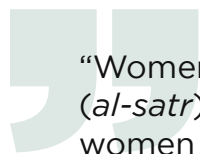


# ARTICLE 5

States Parties shall take all appropriate measures:

- a. To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- b. To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.



“Women should stay at home as their homes are their ‘cover’ (*al-satr*)... they should stay with their children and parent them... women are weak and their intellect and religion are deficient (*naqes al-aql wa al-din*).”<sup>1</sup>

—Taliban’s Chief Justice Abdul Hakim Haqqani

“When you live in this society now, it can kill you before you actually die.”<sup>2</sup>

—An Afghan woman on the increasing Taliban restrictions

## Introduction

Article 5 of CEDAW concentrates on the eradication of gender-based discrimination by targeting the societal and cultural norms that perpetuate stereotypes regarding the roles and behaviors of women and men. It obliges State Parties to take proactive measures to modify social and cultural patterns that are founded on notions of the inferiority or superiority of either sex, or on stereotyped roles assigned to men and women. Article 5 underscores the importance of transforming both legal frameworks and actual social realities to eliminate gender biases effectively.

Beyond the existence of gender-neutral legislation, Article 5 emphasizes the necessity of ensuring that women experience genuine equality in everyday

life. This involves addressing and reshaping deep-rooted societal attitudes that contribute to unequal gender dynamics, particularly within domains such as education, employment, and family life. The article advocates for a shift in public and private spheres alike, promoting an understanding of gender equality that is substantive rather than merely formal. Substantive equality acknowledges the historical and structural disadvantages faced by women and supports the implementation of targeted interventions designed to achieve equitable outcomes. Ultimately, Article 5 establishes a comprehensive framework for transformative change by identifying and challenging the underlying cultural and social foundations of discrimination.<sup>3</sup>

Afghanistan’s ratification CEDAW in 2003 significantly informed the development of its 2004

Constitution. The Constitution enshrines the principle of gender equality, affirming that women and men possess equal rights and responsibilities before the law. It explicitly prohibits discrimination based on gender and guarantees women’s full participation in public and political life. All 18 of the core international human rights treaties that Afghanistan has committed itself to, including CEDAW, apply equally to protect women’s and girls’ rights and freedoms without discrimination.<sup>4</sup>

Article 83 of Afghanistan’s 2004 Constitution established a quota system to promote women’s political participation, reserving approximately 25 percent of seats in the lower house of parliament and 17 percent in the upper house of parliament for women. Electoral laws extended this framework by mandating at least 20 percent female representation in local councils. These measures led to a notable rise in women’s political representation, with levels surpassing those in several Western countries. Women actively participated in elections from 2004 to 2019, both as voters and candidates.

Government strategies such as the *National Action Plan for the Women of Afghanistan* (2008–2018) and related policies aimed to increase women’s roles in public institutions, including a 30 percent target for female representation in civil service and security forces by 2020. Women also held positions as ministers, governors, and elected officials at various levels.<sup>5</sup>

The “Law on Elimination of Violence against Women” (EVAW) (2009) criminalized rape and imposed more severe penalties against perpetrators. Likewise, the EVAW law criminalized physical, psychological, and sexual gender-based violence against women and girls. It outlawed forced and child marriage, and violence that impeded women’s civil, economic, and educational rights. The EVAW mandated the Afghan government to undertake concrete measures to prevent gender-based violence, provide comprehensive support services for survivors, ensure the protection of women and girls at heightened risk, prosecute and penalize perpetrators, and enhance public awareness regarding violence against women. However, the implementation of the EVAW faced considerable obstacles, including entrenched patriarchal norms, the prevalence of traditional dispute resolution mechanisms such as *jirgas* and *shuras*, and limited access to formal justice systems. Despite the enactment of EVAW, Afghan women and

girls continued to endure some of the highest rates of gender-based violence worldwide.<sup>6</sup>

Progress on Afghan girls and women realizing their rights was limited by persistent patriarchal norms, societal resistance, and institutional barriers—particularly in rural areas. Girls and women frequently faced discrimination, harassment, and threats, constraining their ability to fully exercise their rights and leadership roles.<sup>7</sup>

Upon taking power in August 2021, the Taliban suspended the 2004 Constitution and other laws for women’s rights and equality, including the EVAW. They also abolished the Ministry of Women’s Affairs and the Afghanistan Independent Human Rights Commission, both of which played leading roles in promoting and protecting women’s and girls’ rights and tackling sexual and gender-based violence. They dismantled the Attorney General’s Office and introduced numerous laws, edicts, and policies aimed at restricting women’s and girls’ human rights and enabling gender-based discrimination and violence.

