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# Challenges to Women and Girls' Right to Education and Work in Afghanistan: The Role of International Community

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## **Abstract**

After the collapse of Afghanistan's democratic government and Taliban taking control of Afghanistan in August 2021, the lives of Afghan women and girls are severely restricted. Afghanistan is at the crossroads of its political commitments made to the international community and legally binding obligations; its actual domestic laws, policies, and state practices with respect to women's right to education, and work; and its expectation from international community for an economic bailout.

Alongside the lack of effective implementation and compliance monitoring on the part of international human rights treaty regimes, perpetual economic instability and underdevelopment are the causing factors that impinges upon the substantial application and indiscriminate realisation of Afghan women's rights. From the perspective of law of physics which suggests that 'a number of people can do what none is able to do' this research paper will analyse what role the international community (in general), and Muslim world through the Organization of the Islamic Cooperation (OIC) and European Union's economic engagements with Afghanistan in specific, can play at the face of the fact that more than half of the economic life of Afghanistan is based on foreign aid and within this half, thirty percent is contributed by European Union.

**Keywords:** women rights, cultural and religious relativism, economic underdevelopment, Organization of Islamic Cooperation, EU external trade, human rights conditionality

## Introduction

Back in 1910, and 1920s when women were fighting for their rights in various parts of the globe, Afghan women under the rule of Amanullah were enjoying far more freedoms and rights. The first girls' school was established in Afghanistan back in 1921 paving the way for women to make their way to be part of every walk of national life, including political, economic, social, and cultural.<sup>1</sup> Despite the strong cultural and religious relativism, women were allowed as well as encouraged to go unveiled and they were given freedom of choice in marriage. This continued even during the Soviet occupation of Afghanistan until the Taliban took control of most of Afghanistan in 1996. Depriving women of their rights was a swift and brutal insignia of this period in Afghanistan's history.<sup>2</sup>

Following the US invasion of Afghanistan in 2001, women participation in national life significantly increased once again, especially their rights related to education and work were promoted and protected to a great extent. Steadily, the country developed an inclusive education system for all.<sup>3</sup> However, today again, Afghanistan is the world's hardest country for a person to be identified as women. Since the de-facto regime of Taliban took control for a second time in Afghanistan in 2021, the existence of Afghan women, which amounts to 48.6% of Afghanistan total population, has been systematically erased from the social and economic life of Afghanistan. Their right to education, work and their freedom of movement, expression, and peaceful assembly against the violation of their rights have been completely denied.<sup>4</sup>

According to UNESCO's report of February 2023, 2.5 million Afghan school aged girls are not attending the schools. Whereas 1.2 million college and secondary school girls are denied their right to education by the present de-facto regime in Afghanistan. Similarly, women's right to work has been severely curtailed and women are ordered to stay at their homes unless necessary. In cases where women are required to travel more than seventy kilometres, they must be accompanied by a *mahram* (male chaperone). All these measures and developments lead to both political inequality and economic insecurity.<sup>5</sup>

The existing challenges to the women's right to education, work, and freedom of movement are based on both internal as well as external factors. Internally the strong cultural and religious relativism, economic underdevelopment and instability, and the lack of education about human rights are the causing factors. Whereas externally, even though Afghanistan has ratified most of the relevant international human rights treaty regimes and had made political commitments to international community concerning women rights to education, work, freedom of movement and expression, however, the lack of effective enforcement and compliance monitoring mechanisms impinges upon the substantial application and indiscriminate realisation at the domestic level of human rights standards, beyond their formal recognition.<sup>6</sup>

On one hand denying rights to women in Afghanistan as provided for within the international human rights laws and on the other hand expecting economic bailout and financial assistance/incentives from international community, especially from EU, Afghanistan is on the cross-junctions of its economic needs, promises made to international community regarding women rights and its actual behaviour and intention in this respect.

