to raise awareness and support them. Mrs. A mentions a recent hunger strike of Afghan women activists in Germany and multiple other countries asking the UN and global community to recognise the atrocities being committed in Afghanistan as gender apartheid and to respond in the same way that they did during the apartheid in South Africa. Through the lens of a firsthand witness, Ms. A. states that even though women in Afghanistan are trying to resist the Taliban's restrictions in multiple ways, particularly through protests, they are often prevented by gunfire, torture, and imprisonment by the Taliban.

5. AFGHAN WOMEN REFUGEES IN THE EUROPEAN UNION AND IN LIGHT OF CJEU DECISIONS

5.1. RESPONSE OF THE EUROPEAN UNION TO THE CURRENT SITUATION IN AFGHANISTAN

Since the mid-1980s, the European Union (EU) has been focused on advancing women's rights in Afghanistan and continues to provide humanitarian aid and support through projects mainly in the areas that promote women's economic empowerment and decision-making. The EU has modified the parameters of its engagement since Taliban has taken over the country from mid-august 2021. In September 2021, the EU Council set out guiding principles regarding the EU's position and further steps which were adopted by the Foreign Affairs Ministers of EU. A series of benchmarks were defined as guiding principles such as:

- 1. Safe, secure and orderly departure of all foreign nationals and Afghans wishing to leave the country**
- 2. Promotion, protection and respect to all human rights (in particular the rights of women and girls, children and minorities)**
- 3. Allowing the implementation of humanitarian operations in Afghanistan in line with the principles of humanity, neutrality, impartiality and independence and full respect of international humanitarian law**
- 4. Preventing Afghanistan from serving as a base for hosting, financing or exporting terrorism to other countries**
- 5. Establishment of an inclusive and representative government through negotiations**

In January 2022, it established a modest presence in Kabul, acknowledging the need for cooperation even though it refused to acknowledge the new Taliban administration. While the restrictions led the EU to stop providing regular development assistance, it has continued to fund basic needs, livelihood, and humanitarian efforts, particularly for women and girls. The EU denounced on March 28th, 2022 the Taliban's decision to deprive over million Afghan females of secondary level education until further notice as it is a violation of the fundamental right of all children to education. On December 25th, 2022, the High Representative denounced the Taliban's decisions to restrict women's involvement in public life. Furthermore, on November 14th, 2022, the Council of European Union drew several conclusions criticising the Taliban's systematic suspension of fundamental freedoms and

rights of women and girls. It appeals to the High Representative, the EU Commission, and Member States to make specific efforts in order to tackle the issue and ensure Afghan women's involvement in the country's policy discussions. It also acknowledges significant initiatives to advance the WPS agenda (for instance, the creation of the EU-facilitated Afghan leaders Forum). The EU Council reaffirmed in March 2023 the European Union's dedication to continue providing humanitarian aid as long as they remain recipients and participants to its deliverance. In December 2022 and in March 2023, the Council strongly denounced the limitations placed on women's rights as well as the Taliban's systematic and widespread discrimination against women.

On April 7th, 2023, the EU denounced the working ban for the UN and its agencies, funds, and programmes imposed on Afghan women, following other restrictions related to their rights of secondary/higher education, work, and freedom of movement.

5.2. AFGHAN ASYLUM SEEKERS

During August 2021, the UN High Commissioner for Refugees (UNHCR) released a “non-return advisory” for Afghanistan, requesting that repatriation processes for Afghan citizens be suspended even if asylum requests had been denied. The month of November marked by the rise of recognition of Afghan asylum applications reaching 92 percent. In December, the EUAA (European Union Asylum Agency) stated that numerous EU+ nations such as Germany, Finland, the Netherlands, Norway, Sweden, and Switzerland, halted repatriation procedures for Afghan asylum-seekers whose applications were rejected. Nevertheless, the EUAA asylum report in 2022 found considerable disparities regarding the different recognition rates of applications among EU nations oscillating between 11 percent (Bulgaria) and 99 percent (Poland and Spain). From December 2022, refugee status has been granted to all Afghan female asylum seekers from certain EU Nations, based exclusively on gender. The circumstances are getting worse for women and girls in Afghanistan where the discrimination level was deemed serious enough to constitute persecution of a social group, as stated in the 1951 Refugee Convention, and satisfied the criterion for granting refugee status. In 2022, Afghans accounted for the highest number of asylum applications in the EU+ nations with between 8,000 and 9,100 applications on a monthly basis.

