



Review Article

Harmonizing Legal Frameworks: Bridging the Gap between CEDAW and the Afghan Civil Code in Pursuit of Gender Equality

Khatol Shafiq^{1*} , Safia Rahim²

¹Assistant Professor, Member of PR Department, Faculty of Communication and Journalism, Kabul University, Afghanistan

²Assistant Professor, Member of Communication Studies Department, Faculty of Communication and Journalism, Kabul University, Afghanistan

ARTICLE INFO

ABSTRACT



Keywords:

CEDAW, Convention, Discrimination, Women, convention

Article History:

Received: 12-02-2024

Accepted: 02-05-2024

Published: 07-05-2024

Afghanistan ratified the CEDAW accord without any conditions in 2003 after the deal was formally recognized by the Ministry of Foreign Affairs in 1980. According to the Vienna Agreement, countries can impose restrictions on United Nations resolutions that contradict domestic laws. The Afghan government has decided not to step in, despite the fact that there is a clash between the CEDAW Convention and the Afghan legal system, particularly the Civil Code. The parties to the CEDAW Convention remove from their legal systems any clauses that restrict gender equality as specified by the convention. This article compares and contrasts the rights and obligations regarding marriage, divorce, inheritance, guardianship, custody, and proclamation found in the Afghan Civil Code with Article 16 of the CEDAW Convention.

Cite this article:

Shafiq, K., & Rahim, S. (2024). Harmonizing Legal Frameworks: Bridging the Gap between CEDAW and the Afghan Civil Code in Pursuit of Gender Equality. *Sprin Journal of Arts, Humanities and Social Sciences*, 3(5), 09–12. <https://doi.org/10.55559/sjahss.v3i5.272>

Introduction

The Commission on the Status of Women (CSW) was entrusted with compiling concepts that advanced global gender equality into a proclamation in 1963, marking the start of the process of creating a global accord that would specifically address women's rights. A CSW committee was tasked with overseeing this massive project in 1965. The General Assembly approved the final proclamation on November 7, 1965, which was titled the Proclamation on the Elimination of Discrimination against Women. The 1981 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was founded on this proclamation. For almost thirty years, the Commission on the Status of Women labored to compile the CEDAW, or list of areas where men and women are not treated equally (Kurdistani, 2009). CEDAW, which prohibits discrimination against women based on their sex or marital status, establishes internationally recognized norms of equality for men and women (Tinker, 1981). The Convention significantly expands the rights of women and forbids discrimination against them wherever on the basis of their gender. It is the most important and comprehensive tool ever created to address women's growth and the fulfillment of their human rights.

This article discusses the disagreements between the CEDAW Convention and the Afghan Civil Code. Regarding some topics, there have been disputes about how the CEDAW Convention requires total equality between men and women, yet

Afghan civil law recognizes this equality at the expense of both and establishes requirements for it. The Convention on the Elimination of All Forms of Discrimination against Women, or CEDAW, consists of thirty articles plus an introduction (Tinker, 1981). While Article 14 of this Convention deals with the Commission's administrative duties and its oversight of the implementation of other articles, Article 16 of this Convention is devoted to the entire battle against violence against women. The Convention is broken down into six sections that cover every facet of a woman's life, such as laws pertaining to marriage and families, customs around men and women, political, economic, social, and civil rights, health, education, and the workplace, as well as discrimination and ways to combat it (Kurdistani, 2009).

Objectives and importance

The CEDAW Convention is a profoundly important global treaty and collection of resolutions concerning the rights of women. Since this convention is a global agreement, member states are obligated to consider it. The UN Resolution of December 18, 1979 assesses the extent to which member states are required to and have executed this convention. Afghanistan entered into the convention on August 14, 1980, and subsequently ratified it in 2003 as a result of its infringement of domestic legislation. Article 16, considered the essential component of this convention, conflicts with the legal framework of Afghanistan, specifically its civil laws. (Kurdistani, 2009) However, Afghanistan has not effectively utilized its authority to safeguard itself, leading to various difficulties in

*Corresponding Author:

Email: [Shafiq21092\[at\]gmail.com](mailto:Shafiq21092[at]gmail.com) (K. Shafiq)

<https://doi.org/10.55559/sjahss.v3i5.272>

© 2024 The Authors. Published by Sprin Publisher, India. This is an open access article published under the CC-BY license

<https://creativecommons.org/licenses/by/4.0>

carrying out and reporting its responsibilities to the United Nations. Hence, it is not pointless to recognize, evaluate, and compare this convention with the civil law of Afghanistan.