There is the need to analyse in the first place how the Afghan women rights international standards are treated within the domestic laws, policies and contemporary practices in Afghanistan, there is also the need to analyse what role can the international community in general and Muslim world through the Organization of Islamic Cooperation (hereinafter

OIC) and European Union in specific can play in this regard by employing the tools and venues available at its disposal that could encourage the de facto regime for the observing and respecting Afghan women's right to education, work and their freedoms associated with movement, speech and peaceful assembly.

## **I. International Standards on Equal Right to Education and Work**

In international law, education is the basic human right of every individual.<sup>7</sup> Education can be termed as the whole process within a society where knowledge, beliefs, culture, and other values are transmitted to others.<sup>8</sup> The right to education binds state parties for both, positive and negative obligations.<sup>9</sup> The states are under an obligation to respect, protect and fulfil everyone's right to education. The obligation to 'respect' is a negative obligation, where the state parties shall refrain from taking actions and measures that may scotch upon everyone's right to education. The responsibility of the state to protect is to prohibit third parties from interfering with the enjoyment of the right to education, whereas the responsibility to fulfil requires state parties to provide all the facilities and measures required for realising the right to education meaningfully, this is the positive obligation of the states with respect to the right to education.<sup>10</sup>

Secondly, the societies where the profits of the globalised economy are fairly distributed, achieve greater social stability, while "*poverty anywhere constitutes a danger to prosperity everywhere*".<sup>11</sup> Every human being is endowed with the right to pursue freely and with dignity, his or her economic and material wellbeing. International human rights law endeavours to regulate and protect and different aspects of the right to work, such as everyone's equal right to work, freedom of choice in employment,<sup>12</sup> the minimum wage,<sup>13</sup> and non-discrimination within the matters relating to the right to work.<sup>14</sup> The most relevant body of law in this respect are the International Labour Organization (ILO) Conventions and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The state parties to the ILO Conventions and CEDAW are required to adopt all the measures required in order to ensure the equal employment opportunities and equal wellbeing in all the aspects of the right to work.<sup>15</sup> Same as the right to education, the right to work entails both positive and negative obligations for states.<sup>16</sup>

## **II. The Treatment of International Human Rights Standards Within Afghanistan Domestic Legal System**

The domestic implementation of international human rights standards through constitutional framework is a puzzling process, as it binds the states for compliance with international human rights standards.<sup>17</sup> Different states treat human rights treaties and its provisions with different degrees of value. Correspondingly, different methods are adopted for the incorporation of international human rights treaties into domestic constitutions. Some constitutions explicitly incorporate international human rights conventions to its constitutional scheme and this kind of constitutions are the rarest of its type.<sup>18</sup> Other stipulate that domestic laws should be adopted in accordance with the international human rights standards,<sup>19</sup> while some provides for access to judicial forums in cases of human rights violations. Out of all these instances, the ideal of constitutional construction is considered to be the one that affirmatively incorporates international human rights law into constitutional law but still provides courts with meaningful discretion to decide when and how to apply international standards in domestic cases.

Giving weight to international human rights within the constitutional framework should be a well thought and careful process as it possesses both its positives and negatives. On one hand, the rigorous adoption of the international human rights laws within the constitutional corpus may be an effective way to enforce domestically the international human rights standards. On the other hand, such a stringent approach undermines the legitimacy of domestic judicial forums and domestic legal forums are more subordinate to the international judicial forums. There is therefore the need to adopt a constitutional framework that could strike a balance between preserving the institutional, especially judicial, independence as well as incorporating international legal standards. For this purpose, the treatment of international law within the South African constitution could be a good example as it requires the domestic courts to consider the international law but not necessarily follow it. In other words, to engage meaningfully with the international legal system and differ to it where required and legally justified.<sup>20</sup>