## Marriage and Divorce

Marriage is a significant part of Afghan culture. Marriage creates bonds and can be a survival mechanism and a pillar of family honor.<sup>8</sup> Marriage can also be used to control female sexuality with rules surrounding virginity and monogamy.<sup>9</sup> In 2021, the Taliban issued a decree against forced marriage for girls and women and marriage for girls and women as compensation for crimes or debts.<sup>10</sup> In 2022, the Taliban also issued a decree against polygamy, with exceptions made for some Taliban members. The Taliban then rolled these decrees back for a variety of reasons, including if the woman failed to produce a male child, if the first wife was ill, and other reasons.

In reality, the Taliban has done little to stop forced marriages and polygamy, and has often been actively engaged in forcing families to give their daughters in marriage. A woman describes this form of forced marriage under the Taliban, “I know a girl who was a medical student, and she was also engaged, a Talib used to follow her on the way to home every day. One day he sent a marriage proposal for her. When her family refused saying ‘she is already engaged,’ then he started to threaten her family that he will kill the girl and her father. He forced the family to marry the girl.”<sup>11</sup>

Despite cultural taboos before the Taliban takeover, girls and women were able to obtain divorces from their husbands through court orders. The Taliban decrees emphasize that girls and women should accept male domination, and their courts make it more difficult for girls and women to leave violent and dangerous marriages.<sup>12</sup> Since August 2021, girls and women have gone to Taliban courts with descriptions and forensic evidence of physical abuse from their husbands and were told by Taliban members that such abuse is a normal part of marriage and not a justification for disrupting the sanctity of a family.<sup>13</sup> In other cases, women's previous divorces were rescinded under the new Taliban court system, despite years of documented physical abuse.<sup>14</sup> To illustrate, when one woman attempted to fight the new decision, she was told, "The ruling of Mohammad Ashraf Ghani's government court is no longer valid."<sup>15</sup> Other girls and women have been coerced into marrying Taliban members as conditions for ending and staying out of their previously abusive marriages.<sup>16</sup>

Girls are also at heightened risk for early marriages as Taliban policies have limited their opportunities in life. Measures restricting girls' education have put them at increased risk of illiteracy and poverty.<sup>17</sup> Parents have also facilitated early marriages at a higher rate due to the belief that girls are better off in another home than doing nothing and consuming resources in their own home.<sup>18</sup>

## Virginity Tests

Starting in 2020, during the Republic Period, virginity tests were only obtained through special court orders and the consent of the girl or woman. However, the Taliban have implemented "virginity tests" for girls to maintain the Taliban's conceptualization of female purity.<sup>19</sup> As a result of hymen inspections, which are not a medically accurate method of testing virginity, girls whose hymens are not fully intact can be arrested by the Taliban on moral charges.<sup>20</sup> Hospitals reported conducting virginity tests daily without a court order, the consent of the girl or woman, or charges of sexual activity.<sup>21</sup> These tests are almost always done without the girl's or woman's consent.<sup>22</sup> Overall, from 2021-2023, 700 girls in the province of Herat alone have undergone virginity tests, with 200 of them incarcerated for "failing" the tests.<sup>23</sup> (See also Article 16.)

## Enforcement of Taliban Laws, Decrees, and Policies

The Taliban uses public violence to humiliate and dominate girls and women who act in defiance of Taliban-prescribed laws, decrees, and desired social behavior. The eradication of the Attorney General's Office, the Afghan Independent Human Rights Commission, the 2004 Constitution, the Ministry of Women's Affairs, the EAW law, and the promotion of Taliban religious and morality police have further entrenched a system of violent male domination and undermined the rights and protection of girls and women. Under the newly imposed Taliban laws, edicts, and practices, religious police patrol public areas such as markets, universities, and mosques seeking to punish any women or girls and their mahrams who they believe violate their laws.<sup>24</sup> Additionally, the Taliban has engaged public figures such as male shopkeepers and elders to enforce their rules.<sup>25</sup> Girls and women who violate the Taliban's decrees, such as proper dress, are met with violence, including some being beaten with electric cables.<sup>26</sup> Other modes of enforcement range from being forced to return to their homes to public floggings for alleged "moral crimes" such as wearing the wrong clothing and communicating on the phone with someone of the opposite sex.<sup>27</sup>

Hazara girls and women are at heightened risk of Taliban violence, as they are victims of the Taliban's gender and ethnic domination. Hazara girls and women have repeatedly faced ethnic slurs along with a higher level of brutality when detained or publicly punished.<sup>28</sup>

