



Women Rights Under Taliban And Abrogation Of Forced Marriages

Prakash Kumar*

Abstract

The Islamic Republic of Afghanistan was captured by force in August 2021 after twenty years of war by Taliban, the Sunni Islamic Extremist Organization, which was proposed to be declared as a Foreign Terrorist Organization in September 2021 referendum in the parliament of United States of America. This violently forced seizure of the Islamic Republic lead to an aura of fear and barbarianism, which lead to a state of chaos and emergency for the nations worldwide. The women in Afghanistan have been deficient towards the basic human rights and treated as per the tribal customary laws since decades now. One such feudal practice that was seen prevalent is that of forced marriages wherein the family, sell their daughters against the repayment of debts or to fulfil other financial obligations pending towards the family. The need to free consent in marriage is supposed to be a myth in this state, thus treating the females as chattels and property. On 3rd December 2021, the self-proclaimed proxy government put forward an official notification stating the abrogation of Forced Marriages and giving the right to remarry after seventeen weeks to the widows. This move is welcomed by many female scholars of Afghanistan, but the unanswered question about the restoration of basic rights to education and freedom of movement still remind us of the era of 1990's. This paper shall give a glimpse about the prevalent human rights violations committed against the women of Afghanistan and the decreed moves towards reconsideration of granting statehood and restoration of aid under the lens of falsehood and religious extremism by the Taliban leadership.

Keywords: *Women Rights, Abuse, Child Marriage, Taliban, Afghanistan*

I. Introduction

Following the withdrawal of Soviet soldiers from Afghanistan in the early 1990s, the *Taliban* (meaning *students* in Pashto language), arose in northern Pakistan. It is a group of conservative Sunni Muslims, which gained resemblance from the *Pashtun Movement*. This movement originally emerged from the theological institutes funded by Saudi Arabia.¹ They were back in power by overthrowing the democratically elected government after 2001. After seizing control of the capital of Afghanistan '*Kabul*', the Taliban leaders held their first formal press conference, where they wished for peaceful ties with foreign nations. Taliban spokesperson *Zabihullah Mujahid* claimed on 17th August, 2021 i.e., just two days after overthrowing the last democratic government headed by *Ashraf Gani*. He said that the Taliban will respect women's rights, forgive those who opposed them and protect the Afghan citizens. However, this seems far from real, to be a part of a propaganda blitz designed to persuade the international community and a scared populace that the Taliban had changed its orthodox ways.² Zabihullah said in the official statement, emphasizing that now "There's a huge difference between us, in comparison to 20 years ago". However, The Taliban's primary targets in Afghanistan have been "*women and girls, human rights activists, judges and journalists*", which rhetorically contradicts these comments.

*Prosecution officer, Rajasthan.

¹ "Who are the Taliban?", BBC, Aug. 12, 2021, available at: <https://www.bbc.com/news/world-south-asia-11451718>.

² Rahmat Gul, "Transcript of Taliban's first news conference in Kabul. Aljazeera", Aug. 17, 2021, available at: <https://www.aljazeera.com/news/2021/8/17/transcript-of-talibans-first-press-conference-in-kabul>.



In reality, the Taliban's earlier repressive measures have been replicated in the first 100 days of their takeover. The Taliban's campaign of '*targeted killings*' of government workers and civil society members, as well as its violent suppression of anyone who dared to oppose the group, have intensified in a year. These actions are not limited to the group's previous period in power.³ It is obvious that the Taliban has a '*repressive policy*' based on reports of violations of religious and ethnic minority' rights, as well as reprisals against former military, police and government workers.⁴ There have been no consequences for any of these offences. The '*rule of law*' in Afghanistan has totally collapsed since the Taliban's takeover, resulting in a lack of punishment for crimes. Although the country's judicial courts are closed and the Taliban's '*customary courts*' continue to operate throughout the country. The police and other law enforcement agencies are not performing their duties as they should. Fear of retaliatory attacks by former Taliban detainees, disregard for the existing legal system and court processes, have made judges and prosecutors nervous for their life.⁵

Prior to the rise of Taliban, there was an acceptance towards empowering women in the country. As per the Data of 1977, women comprised over 15% of the highest legislative body. Similarly in the early 1990's women comprised 70% of School Teachers, 50% of government workers and 40% of the Doctors in Kabul itself.⁶ Even during the reign of *Hamid Ansari*, the elected head of the democratic government, the situation of women improved since the first *Talibanic Regime*. Although they were still suppressed and restricted to domestic household work and rearing children. As per a study conducted in the year 2010, it was found that "Women constitute half the population of Afghanistan, but are regarded as '*chattel to be sold and bought by men*', treated as *second-class citizens* and are routinely deprived of their basic civil rights. It is suggested that 87% of women in the country are *illiterate*. Violence against women is pervasive to the extent that *one in three women* experiences *domestic and sexual abuse* and 70-80% are '*forced to marry against their will*', often too much older men. Many of these women resort to *suicide* as a way to end the abusive relationship or escape other *misogynistic traditions*'.⁷ The socio-economic status at the effect of religious hegemony has left the women of this country in a battered state of affairs. This paper shall examine the Islamic extremist policy and gender bias upon the women in Afghanistan, the role of Islamic fundamentalist and its impact on women struggle for gender equity.