There are no clear canons and directions that could answer the question of how international law can operate within the domestic legal corpus of Afghanistan. At the face of its dualist legislative and judicial dimension, Afghanistan has adopted a relatively weak domestic incorporation approach of international human rights standards stemming from relevant treaties, by making mere references to international human rights treaties, which is identical to the approach adopted by Algeria.<sup>21</sup> The constitution of Afghanistan adopted in 2004 is the supreme domestic legal authority. The preamble of the constitution of Afghanistan 2004 provides for the treatment of the international legal rules as following: "We the people of Afghanistan: [...] Observing the United Nations Charter as well as the Universal Declaration of Human Rights [...] And in order to [...] Establish an order based on the peoples' will and democracy; Form a civil society void of oppression, atrocity, discrimination as well as violence, based on rule of law, social justice, protecting integrity and human rights, and attaining peoples' freedoms and fundamental rights; Strengthen political, social, economic as well as defence institutions [...] Have, herein, approved this constitution [...]."<sup>22</sup>

Within the domestic legal system of Afghanistan, a legal framework was established for the protection of women through Elimination of Violence against Women Law 2009.<sup>23</sup> The violations of women's right to work, education and access to healthcare services were criminalised through this legal arrangement. It also provided a mechanism for initiating criminal complaints through relevant state bodies. Following the Taliban's takeover, this whole legal and institutional arrangement was abolished.

### **III. Challenges to Women Rights by Present de Facto Regime**

Out of many contemporary developments that have taken place globally, challenging domestic constitutionalism and causing a democratic recession, the case of Afghanistan is the worst. In Afghanistan, the power of authoritarianism and anti-pluralist regime negates democracy and human rights.<sup>24</sup> This democratic deterioration has been caused by the political deficit where the common population don't feel to be represented by the existing political system comprised of political leaders and institutions. All these phenomena lead to social stagnation in Afghanistan.<sup>25</sup>

Since the Taliban's de facto regime has taken control of Afghanistan women's freedom of movement has been severely curtailed by a cluster of decisions adopted. Following May 2022, women are directed not to leave their homes unless exactly necessary, and should that be the case, they are under an obligation to wear a face veil in form of *niqab* (covering all body except eyes) or *burqa* (covering whole body with a net above the eyes). It is also

required that women must be accompanied by a *mahram* – a male chaperone. Travelling, driving, or going to public places without a male mahram is punishable, and therefore the women doing so are often harassed, arrested, and punished. This obligation of mahram presence has hindered women's autonomy and freedom of movement, which brings about compound consequences for their right to education, work, and freedom of movement.

With respect to the right to education, on August 23, 2021 all schools in Afghanistan were closed following the Taliban's takeover on August 15, 2021. On September 17, 2021, all the schools were re-opened except those for the female students. According to the Taliban, secondary schools will remain closed to girls until an educational framework for girls is established in line with the Taliban's understanding of Shari'ah and Afghan cultural norms. This closure of girls' schools remains in force.<sup>26</sup> Similarly, since December 2022, the universities in Afghanistan are ordered not to enrol women. Also, women are banned from taking admission in certain disciplines. Subjects such as journalism, agriculture, veterinary medicine, engineering, and economics were made largely or entirely inaccessible to women candidates. In other instances, in some areas the girls' school remained open, however, families often avoided sending girls to schools fearing reaction from Taliban.

Same as the right to education, the right to work of Afghan women is severely challenged. Though there is no explicit ban on women's right to work, the measures adopted lead to severe challenges for women to work. The reports of the UN Special Rapporteur on the situation of Human Rights in Afghanistan indicates that women are completely excluded from activities that lead to income generation.<sup>27</sup> By March 2022, 61% of working Afghan women lost their jobs, which cost 600 million to 1 billion dollars of loss for the Afghan economy. According to one estimate, 80% of the women journalists across Afghanistan have left their jobs since the de facto regime captured power in Afghanistan. Those who continue are facing severe threats to their lives.<sup>28</sup> These restrictions on Afghan women's right to education and work are further compounded by the requirement of mahram for girls to travel. The requirement to be accompanied by a mahram affect women and girls' ability to independently access their educational institutes and workplaces.<sup>29</sup>