The Taliban also target Afghan girls and women in the digital sphere, where politically active Afghan girls and women experienced a 217 percent increase in targeted hate speech.<sup>29</sup> During 2021-2022, hate speech towards prominent Afghan women spiked surrounding the introduction of a new Taliban decree or when women's protests occurred.<sup>30</sup> The Taliban's actions consisted of sending degrading, sexually explicit pictures, threats of rape or death, and accusing the girls and women of prostitution.<sup>31</sup> The Taliban's use of digital harassment furthers the humiliation and subjugation of girls and women in Afghanistan. Some female business owners and women's rights defenders who were active in the digital sphere closed their businesses and deactivated their social media accounts because of the Taliban's harassment and threats.<sup>32</sup>

## Torture and Inhuman and Degrading Treatment

The Taliban uses gender-specific torture against girls and women to punish and control them.<sup>33</sup> Girls and women have been subjected to beating, striking, exposure to extreme heat, suffocation by using plastic bags, waterboarding, torture specific to the genitals, rape, sexual enslavement, sleep deprivation, forced feedings, mock executions, use of cages, and electric shocks in specially designed rooms at Taliban detention centers.<sup>34</sup> A woman named Radhika describes her experience in Taliban detention, “Every Taliban militant who passed by us would strike us with fists and kicks. They made footballs out of us.”<sup>35</sup>

To illustrate, one girl was detained for alleged extramarital relations when walking home alone. She was abducted, had her fingerprints taken, and was sent to a detention center when she refused to admit to untrue claims of infidelity. At the center, she was whipped, lashed, subjected to sexual torture, and witnessed women forced to become Taliban sex slaves. The girl was only released due to a bribe and an agreement to sell the family’s house to the Taliban. Other women underwent forced marriages to Taliban members as their only option to enable them to leave the detention center.<sup>36</sup>

Older girls and women detained by the Taliban are at times arrested on allegations of moral corruption, and the Taliban torture them as a form of domination and humiliation.<sup>37</sup> Women detained with children reported being tortured in front of their children.<sup>38</sup> This torture is used to degrade women as individuals and caregivers. In multiple cases, older girls and women reported that they were given contaminated food. They were also prohibited from using menstrual hygiene. When the girls and women are released, either to their families or as forced wives of Taliban members, biometric data is taken, and other identification documents are recorded.<sup>39</sup> Though they are released from physical detention, the girls and women fear they can never be truly safe or free. The Taliban’s use of torture on girls and women is an extreme tool for gender formulation, correction, and subjugation.<sup>40</sup>

## Rape and Forced Impregnation

Article 5(b) of CEDAW states the necessity for education surrounding the importance of the

common responsibility of child-rearing between men and women.<sup>41</sup> Due to the Taliban’s restrictions, girls and women have been forced into marriage and become vessels for childbirth. A report from a female doctor forcibly recruited by the Taliban detailed how girls and women in detention underwent forced pregnancies as sexual slaves to the fighters. The doctor was brought to a detention center and forced to examine the girls and women in a room set up as an obstetric and gynecologic examination room.<sup>42</sup> The room was equipped with all the medical equipment for the pelvic exams the doctor was asked to perform.<sup>43</sup> One girl in detention stated, “We are the wives of all Mujahideen,” indicating their existence in the detention center was for the manipulation and control of their sexuality and their reproductive capabilities.<sup>44</sup> (For more details, see Article 12 and Article 16.)

## Control of Girls’ and Women’s Clothing and Dress

The Taliban seeks to control how girls and women dress outside of their homes. In June 2023, the Supreme Leader of the Taliban released a message that the Taliban government has worked to improve Afghan girls’ and women’s lives.<sup>45</sup> The Supreme Leader cited the regulation of the hijab as a key example, stating that restrictions on how females must dress would assist girls and women in becoming dignified and help them in securing marriages and other rights.<sup>46</sup> According to the Taliban, the proper hijab consists of an all-encompassing hijab or burqa to obscure any outline of a girl or woman’s body.<sup>47</sup> The Taliban leadership stated that the very best hijab is for girls and women not to leave the home unless necessary.<sup>48</sup> The Taliban have also detained and fired male family members from their jobs if they did not enforce the hijab requirements on their female family members.<sup>49</sup>

The Taliban-preferred burqa is not the traditional or most popular form of clothing for women. In the past, while some girls and women may have chosen to wear the burqa, such choices were rooted in family or religious preferences, not government mandates.<sup>50</sup> The Taliban’s restrictions surrounding clothing evidence their campaign to render girls and women essentially invisible. By policing girls’ and women’s clothing to suppress individuality and establishing a public and private surveillance system enforced by both the Taliban

and local communities and families, girls and women are rendered invisible and subordinate.