Research Methodology

The main emphasis of the research methodology employed in this study is library research. This study employs a comparative legal analysis technique to investigate and compare women's rights under family law in the Afghan Civil Code and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This essay examines both the CEDAW Convention and Afghan civil law. Online resources have undergone research-based reviews. The examination of the outcomes incorporates both international human rights standards and Afghanistan's cultural characteristics. Academic integrity is a set of ethical principles that ensure impartiality, honesty, and openness in the assessment and communication of research results. These notions function as the principles for the research technique.

Navigating Legal Discrepancies: Advancing Gender Equality in Afghanistan

CEDAW defines equality and addresses many other issues, such as nationality, access to political and public rights, freedom of movement, religion, opinion, and association, as well as rights to work, healthcare, and education. Article 2 requires states to take specific action to advance gender equality, such as establishing laws or putting it in national constitutions. States are required to ensure that women receive equal protection by amending or eliminating laws, customs, and practices that discriminate against them (Minor, 1994). There is also an extensive action plan provided to the States that have ratified the Convention. Civil rights, women's legal position, and, for the first time in treaty history, concerns related to human reproduction and the influence of culture on gender relations are all included in the preamble of the Women's Convention, also known as the International Bill of Rights for Women. (Taha, 2012) The thirty articles of the convention now include these subjects (Kaufman- Hevener, 1986). claims that because CEDAW covered subjects that had not been covered in earlier accords, it beyond their previous agreements' purview. The Convention emphasizes how important it is to safeguard women's rights and access to the legal system in order to successfully reduce instances of discrimination and rights violations against women. It addresses topics that were not previously covered, such as the necessity of altering the roles that men and women perform in the community, in the workplace, in families, and in government. It also bravely opposes the division of the public and private domains and aggressively seeks to put a stop to human rights abuses that occur within families. The Convention also addresses the situation that rural women face, emphasizes the necessity of taking focused action to advance gender equality, and emphasizes how crucial it is to remove cultural barriers in the pursuit of gender parity. (Kaufman- Hevener, 1986) An essential element of the Convention is its acknowledgement of gender roles and other societal, cultural, and traditional impediments that keep women from achieving full equality and participation. The Articles of the Convention also mandate that States Parties take constructive steps to change these beliefs and practices. The CEDAW treaty was developed in response to the particular challenges faced by women and the gendered character of rights violations. There's also an optional protocol attached. Previous human rights instruments and treaties aim to guarantee human rights without discrimination; but, the CEDAW convention, along with its optional protocol, provides particular measures to

address the particular situation that women face. (Minor, 1994) As with earlier accords, the primary obstacle with CEDAW is determining how to translate the verbal tenets into deeds that will materially improve the lives of women and put an end to any human rights breaches (Taha, 2012).

It has not been properly investigated how the Afghan Civil Code and the CEDAW Convention differ from one another. Conversely, an implicit study has been carried out, which we will touch on in the following paragraphs. Mustafa Taha is the author of the scholarly work "Women's rights between justice and equality". The book examines the CEDAW Convention from the standpoint of Islamic law. The Afghan Women's Network has assessed this convention as the CEDAW Guide. The report that compared and contrasted Afghan legislation with the CEDAW Convention drew criticism for the Ministry of Foreign Affairs in Afghanistan for neglecting to include an explanation of the right of protection. This rule's flaw is that it emphasizes the historical nature of political rights while ignoring the distinctions and parallels between Afghan law and the CEDAW Convention.