In sum, Afghan women are facing both political inequality and economic insecurity. Same as the orthodox pattern of excuses, the autocratic de facto regime claims that "*nowhere else is human rights respected more than here*".<sup>30</sup> Restriction on Afghan women right to education is in contravention with article 2 of Convention on the Rights of Child, article 10 of Convention on the Elimination of All Forms of Discrimination against Women and articles 13(2)(b) and (c) of the International Covenant on Economic Social and Cultural Rights that provides for educational accessibility to all without discrimination. Restrictions on women rights to work are in violation of the articles 2 and 6 of the International Covenant on Economic Social and Cultural Rights and article 11(a) of the Convention on the Elimination of All Forms of Discrimination against Women that prohibits the denial of access to work on the basis of a specific gender.<sup>31</sup> Limiting the women's freedom of movement is in defiance with the international legal provision relating to the freedom of movement, i.e., International Covenant on Civil and Political Rights articles 2 (1), 12 (1) and 26), International Covenant on Economic Social and Cultural Rights article 2 (2), Convention on the Elimination of All Forms of Discrimination against Women Articles 2(f) and 5(a), and the Convention on the Rights of Child.<sup>32</sup>

## IV. Legal, Political, and Economic Role of International Community

The maxim '*a number of people can do what none is able to do*' from the law of physics suggests that the primary reason for joint action is the impossibility or seriousness of achieving certain ends alone.<sup>33</sup> This understanding was best translated within the context of international relations by Eleanor Roosevelt as following:

Our own land and our own flag cannot be replaced by any other land or any other flag. But you can join with other nations, under a joint flag, to accomplish something good for the world that you cannot accomplish alone.<sup>34</sup>

Montevideo Convention 1933 provides for the requirements for statehood. These requirements are a permanent population, defined territory, government, and the capacity to conduct international relations. In terms of the de facto regime's ability to maintain government and the capacity to enter into and maintain relations with the international community is questionable.

In this respect, challenges to the de facto regime are twofold. First and foremost, the challenge is achieving international recognition. Secondly, maintaining unity and cohesion at home. So far, not getting international recognition undermines the de facto regime's capacity to address certain challenges to its internal cohesion and peace and it creates downstream problems in Afghanistan.

The realisation of women's right to education, work and freedoms related to their movement, which alone by the Afghans are hard to achieve against the sitting de facto regime, can therefore be achieved with the assistance of and support of the international community. International human rights law provides for seeking and developing cooperation between the states intended for the effective domestic implementation and meaningful realisation of the international human right standards. For instance, article 28 (3) CRC provides for establishing international cooperation within matters relating to human rights, i.e., the right to education. It obligates the state parties to seek, encourage and promote international cooperation in the matters relating to education, especially with respect to combating and eliminating the ignorance and discrimination prevailing within the sector of education. The said legal provisions maintain that experience and the resources of the developed states shall be utilised by the developing countries, keeping in view the needs and requirements of the developing and least developed states with respect to the meaningful realisation of the international human rights standards.

Despite the fact that the present regime has not been recognised by the international community, the international community may play its role in putting an end to the grave violations of women and girls' rights in Afghanistan. The international community, apart from giving merely lip service and expression of solidarity, should meaningfully engage with Afghanistan to support the reassertion of human rights standards to which today's Afghan women and girls are affronted. In this respect the role of the European Union and Islamic world is vital through the institutions and tools available at their discretion for this purpose.

### ***The role of the European Union***

As mentioned above, economic instability is one of the factors which creates challenges to the realisation of international women right to education and right to work in Afghanistan, there is the need to analyse if the economic needs of Afghanistan can be a

means to be utilised for the actual realisation of international human rights standards within its domestic legal system, policies, and actual practices?