³ Wakil Kohsar, "Broken promises: Civil society under siege after 100 days of Taliban takeover", FIDH, Nov. 23, 2011, available at: <https://www.fidh.org/en/region/asia/afghanistan/broken-promises-civil-society-under-siege-after-100-days-of-taliban>.

⁴YogitaLimaye, "Amid violent reprisals, Afghans fear the Taliban's 'amnesty' was empty", BBC, Aug. 31, 2021, available at: <https://www.bbc.com/news/world-asia-58395954>.

⁵Stephanie van den berg, "Hunted by the men they jailed, Afghanistan's women judges seek escape", Reuters, Sept.3, 2021, 8:39 PM, available at: <https://www.reuters.com/world/asia-pacific/hunted-by-men-they-jailed-afghanistans-women-judges-see-escape-2021-09-03/>.

⁶Sangeeta Tomar, "Human Rights Concern and Conditions of Women in Afghanistan", 58(1) *India Quarterly* 153-164(2002).

⁷HafizullahEmadi, "Women in the Post-Taliban Afghanistan: Dialects of Oppression and Token of Recognition", 22(3-4) *Race, Gender & Class* 244-259 (2015).



II. Origin and Evolution of Afghan Taliban Regime

A lack of understanding of both Islamic religion and the history of the politics of Afghanistan, many people believe that the Taliban are representative of the traditional Muslim culture of the region. However, this is not the case. Afghanistan became an independent country from the clutches of British Colonial Rule upon signing the *Treaty of Rawalpindi* in the year 1919.⁸ The tale of the Taliban's growth is a contemporary one, which is deeply rooted in the politics and its effect which are the results of the *Cold War* between the *Soviet Union* and the *United States of America* (USA). *Afghan Mujahedeen* (also known as Islamic guerrilla warriors), who had battled the Soviet occupation of Afghanistan from the year 1979 till 1989, with the covert support of the CIA and Pakistan's ISI, founded the organisation in the early 1990s. Younger Pashtun tribesmen who got educated in '*Pakistani madrasas*' joined them. Pashtuns constitute the majority of Afghanistan's population and are the biggest ethnic group in the country's south and east. They are also a large ethnic group in the north and west of Pakistan. After four years of fighting (1992–1996) between opposing Mujahedeen factions, the movement gained public support in the early post-Soviet period by vowing to establish stability and rule of law.⁹

In November 1994, the Taliban stormed *Kandahar* to quiet the crime-ridden southern metropolis. By September 1996, they had seized *Kabul* from President *Burhanuddin Rabbani*, an ethnic *Tajik* whom they considered as anti-Pashtun and corrupt. In that year, the Taliban proclaimed Afghanistan to be an *Islamic Emirate*, with *Mullah Mohammed Omar*, a cleric and anti-Soviet resistance veteran, serving as there "amir al-mu'minin aka commander of the faithful". By 1998, the Taliban's were in control of almost 90% of Afghanistan. The USA armed forces invaded Afghanistan, after it refused to hand over *Osama bin Laden*, the mastermind of the 9/11 attacks. Thus the situation started to change towards the formation of a democratic state from here. Since 2001, after the invasion of USA Special Forces which forced the Taliban's militants to go into hiding, the world saw a rise in the standard of living of the Afghan citizens and a way forward towards better days.¹⁰

The Taliban then launched an insurgency operation against the Afghan government, which was backed by the USA. NATO and three U.S. administrations conducted *Counter-insurgency Operations* against the insurgent Taliban, which resulted in more than 6 thousand deaths of US soldiers and a thousand or more NATO forces. In 2003, NATO acquired command of foreign forces for the first time outside of Europe. More than thirteen thousand troops from 50 countries were stationed in Afghanistan at the height of NATO's involvement and by 2011, around one Lakh American soldiers were stationed in Afghanistan. The effect of such military operations was worst felt by the Afghan natives. In the coming years between 2007 to 2021, seventy-three thousand or more Afghan soldiers and police personnel were murdered along with somewhere fifty thousand civilian deaths as per the official government reports. On the other side, even the Taliban lost somewhere ten thousand *mujtahid's* during the course of rebellion.¹¹ On February 29th, 2020, the *Doha Agreement* was enforced between USA and Taliban, towards a mutual promise by the former to remove its military forces and NATO forces in a phased manner from the Afghan soil within 14 days

⁸Supra note 6.

⁹Nasreen Akhtar, "Pakistan, Afghanistan And The Taliban", 25(4) *International Journal on World Peace* 49-73(2008).

¹⁰Lindsay Mainland, "The Taliban in Afghanistan. Council on Foreign Relations", *CFR*, Sept. 23, 2021, available at: <https://www.cfr.org/background/taliban-afghanistan>.

