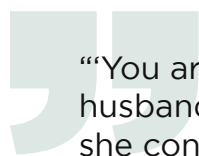


# ARTICLE 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women in civil matters a legal capacity identical to that of men, and the same opportunities to exercise that capacity. In particular they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all states of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to movement of persons and the freedom to choose their residence and domicile.



“‘You are a woman, we will put you in the prison.’ They said to my husband, ‘Take this woman home and punch her in the mouth. If she continues talking, break her teeth.’”<sup>1</sup>

—A 27-year-old woman in Balkh district recounts what she was told by a Taliban judge in a public court session where she sought a divorce from her violent husband.

## Introduction

Article 15 of CEDAW protects women’s rights to equal protection of the law and equality before the law. Equal protection of the law, an expansion of equality before the law, requires that laws and procedures be equal, non-discriminatory, and non-arbitrary. Article 15 affirms the principle of legal equality between women and men, particularly in civil and legal matters. It requires State Parties to recognize women’s full legal capacity, on equal terms with men, in all areas of civil law. Article 15 requires equal access to decision-making bodies, including but not limited to entities such as courts, tribunals, ministries, and informal justice mechanisms. It guarantees an equal right to non-discriminatory administration of justice by such institutions.

By mandating that women be accorded the same status as men before the law, Article 15 seeks to dismantle legal barriers that limit women’s autonomy

and civil agency. It obliges state parties to eliminate any legal provisions or practices that deny or restrict women’s legal capacity. Article 15 serves as a foundation for ensuring that legal systems uphold substantive equality and protect women’s rights in both public and private spheres, including contractual, property, and family law domains, and the right to participate fully in legal proceedings. Article 15 further underscores that women must have equal rights regarding freedom of movement and the ability to determine their domicile and residence independently.<sup>2</sup>

Afghanistan is a signatory to key international human rights instruments and has demonstrated a formal commitment to gender equality through its ratification of major treaties. The country is bound by the UN Charter and the Universal Declaration of Human Rights and has ratified several core human rights conventions, including:

- International Covenant on Civil and Political Rights (1983)
- International Covenant on Economic, Social and Cultural Rights (1983)
- International Convention on the Elimination of All Forms of Racial Discrimination (1983)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987)
- Convention on the Rights of the Child (1994)
- Convention on the Elimination of All Forms of Discrimination against Women (2003)
- Convention on the Rights of Persons with Disabilities (2012)

Importantly, Afghanistan ratified CEDAW without reservations, indicating a formal acceptance of its full scope and obligations. These treaties collectively guarantee the rights of women and girls and obligate the state to prevent discrimination and ensure equal protection under the law.

The Afghanistan Independent Human Rights Commission, established in 2002 and constitutionally recognized in 2004, served as a key institution for monitoring and promoting human rights. The Afghanistan Independent Human Rights Commission played a central role in advancing women's rights, documenting violations, and advocating for legal and policy reforms to address gender-based violence and discrimination.

The 2004 Constitution reflects Afghanistan's international commitments, particularly under CEDAW. It guarantees gender equality, prohibits discrimination, and affirms women's full participation in public and political life. Article 83 introduced a gender quota, reserving approximately 25 percent of seats in the Wolesi Jirga and 17 percent in the Meshrano Jirga. Additional electoral provisions required that 20 percent of seats in all subnational councils be allocated for women.

Several national policy frameworks were adopted to support these commitments, including the National Policy on Gender Mainstreaming (2008), the National Action Plan for the Women of Afghanistan (2008–2018), and the Afghanistan National

Development Strategy. These policies set targets for increasing women's representation across sectors, including a 30 percent target for female employment in the civil service and security forces by 2020, and gender mainstreaming across government ministries and agencies.