As per the recent statement of EU foreign affairs chief Josep Borrell, the EU is going to redraw the landscape of its relations with Afghanistan. Afghanistan is the highest economic assistance recipient from the European Union since 2002. Against this backdrop, and at the face of the fact that more than half of the economic life of Afghanistan is based on foreign aid, within this half, more than thirty percent is contributed by European Union, there is the need to analyse the role and potential of EU Afghanistan engagements (especially the financial and trade relations between the two) for the protection of Afghan women and girls' rights.<sup>35</sup>

The approach of EU Afghanistan economic engagement should be based on the old maxim 'trade rather than aid.' The gradient should be the capacity building of Afghanistan instead of keeping it on a continuous ventilator of economic aid the moment that lifeline is interrupted, its whole existence is in threat.<sup>36</sup> We have seen this situation in August 2021, the minute allied forces decided to withdraw from Afghanistan, Afghanistan collapsed in a matter of days despite enormous amount of financial aid flowing to Afghanistan for almost 20 years. Therefore, there is the need to analyse what preferential trading position EU can offer to Afghanistan which will be effective in economic capacity building of Afghanistan. One such instance could be the Generalised Scheme of Preferences (GSP) which the EU grants to developing and least developed non-EU countries.

Articles 2 and 21 TEU set the foundations of the Union on the values of respect for human dignity, freedom, democracy, equality, the rule of law, respect for human rights and non-discrimination. These values shall reflect in all the instances of the Union. Against this backdrop, Afghan women's right to education, work, and freedom of movement should be the central conditionality of EU Afghanistan economic engagement. In all engagements with de facto authorities, women and girls' rights should be prioritised.

There should be adopted treaties specific approaches by the European Union with respect to Afghanistan. Individual complaint mechanisms providing optional protocols should be the EU Afghanistan economic relations conditional legal instruments. Afghanistan should be encouraged to ratify the optional protocols to the human rights treaty regimes that mandates the committees concerned to receive and consider communications in the form of complaints by individuals or groups of individuals against the violation of rights guaranteed within the provisions of respective treaty regimes.

Moreover, since isolation would only severe the challenges to internal cohesion and human rights situation in Afghanistan, therefore, the Afghanistan's funds and reserves frozen or seized by international financial institutions should be released. The access to funds which has been blocked after Taliban's takeover should be restored. According to the International Monetary Fund, this is due to the fact that there is "a lack of clarity within the international community regarding recognition of a government in Afghanistan, as a consequence of which the country cannot **access** the Special Drawing Rights (SDRs) or other IMF resources." Similarly, the US should release Afghan Central Bank's assets including 1.3 billion dollars in gold reserves and 6.2 billion in investments. Also, other states holding 1.9 billion assets of Da Afghanistan Bank should be released.<sup>37</sup>

### **The Role of Organization of Islamic Cooperation (OIC)**

Alongside, taking into account the economic needs of Afghanistan and economic potential of the European Union, the role of Organization of Islamic Cooperation is crucial as well. OIC can play a fundamental role to reassure the right to education and work to the women

and girls of Afghanistan. One of the relevant legal regimes with considerable potential available at OIC's disposal is the *OIC Plan of Action for the Advancement of Women 2016* (hereinafter OPAAW).<sup>38</sup> This plan of action provides for the following obligations of OIC member states with respect to the status of women: “Strengthen laws aimed at enhancing the advancement of women in OIC Member States in economic, cultural, social, and political fields; protecting them from different forms of violence and discrimination and adhering to the provisions of the Convention on the Elimination of all Forms of Discrimination against Women, in line with the Islamic values of social justice and gender equality.”<sup>39</sup>

In this instance, OPAAW provides for the protection of women and girls' equal opportunity to education and work as provided within Islam. It provides that compulsory education for all is the principal obligation of all the OIC member states. Member states alongside ensuring access to the right to education and work are under an obligation to provide and ensure human and infrastructural resources in this respect.<sup>40</sup>