CEDAW

After the Taliban were overthrown, women's rights were established and safeguarded, and this remained the case during the critical early stages of Afghanistan's reconstruction. The United Nations Worldwide Convention on the Elimination of All Forms of Discrimination Against Women and Security Council Resolution 1325 on Women, Peace, and Security are two important UN accords that have received strong support from worldwide stakeholders. The provisions aimed to ensure that women's rights were upheld, protected, and promoted, and they also encouraged women to actively take part in efforts to create and maintain peace. Despite their flaws, restrictions, and thought-provoking character, these publications are seen as essential for advancing and defending women's rights, particularly in light of the recent social, political, and economic events in Afghanistan. The advocacy work of foreign groups and Afghan women was given priority by Hamed Karzai's Afghan Interim Government, and this had an effect on the country's draft constitution (Brunet A. & Selon-Helal, 2003) In civil affairs, politics, the economy, society, and culture, among other domains, this treaty underscores the significance of guaranteeing gender equality (Kurdistani, 2009). The agreement aligns with Afghan legislation in various domains, encompassing politics, international affairs, nationality, education, healthcare, labor, the economy, and social entitlements. Afghanistan's intricate civil law system is fragmented into multiple versions that do not recognize complete equality. Ensuring fair and balanced handling of the family's rights and obligations through a formal termination of the partnership Women in Afghanistan possess equal legal rights to men in terms of initiating divorce proceedings. Nevertheless, women have the ability to initiate divorce proceedings under specific circumstances. Some examples include the lack of legal protections, such as the termination of benefits after marriage and the rights of spouses. (Taha, 2012) Upon entering into marriage, women possess the legal entitlement to initiate divorce proceedings. The cost of matrimony Following a divorce or separation, the phrase "alimony" refers to the financial support that one spouse provides to the other. A seal is a formal emblem utilized to authenticate or approve documents. "Heritage" denotes the enduring ideals and customs that have been transmitted throughout generations from a preceding civilization. Monitoring or tracking Please indicate your stance on polygamy and whether you are open to engaging in or practicing it. There exist disparities between the legal frameworks of Afghanistan

and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) concerning guardianship and other legal issues. Article 16 of the CEDAW Convention addresses the legal dimensions of marriage and families. These encompass matters like as determining child custody and post-divorce management, dissolving a marriage, raising children and meeting their financial needs, and the legal rights and responsibilities of each partner. In a marriage, the rights of both men and women are equivalent. Article 16 mandates gender equality in this domain, despite the absence of a specific definition of the minimum age for marriage in CEDAW. (Tinker, 1981) Afghan civil law specifies that males must be at least eighteen years old, while females must be at least sixteen years old, in order to enter into marriage. Aside from the statutory minimum age of sixteen for girls to marry, there are no additional legal differentiations between a female and a minor. According to Article 39 of the Afghan Civil Code, an individual must reach the age of eighteen in order to be recognized as legally capable.