In 2009, the Elimination of Violence Against Women Law criminalized a wide range of gender-based violence, including rape (as a distinct and punishable offense); forced and underage marriage; physical, sexual, and psychological abuse; and denial of education, employment, or inheritance. The law also required government action to prevent violence, protect survivors, prosecute offenders, and raise public awareness. However, implementation faced significant obstacles, including resistance from traditional justice systems (*jirgas* and *shuras*), deeply rooted patriarchal norms, and limited access to formal justice mechanisms—particularly for women in rural areas. Despite these challenges, the law provided a critical legal foundation for the protection of women and girls and was reinforced by the monitoring and advocacy work of the Afghanistan Independent Human Rights Commission.

By 2020, Afghanistan had between 250 to 300 women judges, representing approximately 8 to 10 percent of the judiciary.<sup>3</sup> In Afghanistan, female judges held judicial roles across various legal institutions, including courts addressing domestic violence, terrorism, drugs, and juvenile justice. Women judges also served at multiple levels of the judiciary, including appellate courts, civil courts, and municipal courts. Women judges were appointed to specialized tribunals dedicated to combating corruption and addressing cases related to violence against women. Two women were nominated to serve on the Supreme Court but their nominations were not confirmed by parliament.<sup>4</sup> Additionally, by 2020, the Afghanistan Independent Bar Association recorded approximately 1500 women out of 6,000 total members. These women judges and lawyers provided valuable legal access and services, particularly for Afghan women and girls seeking justice and assistance through the legal sector. Furthermore, women lawyers played a crucial role in defending women's and children's rights in cases of violence and in promoting social justice.<sup>5</sup>

Afghanistan's formal commitments to international human rights treaties and its domestic legal and institutional frameworks laid important groundwork for gender equality and the protection of women's

rights. However, systemic barriers, including weak enforcement mechanisms and conservative patriarchal resistance, continued to undermine progress.

## Equality Before the Law and Equal Protection of the Law

The concepts of “equality before the law” and “equal protection of the law,” while closely related, address distinct aspects of legal equality. “Equality before the law” refers to the principle that all individuals, irrespective of their social status, background, or identity, are subject to the same legal standards and judicial procedures. It emphasizes uniformity in the application of legal norms. “Equal protection of the law” pertains to the state’s obligation to enforce laws in a manner that is fair and non-discriminatory. This principle prohibits arbitrary or unjustified differential treatment by public authorities and requires that any distinctions made under the law be supported by legitimate and reasonable justifications.

After reclaiming power in August 2021, the Taliban implemented sweeping legal and institutional changes that significantly curtailed women’s rights. They rejected the 2004 Constitution as a Western imposition, repealed the Elimination of Violence Against Women Law, dissolved the Afghanistan Independent Human Rights Commission, and replaced the Ministry of Women’s Affairs with the Ministry for the Promotion of Virtue and Prevention of Vice. This new body, supported by the Morality Police, began enforcing restrictive and discriminatory laws, policies, and practices targeting women and girls. The Taliban closed the Special Prosecutor’s Office and the Special Court for the Prohibition of Violence against Women and the Prohibition of Harassment of Women.<sup>6</sup> Over the following months and years, the Taliban issued more than 100 decrees and bans that violated both national and international legal standards, including Afghanistan’s commitments under the CEDAW.

The Taliban’s numerous edicts, orders, directives, and laws undermine girls’ and women’s equality before the law and equal protection of the law. Under the Taliban regime, girls and women face barriers to having their complaints heard in a chosen and appropriate forum. Girls and women are subjected to discriminatory treatment during judicial proceedings and complaint processing. Girls and women cannot seek or achieve meaningful redress

for their complaints, including those involving abuse. The Taliban have, for all practical purposes, made it impossible for girls and women to navigate the justice system.