In the Article 1A(2) of the UN 1951 Convention, refugee refers to a person who,

[...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of its nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Although there is no widely accepted legal definition of the word ‘persecution’, the UNHCR handbook defines it as “serious violations of human rights” for assessing refugee status. In a similar vein, according to the press release no. 172/23 of the Court of Justice of the European Union, Advocate General Jean Richard de la Tour regards the accumulation of the Taliban's discriminatory acts and measures against girls and women in Afghanistan as

persecution. As a result of these measures and actions, women and girls in Afghanistan face flagrant and ongoing denial of their most fundamental rights based on gender, separating them of their identity and making their everyday lives unbearable. As a consultant of the Council of Europe and the EU Agency for Asylum and as assessor of the French National Court of Asylum states, Ms. Racho, our second interviewee, notes that the recognition of gender-based persecution is a positive development, which acknowledges that women do not need to prove their political dissent to qualify for asylum; their gender alone can be a valid reason to seek protection.

Can GBV against women be a requirement for refugee protection under international and EU law? For the first time, Ms. Racho stated the Court of Justice of the European Union (CJEU) acknowledged that women can be a social group by adopting a decision regarding a Turkish woman seeking international protection as a victim of domestic violence on January 16th, 2024. Social group in this context refers to a group where there are common characteristics shared among individuals which lead to their rejection from the rest of the society. While this is the case of a Turkish woman, Ms. Racho states the possibility of its application on Afghan women due Taliban's explicit policy against women. She finds this decision as a major improvement to take into account domestic violence and to state that women may be targeted to this type of violence solely for their gender and that they may be protected by other nations based on being a woman. Ms. Racho believes that it will certainly benefit the Afghan women.

On the other hand, according to the European Law Blog, the Case C-621/21, "*the Women who are Victims of Domestic Violence case*" brought by the Turkish women to CJEU, is an important forerunner for the "*Women Fleeing Taliban case*" which was a pending case in **Joined Cases C-608/22 and C-609/22** (*European Law Blog*, January 26, 2024). The European Court of Justice (ECJ) clarified that the CEDAW and the Istanbul Convention are "relevant treaties" under Article 78(1) of the Treaty on the Functioning of the European Union, aligning with the interpretation of the Qualification Directive with international obligations to prevent discrimination and fight against GBV. It reinforces a gender-sensitive interpretation of EU refugee law, providing advantages for women seeking protection and ECJ affirms that women can be considered a specific social group for refugee protection purposes recognising that GBV is often perpetrated by non-state actors. Consequently, ECJ elaborated on the protection of needs of victims. These conclusions will be pertinent to current and future cases involving the protection of individuals escaping from GBV, such as the women fleeing from Afghanistan as the EU Law blog suggests.

6. INTERNATIONAL RESPONSE AND AID

6.1 UN AND PROTECTION FROM INTERNATIONAL ORGANISATIONS

The UN is seeking to protect Afghan women and girls amidst the Taliban's resurgence. UNSCR 1325 and the Women, Peace and Security agenda have been at the forefront to lead this effort. The UN report of 2020 noted a 17 percent rise in documented

human rights abuses including assassinations, GBV and infringements of women's freedom of movement compared to the previous year. In responding to these challenges, the UN is adopting a multi-faceted approach to addressing the needs of Afghan women and girls. Notably on the ground, the UN has led the establishment of five safe houses in Kabul, Ghor, and Nangarhar, providing immediate shelter for women and girls who are at risk of gender-based violence (Kamruzzaman et al., 2022; Saleem et al., 2021).

In order to support the long-term and sustainable development of Afghan women, the UN has developed the 'UN-Government of Afghanistan Country Gender Equality Common Agenda', a document that outlines the UN's and the Afghan government's commitment to achieve gender equality and women's empowerment. This commitment is manifested in the UN's focus on increased investment in the sectors of health, education, protection, and livelihood, as well as its provision of moral and technical support to the Afghan Women's shelter network. Also, the UN has made progress in terms of improving the gender balance in leadership positions (Kamruzzaman et al., 2022; Saleem et al., 2021).

The resurgence of the Taliban in Afghanistan has significantly impacted the lives of Afghan women, presenting new challenges to their safety, rights, and access to services. Amidst this backdrop, the Office of the UNHCR and the World Health Organisation (WHO) have become even more crucial in safeguarding and supporting Afghan women. The UNHCR has been instrumental in providing assistance and protection to over five million refugees within the country, including Afghan women. This support encompasses legal aid, registration documents, and measures to protect against violence and exploitation, thereby reinforcing women's access to their rights in an increasingly hostile environment (Kamruzzaman et al., 2022; Saleem et al., 2021).