Engaging OIC's forum on one hand can clarify misunderstandings and misinterpretation of Shariah rule regarding women's right to education and work, while on the other hand, it can promote the good practices existing within Muslim states. For example, the engagement between de facto regime and Islamic scholars, established through the good offices of the OIC Secretary General's Special Envoy for Afghanistan,<sup>41</sup> will allow the relevant stakeholders in Afghanistan to interpret the Shari'ah legal system in women rights friendly manner while remaining at the same time within the fabric of Shari'ah legal system which is an important facet for any proposed reforms to be acceptable for the de-facto regime. It can highlight that the prohibition on women and girls' right to education is based on the existing Pashtun culture in Afghanistan rather than having any connection with the Shariah legal system. This cultural barrier to women's right to education and work in Afghanistan is misunderstood or misinterpreted as to be part of the Shariah legal system. On the other hand, taking into account the treatment of women rights in other Islamic countries by engagement with Islamic scholars through the OIC platform can highlight what positive lessons Afghanistan can learn from other Shariah legal system prevailing states. How can the rules of Shariah be given modernist interpretations with a non-essentialist approach? Such as the employment of doctrines of Ijtihad (independent legal reasoning) instead of Taqleed, (following a predefined path), Takhayyur and Talfiq, and its potential.<sup>42</sup> This approach can be of great assistance for the interpretation of Shari'ah law relating to women rights in general and right to education and work in specific.

### ***Educating broader public about women rights and non-discrimination***

Keeping in view that fact that restriction to women and girls' right to education, work and freedom of movement are based on cultural practices, there is the need for reformation through education and rehabilitation of the social attitudes, behaviours and practices that are based on cultural norms and values both at micro as well as macro level. The Afghan public in general and women in specific should be made aware and educated regarding their right to education, work, and freedom of movement. In this respect an effective tool can be the access to mass media and telematic sources of both the Afghan women rights activists and the common masses. The larger public should be educated about the required reforms, the benefits, and fruits of those required measures for eliminating discrimination and ensuring the rights of women on substantively equal footing to that of men rights within the national life of Afghanistan.

### ***Treatment of Afghan Refugees Internationally***

In the first place, it is not realistic to evacuate some 40 million people from Afghanistan, therefore, the way the international community assisted Afghanistan during the last 20 years, can be replicated by mainly addressing and tackling the issues of women's right to education and work within Afghanistan.

Afghans fleeing Afghanistan in flux due to well-founded fears on multiple grounds must not be left at the mercy of few states only because the humanitarian crisis cannot be resolved by few states only as it was previously the case of Pakistan and to some extent Iran. There should be the approach of sharing the responsibility between the states. This will require the involvement of many states including the countries of asylum, resettlement, and country of origin.<sup>43</sup> Afghan women and girls fleeing Afghanistan should be considered by the international community as refugees in need of the international community and should be considered in the United Nations High Commissioner for Refugees ('UNHCR') resettlement program.

### ***Responsibilities of De Facto Regime***

The de-facto regime in Afghanistan should be encouraged to restore the constitutional and domestic legal framework established for the protection of women's right to education, work, and freedom of movement with further improvements required to make it more meaningful and robust. Such as the restoration of 2004's Constitution of Afghanistan and the Elimination of Violence against Women Law 2009.

Specifically, from the perspective of protecting women right to education, work, and freedom of movement in Afghanistan, Afghanistan should be encouraged for the withdrawal of the reservations to Human Rights treaty regimes, specifically reservation placed against CEDAW; to ratify the optional protocols to the human rights treaty regimes that mandates the committees concerned to receive and consider communications in the form of complaints by individuals or groups of individuals against the violation of rights guaranteed within the provisions of respective treaty regimes.

Afghanistan should initiate dialogues between the relevant stakeholders concerned and ensure the full involvement of all the relevant within the development, adoption, implementation, monitoring and the evaluation of the national laws, policies and practice adopted in the pursuance of the international human rights law binding obligations. After the de facto regimes taking control of Afghanistan not recognized by the international community, the responsibility of Universal Periodic Review relating to Afghanistan is a limbo. Afghanistan should be encouraged to reflect the situation of women within its Universal Periodic Review.