Taliban restrictions on women in the legal and judicial professions have resulted in a substantial decrease in girls’ and women’s ability and desire to seek formal legal assistance, which limits their access to judicial institutions. The Taliban has refused to renew women lawyers’ law licenses and prevented women from taking bar exams.<sup>7</sup> Women lawyers in some provinces have worked outside their homes<sup>8</sup> and used their former licenses to appear in court. However, no women law students have been able to continue since the Taliban’s December 2022 ban on women attending university or working in NGOs and the United Nations. Most reports of continued legal work by women involved activities outside of court appearances.<sup>9</sup>

The Taliban has dismissed all women judges.<sup>10</sup> Law enforcement and judicial employees are now entirely men.<sup>11</sup> These actions limit girls’ and women’s access to courts and lawyers’ offices and discourage them from seeking justice through the formal justice system.<sup>12</sup> Restrictions on girls’ and women’s freedom of movement have made it more difficult for girls and women to file complaints or lawsuits and forced domestic violence survivors to undergo further violence.<sup>13</sup>

By 2023, Specialized Elimination of Violence Against Women prosecution units were only present in 17 provinces, as compared to the original 22.<sup>14</sup> They have banned shelters and safe houses for older girls and women and their children seeking sanctuary from abusive family members.<sup>15</sup> By late 2023, interviewees in a United Nations Assistance Mission in Afghanistan “almost unanimously confirmed that...there are no State-sponsored specialised women’s protection centres or shelters across the country where survivors can seek refuge.”<sup>16</sup> The remaining protective infrastructure discriminates against girls and women.<sup>17</sup> In particular, 12 provinces prohibited the involvement of women prosecutors in the Elimination of Violence Against Women prosecution unit investigations.<sup>18</sup> Furthermore, women police officers in Family Response Units in eight provinces could only come into the office when their male supervisors asked them to do so.<sup>19</sup> Such restrictions on the participation of women personnel dissuade girls and women survivors from bringing complaints.<sup>20</sup> By 2025, all the

Specialized Elimination of Violence Against Women prosecution units were non-functioning.

The Taliban have obstructed girls' and women's ability to have their cases heard in the appropriate legal forum without discrimination. They limited, and in some cases blocked, girls' and women's ability to seek justice and access meaningful remedies.<sup>21</sup> Even when girls and women can surmount the barriers of the limited protective infrastructure and attempt to bring complaints, they confront a tangled judicial landscape.<sup>22</sup> Some acts criminalized under the Elimination of Violence Against Women Law, such as forced marriage and beatings, are now treated by some Taliban authorities as civil, not criminal, cases. The Taliban's current delineation of what constitutes civil and criminal cases and what formal justice actor is meant to address each part of the complaint process is unclear.<sup>23</sup> This lack of clarity makes it confusing to which entity girls and women should report gender-based violence. Thus, there is no effective legal protection for women and girls, including a lack of full "access to the protection and remedies offered through criminal law."<sup>24</sup> The Taliban's deliberate dismantling of protective infrastructure and legal frameworks has increased Afghan girls' and women's vulnerability to abuse and has made it more likely that domestic violence survivors will be forced to stay with their abusers.<sup>25</sup>

Older girls and women who have brought complaints through the formal justice system have had little success. Taliban authorities are unwilling to hear their complaints. According to the Law Society of England and Wales, "[t]he majority of judicial bodies will reportedly not accept women's petitions."<sup>26</sup> Additionally, the Taliban prohibited older girls and women from suing men in Herat on June 16, 2022.<sup>27</sup> To date, Taliban courts have only been willing to hear older girls' and women's complaints on issues of inheritance.<sup>28</sup> Courts have generally disregarded complaints related to gender-based and sexual violence, divorce, and human rights violations, especially those involving domestic violence and abuse.<sup>29</sup> Even when Taliban authorities have considered women's cases, most of them have been settled outside of courts in administrative offices such as the Ministry for the Propagation of Virtue and the Prevention of Vice, which is "the sole entity vested with authority to address women's legal cases" in Balkh, Takhar, and Baghlan Provinces.<sup>30</sup> In such procedures, women have not had access to legal representation, and their cases have been settled without formal records.<sup>31</sup> This legal landscape

limits girls' and women's ability to access appropriate remedies for the harm suffered and escape abusive situations.