On June 28th, 2021, a significant initiative was launched by WHO, UNHCR, and the Afghan Ministry of Public Health called the 'National Standard Operating Procedures for the Comprehensive Healthcare of Survivors of Gender-Based Violence' in Kabul. This initiative aims to create a comprehensive and quality-managed response to GBV cases, with a particular emphasis on domestic violence, in a context where such incidents are likely to escalate due to the Taliban's regressive stance on women's rights (Kamruzzaman et al., 2022; Saleem et al., 2021).

Furthermore, international cooperation in refugee protection has been facilitated through agreements signed by the former Afghan government, such as the Safe and Dignified Return and Reintegration of Displaced Persons agreement with Pakistan, which adheres to UNHCR principles. However, the Taliban's return poses significant challenges to the implementation and effectiveness of these treaties, making the role of international organisations and cooperation even more critical in ensuring the protection and rights of Afghan women amidst the changing political landscape (Kamruzzaman et al., 2022; Saleem et al., 2021).

6.2. AFGHAN DIASPORA AND CIVIL SOCIETY ORGANISATIONS

6.2.1. Role of the Afghan diaspora in supporting women's rights

The Afghan diaspora around the world provides resources for Afghan women. In recent years, this community has played a greater role in international advocacy and support for women's rights in Afghanistan. In particular, the Afghan diaspora has worked to raise awareness and pressure on the international stage by organising and participating in global campaigns in support of Afghan women's rights (Bazafkan, 2024).

For instance, the Free Women Writers, a group that started in Afghanistan and has members in the US and Europe, has established a global network for Afghan women writers in the diaspora. Through their writing and publishing, they have been instrumental in raising awareness and funds for women's causes in Afghanistan and exerting international pressure on policymakers to take women's rights seriously. Also, Afghan diaspora organisations have engaged in grassroots development projects and direct support for women in Afghanistan. For example, Women for Justice in Afghanistan is a group based in the UK, started by Afghan and non-Afghan women, which seeks to promote and advance the human rights of Afghan women. The group has carried out various projects in Afghanistan, such as building women's resource centers and promoting women's access to legal aid and education. In addition, members of the diaspora regularly highlight and protest against human rights abuses by the Taliban, both in Afghanistan and in countries where the diaspora is based. For instance, during the recent Taliban offensive, Afghan diaspora members have held international rallies and circulated petitions, urging governments and international bodies to take immediate steps to protect Afghan women's rights. This effective global advocacy led by the diaspora has helped to put women's rights issues at the forefront of international diplomacy. For example, in light of the tragic killing of the Afghan women's rights activist Freshta earlier this year, the EU was called upon by Afghan diaspora organisations to take immediate actions to improve protection and asylum provisions for Afghan activists (Bazafkan, 2024).

6.2.2. Civil Society Organisations

In 2000, the UN Security Council adopted Resolution 1325 on Women, Peace, and Security. This resolution recognised the contributions of women in peace-building efforts and the disproportionate impact of armed conflict on women. The resolution calls for the inclusion of women and the incorporation of gender perspectives in all areas of peace-building, from negotiation and planning to implementation and post-conflict reconstruction. In addition, the resolution emphasises the need for the full and active participation of women in decision-making and the importance of women's rights and access to resources in post-conflict (Gbadayan et al., 2024).

Women in Afghanistan have made considerable leadership and organisational contributions in the peace-building processes. Afghan women-led and women's rights civil society organisations have played key roles in promoting human rights and ethical values. They provide services such as shelter, legal aid, and advocacy to help victims of human rights

abuses. These organisations have also implemented programs and projects focusing on empowering Afghan women, fostering leadership skills, and promoting the participation of women in the social, economic, and political development of the country (De Leede & Brief, 2022).

Well-known organisations include the Afghan Women's Network (AWN), Women for Afghan Women (WAW), and the Afghan Women's Educational Center (AWEC). These organisations have opened doors for women and have created opportunities for a better quality of life for women and their families. They have also contributed to capacity building in many areas, including awareness raising, enhancing women's participation and leadership, coordination and networking, policy and decision making, improving research and learning opportunities, and also helping the gender focal points and gender advisors in the different line ministries (Muhirwa et al., 2023).

For instance, under the umbrella of the AWN, there are many initiatives that focus on education, training, and providing skills to women and girls. Others are concentrating on research and advocacy for policy based on reality and to make actual changes in the lives of women. Through the substantive participation of civil society and the consultations and institutions described above, ongoing efforts to promote women's rights and empowerment have received a key degree of sustainability and legitimacy (Muhirwa et al.2023).