¹¹*Ibid*.



from signing the accord. Against which the Taliban have promised not to allow any terrorist organization or individual to use its soil for any terrorist activities or to avenge attack on USA or its allies. It was also pledged by Taliban that they shall sever all ties with *Al-Qaeda*. A 'prisoner swap' was also agreed between the parties of the peace accord, against which 5000 Taliban prisoners and 1000 members of USA and NATO security forces were freed. By August 2021, as pledged, the USA had completely withdrawn its troops from Afghanistan's territory (Hakimi, 2020).¹²

III. Human Rights Violation and International Concerns

Sharia as proclaimed by the followers of Islam is the *right way to lead a life* of a Muslim. It is no code of law, but a set of moral based principles from Quran and the Practices of Prophet Muhammad. As per the experts, Taliban follows the most extreme and narrow version of *Sharia*, which accords to "public executions and amputations, banning music, television and videos and beating men who failed to pray five times a day or cut their beards".¹³

Human rights were grossly violated under the Taliban's previous reign of power which followed the extreme laws of *Sharia* as a code of Governance/*Grundnorm*. The first reign of Taliban lasted from '1996 to 2001'. Women's rights, as well as their right to education and work were severely restricted under the Taliban. Taliban holds a long history of threatening and attacking members of civil society, including those who advocate for human rights and education; media workers; academics; and members of ethnic minorities, particularly the *Hazaras* (Shia Community).¹⁴ Looking upon the present crisis and learning from the previous atrocities committed upon the Afghan citizens, at the international forums many concerns over such issue were raised. In the *UN Security Council* meeting held on 16th August, 2021, wherein it was recalled that "In the past 18 months there have been the deadliest civilian casualties recorded in Afghanistan in late history" and also reminded the Council of the *fifth report* of the *UN Secretary General on Children and Armed Conflict* in Afghanistan (S/2021/662 16 July 2021) documenting about the, "child casualties for the first half of 2021 constituted the highest number of children killed and maimed for this period' ever recorded by the UN in Afghanistan".¹⁵ On the similar front the matters like, recognizing *De-facto Government*, the development and increasing numbers of internally displaced individuals and culmination of Refugee crisis, had been discussed¹⁶, also the humanitarian and economic policies, deprivation of human dignity, extra judicial killings and other factors¹⁷ (Al-Nashif, 2021) were discussed in *United Nations Human Rights Council* (UNHRC) 31st Special Session on 24th August, 2021 and its 48th Regular Session organized on 9th September, 2021.

¹²Mehedi J. Hakimi, "The U.S.-Taliban Agreement and the Afghan Peace Process", *Stanford Law School*, Dec. 7, 2020, available at: <https://law.stanford.edu/2020/12/07/the-u-s-taliban-agreement-and-the-afghan-peace-process/>.

¹³"What *Sharia* law is and why women in Afghanistan are scared that Taliban might re-impose it strictly", *First Post*, Aug. 19, 2021, 7:27 PM, available at: <https://www.firstpost.com/world/what-sharia-law-is-and-why-women-in-afghanistan-are-scared-that-taliban-might-reimpose-it-strictly-9896601.html>.

¹⁴"Afghanistan: international community must prevent human rights catastrophe", FIDH, Aug. 16, 2021, available at: <https://www.fidh.org/en/region/asia/afghanistan/afghanistan-international-community-must-prevent-human-rights>

¹⁵*Ibid.*

¹⁶Sebastian Rich, "Afghan refugees reach Iran as violence escalates", *UNHCR*, Aug. 9, 2021, available at: <https://www.unhcr.org/news/press/2021/8/611141ec4/afghan-refugees-reach-iran-violence-escalates.html>.

¹⁷Nida Al Nashif, "Afghanistan: Humanitarian crisis threatens basic human rights", *UN News*, Dec. 12, 2021, available at: <https://news.un.org/en/story/2021/12/1107902>.



Conclusion & Suggestion

According to a UN Report of 2021 (S/2021/486), Afghanistan is on the verge of collapse, as poverty, hunger surge and the economy have gone into a freefall. In addition to this, millions of people who have already been forced to evacuate their homes and many more might be displaced internally and stranded on borders of Iran. With the Suspension of Aid by certain countries and non-profit organizations, the lifeline of the economy and public health sector is in deep crisis as it amounted for 75% of the total revenue held by the previous Afghan Government. Adding to these problems, drought and the Covid-19 epidemic are also plaguing the country. A strong notable fact is that, there are concerns that the Taliban's backing for terrorist groups, notably *Al-Qaeda*, poses a threat to both regional and worldwide security. As some people are suspecting that, Terrorists might use Afghanistan as a safe haven to launch attacks on the United States and its allies, despite Taliban's claims that "Afghanistan's land would not be utilised against the security of any other country".

Nonetheless, the new interim government of Afghanistan have stood forward to withhold diplomatic ties with the neighbouring countries in its region, most importantly with Pakistan, China and Russia. They have also requested the other nations on the international peace forums, for opening there embassy again in their respective countries, as well as in Afghanistan and resume business with them. However, nothing firm has been answered in positive from any Western Country and others who are holding their ground to look forward towards the kind of relationship that may originate if a democratic setup is established and the basic Human Rights of the Afghan citizens are protected.