## **V. Conclusion**

The failure to indiscriminately realise human rights standards relating to the right to education, work, freedom of movement and peaceful assembly within the domestic laws, policies and actual practices of Afghanistan are due to the drawbacks of both the international human rights legal systems as well as the domestic legal and political setup, cultural and religious realities of Afghanistan.

International community comprising of Islamic world, its organisations, and the European Union has the responsibility to effectively exhaust their role by engaging with the de-facto regime through dialogue to achieve the objectives which Afghan inhabitants themselves cannot attain in lonesome. For instance, the Organization of Islamic Cooperation can engage in dialogue with the de facto regime to achieve the interpretation of Shari'ah law

in consistency with Afghan women and girls' rights to education, work and freedom of movement by taking into consideration the progressive examples of Islamic law background holding countries, such as Tunisia and Egypt. On the other hand, the European Union being the biggest contributor to the economic life of Afghanistan has certain leverage in its hand to encourage Afghanistan for observing international human rights standards relating to women's right to education and work.

The international community in general has the responsibility in the first place to ensure the challenges of Afghan women are addressed within Afghanistan as it is not feasible to evacuate all women from Afghanistan. Whereas those fleeing Afghanistan, due to well-founded fear on multiple grounds, should be given international protection and not to be discriminated in terms of immigration procedures as well as in matters relating to their accommodation worldwide as this is a matter that needs to be addressed collectively as the adage 'a number of people can do what none is able to do' would suggest.

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- <sup>20</sup> Healy, Constitutional Incorporation of International Human Rights Standards: An Effective Legal Mechanism? 121
- <sup>21</sup> Constitution de la République Algérienne Démocratique et Populaire 1989, Preamble: The Algerian people express their complete commitment to human rights as specified in the [UDHR] of 10 December 1948, the International Covenant on Economic, Social and Cultural Rights and the [ICCPR] (both issued on 16 December 1966), the African Charter on Human Rights and Peoples' Rights of 27 June 1981, and the Arab Charter on Human Rights of 23 May 2004.
- <sup>22</sup> Similarly, within the article 34 of the constitution of Afghanistan 2004, the freedom of expression and speech has been guaranteed and protected. Through legal provision, every citizen has the freedom to express opinion through speech, writing, illustrations, or any other means in accordance with the constitution of Afghanistan. The Law on Mass Media 2008 provides for the facilitation and regulation of freedom of expression and the activities of mass media.
- <sup>23</sup> Law of 2009 on Elimination of Violence against Women (EVAW) [Afghanistan] 2009