7. FUTURE PROSPECTS: WHAT LIES AHEAD

As Afghanistan battles with regime change and setbacks in its political sphere, it stands at a critical juncture in its history with the future of women's rights being uncertain. The recent political developments, including the Taliban's return to power, have cast a shadow of uncertainty over the fate of Afghan women. Amidst the challenges and obstacles, there is a need for optimism and solidarity. What follows is an exploration of the potential ways to advance women's rights in Afghanistan and the key challenges that lie ahead.

Political Landscape

With the Taliban asserting control over the country, the political landscape in Afghanistan remains uncertain. The Taliban's repressive ideology poses a significant threat to women's rights. There is a growing international consensus denouncing their policies as incompatible with the principles of freedom and equality. The urgent need for the establishment of an all-encompassing and inclusive government, one that upholds the rights of every Afghan, particularly women, cannot be overstated.

Legal Framework

Ensuring the protection of women's rights in Afghanistan requires a robust legal framework that upholds principles of equality, justice, and human rights. Efforts must be made to reform outdated laws and discriminatory practices that perpetuate GBV and discrimination. Additionally, mechanisms for legal redressal and accountability must be

strengthened to ensure that perpetrators of violence against women are held accountable for their actions.

Education and Empowerment

Investing in education and empowerment is essential for advancing women's rights in Afghanistan. Access to quality education is a fundamental right that enables women to pursue their aspirations, contribute to their communities, and participate fully in society. Efforts must be made to ensure that girls have equal access to education at all levels and that barriers to enrollment, such as poverty, early marriage, and insecurity, are addressed. Moreover, initiatives to promote women's economic empowerment, including vocational training, entrepreneurship, and access to credit, can help enhance their agency and autonomy.

Social Change and Cultural Shifts

Changing societal attitudes and norms is key to fostering a culture of gender equality and respect for women's rights in Afghanistan. Grassroots initiatives and community-based interventions can play a crucial role in challenging harmful practices such as child marriage, forced marriage, and honor-based violence. Engaging religious leaders, traditional elders, and influential figures in promoting gender equality and women's rights can help garner support for progressive change within Afghan society.

International Support and Solidarity

The international community has a critical role to play in supporting women's rights in Afghanistan. Continued diplomatic pressure, humanitarian assistance, and development aid can help mitigate the impact of the humanitarian crisis and support efforts to safeguard women's rights. Moreover, diplomatic engagement and dialogue with the Taliban should be leveraged to advocate for the protection of women's rights and ensure that international norms and standards are upheld.

CONCLUSION

As the Taliban gains power, the strong spirit of Afghan women are of the utmost importance in the fight for their rights and recognition. The complicated social and political situation in Afghanistan, made worse by many years of conflict and changing leaders.

The history of women's rights in Afghanistan shows times of progress and times of loss. From the early 20th century efforts to modernise to the harsh rules set by the Taliban, Afghan women have seen big changes, shifting between gaining rights and facing restrictions. The laws and social ideas that were meant to help women are now at risk of being removed as the Taliban's strict rules threaten the progress made in women's rights and involvement in society.

Opportunities for education and work, key ways for women to gain power and independence, have been greatly affected, leaving women in vulnerable positions. The return of the Taliban not only puts women's legal rights in danger but also affects their social, economic, and mental health. The world's strong disapproval of the Taliban's actions shows a common understanding of the need to protect Afghan women's rights, but real progress is hard to achieve with the ongoing conflicts and political unrest.

However, the strong spirit of Afghan women stands out as a sign of hope.. Even with huge obstacles, they keep fighting for their rights, speaking out for their freedom, and bringing people together both in Afghanistan and around the world. The support from Afghans living abroad and groups working for the cause, along with help from other countries, is very important in this struggle, providing support, resources, and awareness across borders.

Looking ahead, the road to equality for women in Afghanistan has obstacles but also opportunities for big change. A united effort from everyone involved—local communities, the Afghan government, international groups, and people all over the world—is needed to create a place where women have the same chances as men. Changes in the law, education, opportunities for work, and culture are all pertinent.

Ultimately, the fight of Afghan women for their rights and recognition is a symbol of the wider fight for human respect and equality. The courage, determination, and spirit of Afghan women, in the face of challenges, are a strong example of the never-ending human drive for justice. As the world watches and helps in this journey, the hope for a fairer and more just future for Afghan women shines brightly, reminding us of the ongoing fight for freedom and dignity that connects us all.

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