Article 39: The minimum competency age is eighteen. When a person achieves this age and possesses the necessary mental capacity, they are deemed fully capable of exercising their civil rights. B: The equivalent right to select a spouse and to avoid getting married without the wife's permission and independence. A woman has the right to select her husband in accordance with Article 80 of the Afghan Civil Code. According to Article 80 of the Civil Code, "the critique of marriage is effective and necessary if a wise woman marries without her guardian's consent." The marriage of a Muslim lady to a non-Muslim man is null and void, according to Article 92 of the Afghan Civil Code. It is acceptable for a Muslim man to wed a woman of another faith." For Muslim and Afghani women, this is a value rather than a restriction. Equitable rights while living together Men and women have equal rights and obligations under Section 30, Paragraph 1 of Article 16 of the Convention, provided that they cohabit as a pair. At this point in time, none of them is better than the others. This section also goes against the wife's rights over her husband's regarding the sealing, alimony, and preparation of household goods. The wife is only required to pay the dowry once more in the event of a divorce, which contrasts with the payment of ransom in the event of a divorce, the payment of alimony during the Edat period, and the custody of the children. Without taking into account all of these situations, this CEDAW language treats cohabitation and divorce as equivalent situations. A spouse is required by Article 115 of the Afghan Civil Code to give his wife a proper place to live. Eating, drinking, clothes, and medical care are also included in the alimony that the husband is compelled to pay under Article 117 of the Afghan Civil Code. Article 89 of the Afghan Civil Code states that a woman's seal must be placed on a man before they can get married. Because alimony is required of a woman by a man, the lady's portion of her husband's heritage remains distinct. Alimony is required for married women over men. In accordance with paragraph two of Article 2007 of the Civil Code, the wife's right to inherit is the fourth portion of the husband's property in the event that the husband is childless and the eighth portion in the event that the husband has children. Notwithstanding the fact that she owes her father and brother support if she does not marry, Article 2008 of the Afghan Civil Code grants her the right to half of her father's estate. Sections (f) and (e): Based on recommendations, a couple who consists of a man and a woman is said to cooperate with each other in their daily lives. Family matters can be organized without issue, however under Afghan civil law, there is a difficulty if their rights are equal in guardianship and guardianship-related matters. Section (g): the freedom to select

a moniker. Gender identity is a right guaranteed to both men and women under the CEDAW Convention, specifically in Section g, paragraph 1, Article 16. Afghan civil law acknowledges a woman's identity as belonging to her paternal family, not her husband, in accordance with Islamic law. In this instance, it is unclear how CEDAW and Afghan civil law differ from one another. (Minor, 1994) Certain nations have laws requiring newlywed women to take on their husband's family name; however, other nations have no such laws. There are no special limitations in this area under Afghan law. The Afghan Civil Code's Article 38 declares that "everyone can choose the name of a family according to his own name." This article states that a woman is not required to take her husband's last name or his family name as her surname. The Afghan Civil Code also grants women the right to financial independence in another section that represents their financial independence. The number of children and the distance between them are the same.

There are a few more distinctions between the CEDAW Convention and the Afghan Civil Code in regard to guardianship and custody rights. A man and a woman may adopt a girl or kid in accordance with the CEDAW Convention, despite the fact that Afghan civil law forbids it. A significant turning point for women's rights in Afghanistan and the Muslim world at large was the country's acceptance of CEDAW. Being the first Muslim state to ratify CEDAW without any opposition, Afghanistan made history. (Kaufman- Hevener, 1986) Afghanistan promised to respect the Convention's objectives after ratifying it. This entailed doing away with all laws that discriminated against women, incorporating gender equality into the legal system, stopping acts of discrimination against women by individuals, organizations, or businesses, and setting up governmental institutions like tribunals to protect women from discrimination (Zine, 2006).

Another significant milestone was Afghanistan's quick ratification of CEDAW. It was held prior to the preparation and adoption of the new Afghan Constitution in January 2004, giving advocates of women's rights a chance to unite and insist on key provisions for women's rights being included in the new constitution. The international feminist movement swiftly mobilized to support and assist in incorporating CEDAW provisions into the new constitution, as did key national participants in the Afghan women's movement. They pushed for the inclusion of important international human rights principles for women in the Constitution, like equality before the law and increased political rights, in the months preceding the Loya Jirga. (Alavi, 2018) There were claims that the Convention was "Western," "un-Islamic," and at odds with the Afghan people's culture and faith. Those who opposed the CEDAW movement were not in the minority. My colleagues and I held training sessions in Kabul and Jalalabad in the spring of 2003. (Alavi, 2018) We discovered that communities and imams were spreading false information about the Convention through participant inquiries. Nonetheless, despite strong opposition from conservative forces before and after the Constitutional Loya Jirga (CLJ), which was applauded by Afghan women and others who supported them abroad, local and international feminists did succeed in a few areas. The recently approved Afghan Constitution's equality clause, which effectively granted men and women equal rights under the law, was significant at the time. This was an impressive accomplishment, especially in a Muslim state where women are treated unfairly in the court system due to rigid interpretations of Sharia law.