- <sup>24</sup> Larry Diamond, 'Facing up to the Democratic Recession in J. DEMOCRACY' [2015] 141; Aziz Huq, Tom Ginsburg 'How to Lose a Constitutional Democracy in UCLA Law Review [2018] 65, 91; David Landau 'Abusive Constitutionalism 47 U.C. DAVIS Law Review' [2013] 189
- <sup>25</sup> Luís Roberto Barroso, Luna van Brussel Barrosob, 'Democracy, social media, and Freedom of Expression: Hate, Lies, and the Search for the Possible Truth in Chicago Journal of International Law' [2023] 24 (1) 53, 70
- <sup>26</sup> In some regions the de facto regime forces the closure of girl schools, in other instances the women are prohibited from attending the exams and they are without exams promoted to next classes.
- <sup>27</sup> Amnesty International, *The Taliban war on women: the situation of women and girls in Afghanistan under Taliban leadership*, (International Commission of Jurists, 2023)
- <sup>28</sup> Reporters Without Borders (RSF) and the Afghan Independent Journalists Association (AIJA), *Since the Taliban takeover, 40% of Afghan media have closed, 80% of women journalists have lost their jobs*, <<https://rsf.org/en/taliban-takeover-40-afghan-media-have-closed-80-women-journalists-have-lost-their-jobs>> Online accessed on 11 October 2023
- <sup>29</sup> Edward L. Carter, 'The Future of International Law Freedom of Journalism: A Transitional Justice Framework in Chicago Journal of International Law' [2023] 24 (1) 79
- <sup>30</sup> Shadi Mokhtari, 'Human rights as mockery of morality, manifesting morality, and moral maze, Journal of Human Rights' [2023] 22:5, 660, 667
- <sup>31</sup> *Bedoya Lima et al. v. Colombia*, Merits, Reparations, and Costs [2021] Judgement, IACrHR 431 41-42
- <sup>32</sup> Arthur Traldi, 'The Recent Free Expression Jurisprudence of the Working Group on Arbitrary Detention in Chicago Journal of International Law' [2023] 24 (1) 153
- <sup>33</sup> Chile Eboe Osuji, 'Accountability of sovereign power for international crimes in Hungarian Yearbook of international law and European law' (2023) 11, 160, 172.
- <sup>34</sup> Eleanor Roosevelt, "My Day, October 30, 1950," *The Eleanor Roosevelt Papers Digital Edition* (2017) <[https://www2.gwu.edu/~erpapers/myday/displaydoc.cfm?\\_y=1950&\\_f=md001739](https://www2.gwu.edu/~erpapers/myday/displaydoc.cfm?_y=1950&_f=md001739)> accessed 10/9/2023
- <sup>35</sup> Henri de Waele, *Legal dynamics of EU External Relations: Dissecting a Layered Global Player*, (first published 2011, Springer Publishers, 2017) 81.
- <sup>36</sup> "As defined by [Oxford Reference](#):
- " A slogan epitomising the view that industrial countries could facilitate the progress of less developed countries (LDCs) more by liberalising their treatment of LDC exports than by aid payments. The argument is that aid may be spent inefficiently whereas better access to Organization for Economic Cooperation and Development markets for LDC products such as textiles would promote sustainable development consistent with countries' comparative advantage."
- <sup>37</sup> Erik G. Jensen & Kazumi Hoshino-MacDonald, 'Is Taliban 2.0 Closing the Gates to Ijtihad Again?' (2023) 59 Stan J Int'l L 75
- <sup>38</sup> Organization of Islamic Cooperation Plan of Action for the Advancement of Women 2016, Istanbul, 1-3 November 2016

- <sup>39</sup> Organization of Islamic Cooperation, *OIC Plan of Action for the Advancement of Women (OPAAW)* Adopted by the Sixth Session of the Ministerial Conference on the Role of Women in the Development of OIC Member States Istanbul, Republic of Turkey 1-3 November 2016. P. 13.
- <sup>40</sup> Also, member states are under an obligation to eliminate and remove the misconception and misinterpretation of Shariah legal rules about the women right to education and work at the face of the datum that Islam in fact promote the women participation in decision making processes and it ensures political, economic, and cultural participation of women. In this respect the member states are under an obligation to abrogate law policies and social practices violative of women's right to education and work and enact laws and policies required for this purpose.
- <sup>41</sup> In the case of Afghanistan, the Secretariat General of OIC, specifically through Directorate General of Cultural, Social and Family Affairs should be engaged.
- <sup>42</sup> Anna Jenefsky, 'Permissibility of Egypt's reservations to the Convention on the Elimination of Discrimination Against Women in *Md. J. of Int'l.*' (15, 199) [1991]. Ijtihad means independent legal reasoning in accordance with the situation whereas taqleed means to follow a predefined path rather than exploring new ways for solving the contemporary challenges.
- <sup>43</sup> Riona Moodley, 'Rethinking 'regional processing' in Europe: lessons from the Comprehensive Plan of Action (CPA) for Indochinese refugees in *Australian Journal of Human Rights*' [2023] 141-159

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