## LGBTQI+ Individuals

The Taliban's violence against LGBTQI+ individuals represents a severe subjugation of those who do not embody the Taliban's conceptions of appropriate masculinity and femininity. Violence and discrimination against LGBTQI+ populations existed before the Taliban takeover, yet there has been a strong uptick in incidents since August 2021.<sup>51</sup> Shortly before the fall of Kabul, the Taliban stated, "For homosexuals, there can only be two punishments: either stoning, or he must stand behind a wall that will fall down on him."<sup>52</sup> Since then, the Taliban has conducted systematic attacks on LGBTQI+ individuals, which have entailed using social media to identify them, conducting searches at checkpoints, and encouraging communities to surveil their neighbors.<sup>53</sup> Known LGBTQI+ individuals have been deluged with threatening phone calls and text messages, which have effectively confined them to their homes.<sup>54</sup>

Known LGBTQI+ individuals have also been subjected to violence. Those taken into Taliban detention have recounted being severely beaten while naked, whipped, cut, and having their heads shaven. They have also been abducted, beaten, and then left in public wearing conservative clothing that the Taliban deems aligns with their biological sex.<sup>55</sup> LGBTQI+ individuals have also been subjected to sexual violence as part of the Taliban's behavioral correction and humiliation, particularly while in detention. To illustrate, while in detention, a trans woman was held naked and beaten daily while being verbally assaulted about her body. She was also forced to confess the locations of other trans women as a condition for her release.<sup>56</sup>

Individuals who cannot visibly or otherwise pass as either male or female, such as those who have voices that do not match a traditional male or female appearance or mannerisms that indicate gender nonconformity, face high risks of violence.<sup>57</sup> LGBTQI+ individuals recounted that they are afraid to speak, particularly in areas like checkpoints, due to fear of being attacked.<sup>58</sup> Najib, a 21-year-old trans woman, describes her experience at a Taliban checkpoint: "They saw us and said, 'You don't have a beard, why is that? They looked at my chest, I have enlarged

breasts...They said 'We are going to stone you to death'... Now I don't leave the room."<sup>59</sup>

LGBTQI+ individuals report that they do not leave their room or home, with some leaving only twice in ten months for fear of death or persecution.<sup>60</sup> Such fears have left many LGBTQI+ individuals unable to access necessities such as food or seek medical care, even after experiencing violence.<sup>61</sup>

## Institutionalizing Male Superiority

By enforcing strict definitions of their version of acceptable femininity, the Taliban has also formed a definition of conservative, patriarchal masculinity, further cementing extreme gender stereotypes. Taliban decrees to affect societal or cultural change have helped establish men as the superior sex and girls and women as inferior and weaker.<sup>62</sup> Under the Taliban, men have also faced gender restrictions and expectations, though to a much less extent than girls and women. Men are expected to have beards, dress in traditional clothing, and not interact with girls and women not in their immediate family.<sup>63</sup> Male family members are also told to act as the providers and decision makers for the family. This further dilutes girls' and women's autonomy and solidifies the superiority of men in marriage and the family.<sup>64</sup>

Male superiority is also entrenched by the Taliban's new education system. Boys have had their curriculum changed, with subjects such as English, Arts, and civic education replaced with religious classes.<sup>65</sup> Lessons include lectures on the success of jihad and 'proper' religious appearance and clothing.<sup>66</sup> Men and boys have also been subjected to more extreme gender re-education to match the Taliban's conception of hegemonic masculinity, further strengthening essentialized, conservative, patriarchal ideals of masculinity and femininity.

The Taliban's attempts of domination and control over women, girls, and LGBTQI+ individuals have deleteriously affected members of these groups' mental health. In a 2023 survey, over 1,000 women stated they suffered from depression and anxiety.<sup>67</sup> Further, suicide and self-harm rates among girls and women have significantly increased.<sup>68</sup> In the same survey, 164 women indicated that they knew another woman or girl who had attempted suicide, and 261 respondents stated they knew someone who self-harmed or medicated to address their mental health.<sup>69</sup>

Safety and security remain real risks for girls, women, and LGBTQI+ individuals, who face constant surveillance by both the Taliban and neighbors and must navigate ever-changing rules and social alliances.<sup>70</sup> Additionally, LGBTQI+ individuals face high levels of food insecurity due to an inability to move freely without risk of serious harm.<sup>71</sup>

As the status and well-being of girls, women, and LGBTQI+ individuals remain increasingly bleak, so do their chances of escaping the Taliban's rule. Some persons facing high risk have had their identification

papers and passports taken from them, including while in Taliban detention, making it increasingly difficult to flee the country.<sup>72</sup> If they choose to and can leave, their lack of documentation can affect their ability to apply for asylum in other countries.<sup>73</sup> For LGBTQI+ individuals, many will never apply for asylum due to fear of harm from identification or disclosure of their sexual orientation.<sup>74</sup> Due to the Taliban's restrictions, girls, women, and LGBTQI+ individuals have become increasingly trapped within the borders of their country and their homes.

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