Conclusion

Every member nation of the largely ratified CEDAW Convention is required to carry out specific legal duties. We must approach this treaty cautiously because this is the procedure by which human rights are evaluated. Although there are numerous similarities between CEDAW and Afghan law, Afghan civil law is very different from CEDAW. States are required by CEDAW to reform or repeal any laws that clearly contravene with the agreement. Afghanistan, on the other hand, does not impose any limitations on signing or ratifying the pact. The main topics of this agreement are articles 2 and 16 of the convention. There are a few issues that must be resolved before these two tactics are put into practice in Afghanistan. Afghanistan finds it difficult to provide the CEDAW Committee with reports. This chapter provided a thorough overview of the Convention, its committee, and all of its intricate oversight procedures. There was also discussion on the history of the reservation system and its relevance to CEDAW. This chapter also discussed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and how it applies to Afghanistan. It's also possible that the Convention has helped the global community and its female population, despite the Committee's challenges and its shortcomings. Moreover, it is becoming more evident that the Convention has raised women's standing.³⁶ is the value. It appears that not much has been done to stop the continuous violations of human rights that occur all around the world by CEDAW and other treaty agencies. It is clear that these agreements had a big influence when we compare the real world to a hypothetical one in which they never occurred. Without a question, the growth pace has been slow. Women's human rights have gained more attention since the Convention was adopted, and as a result, advancements have been made in many regions of the world. Internal adjustments, the support of proponents of women's rights, and other elements of civil society will gradually mold this attitude. CEDAW and the larger human rights framework faced many difficulties throughout the Cold War. It was challenging for the Committee to perform its tasks because of the disagreements and ideological differences among its members.

Suggestions

- It is wise to claim the right to express concerns, especially with reference to the sixteenth and second paragraphs, given the variations between Afghan legislation and specified provisions of the CEDAW Convention. Only when national legislation—like the Afghan Civil Code—meets the standards and obligations specified in CEDAW can harmony be achieved.
- The law has to be changed to handle particular concerns like guardianship, custody, inheritance, marriage, and divorce in order to guarantee adherence to international human rights standards.
- Articles that comply with the Afghan legal system must be rigorously followed. Improved public understanding of the principles of CEDAW and education of judges, the general public, and legal practitioners are essential. Awareness raising, training, and public education initiatives are essential to addressing gender identity prejudice and advancing gender equality.

References

- Alavi, S. N. (2018). *An Introduction to the Sociology of Women*. Kabul University: Faculty of Social Sciences.
- Brunet A. & Selon-Helal, I. (2003). *Seizing the Opportunity: Afghan Women and the Constitution Making Process, Rights and Democracy Mission Report, May - June*. Montreal: Rights and Democracy.
- Kaufman- Hevener, N. (1986). An Analysis of Gender Based Treaty Law: Contemporary Developments in Historical Perspective. *Human rights Quarterly*, vol 8, no. 1 .
- Kurdistani, M. A. (2009). *Feminism (women's liberation movements)*. (A. Z. Soltani, Trans.) Tehran: Hafez Ebro.
- Minor, J. (1994). An Analysis of Structural Weaknesses in the Convention on the Elimination of All Forms of Discrimination Against Women. *Georgia Journal of International and Comparative Law*, vol 24, , 137-54.
- Taha, S. M. (2012). *Women's rights between equality and justice*. (S. Aexandri, Trans.) Tehran : Shaykh al-Islam Ahmad Jam.
- Tinker, C. (1981). Human Rights for Women: The UN Convention on the Elimination of All Forms of Discrimination Against Women. *Human Rights Quarterly*, vol 3, no. 2 , 32-43.
- Zine, J. (2006). Between Orientalism and Fundamentalism: The Politics of Muslim Women's Feminist Engagement. *Krista Hunt & Kim Rygiel (eds), Gendering the War on Terror*. Ashgate Publishing.