The Taliban has also engaged in retaliatory behavior toward girls and women who have brought complaints to the courts. Authorities have detained women who have reported incidents of gender-based violence.<sup>32</sup> Police have told women who reported domestic violence that they "should not complain," that the women "deserved being beaten," and that "such matters are private and should remain in the family."<sup>33</sup> Additionally, women in Kandahar have been "humiliated, insulted, and expelled" from Taliban courts for not bringing mahrams<sup>34</sup> with them when making complaints to the court.<sup>35</sup>

The Taliban invalidated tens of thousands of divorce rulings with a March 30, 2023, order obliging courts to "re-examine and invalidate" divorce and domestic abuse cases finalized under the previous government that the Taliban claim "did not comply with Sharia."<sup>36</sup> To illustrate the kind of treatment girls and women are facing, a 13-year-old girl spoke about how Taliban officials rejected her request for a divorce from her physically abusive husband and portrayed domestic violence as normal and an unworthy basis for divorce:

"My brother and I initially went to the Department of Vice and Virtue. My brother explained that my husband beats me a lot, and I wanted a divorce. The Taliban responded that such issues occur between couples; men sometimes beat their wives, but it's not so serious to seek a divorce. They advised my brother to resolve the matter among the village elders and advised us to reconcile... The Taliban judge told us that sometimes a man gets angry and hits his wife, but that's not a reason for the woman to get a divorce. He told me that you women also cause a lot of trouble, and they shouldn't want a divorce for minor disputes. He even told my brother that he should make her sister behave well. There must be something wrong with her since her husband beats her."<sup>37</sup>

Because of the Taliban's unwillingness to consider divorce requests initiated by girls and women, some girls and women have indicated that they view dying by suicide as the sole solution to their predicaments. For example, Karima, a woman from Pul-i-Khumiri in Baghlan Province who sought to escape an abusive marriage, spoke about her dilemma after having

Taliban officials reject her request three times and force her to move back in with her husband: “Once, I went to my room and hung a noose around my neck, but I couldn’t go through with it because my daughter was crying so much. Another time, I thought about taking rat poison. If I don’t get a divorce, I might go through with it next time.”<sup>38</sup>

If Afghan girls and women succeed in having their cases heard or complaints processed in formal judicial or legal institutions, the Taliban restrict their legal capacity and subject them to discriminatory treatment during judicial proceedings and complaint processing. Women “may only appear in matters in which they are a party” and are often required to bring a mahram with them to court.<sup>39</sup> Once in court, a girl’s or a woman’s testimony is given half the weight of a man’s testimony and is sometimes not accepted at all.<sup>40</sup> Girls and women seeking to divorce their husbands have faced discriminatory treatment from judges, who have scolded them for wanting a divorce without evidence of physical abuse. Taliban judges in divorce cases have told girls and women to “get...[their] husband’s consent first,” and said, “you cannot divorce.”<sup>41</sup> According to a defense lawyer in Mazar-e-Sharif, many girls and women have been “forced to give up their cases.”<sup>42</sup>

An account from a woman in Balkh Province highlights the discriminatory treatment that Taliban judges have subjected women to during divorce proceedings, even in cases where their husbands had been abusive toward them. The 27-year-old woman from Balkh district explained she was told by a Taliban judge in a public session of the court, “‘You are a woman, we will put you in the prison.’ They said to my husband, ‘Take this woman home and punch her in the mouth. If she continues talking, break her teeth.’”<sup>43</sup>

Taliban courts in Ghor and Kunduz provinces reportedly punish girls more severely than boys for an elopement or ‘moral crimes.’<sup>44</sup> Taliban courts do not grant divorces when domestic violence is implicated or the husband is not in favor of separation, and verdicts on family cases are often in men’s favor, as documented in Badakhshan and Balkh Provinces.<sup>45</sup> This has forced girls and women to return to abusive situations.<sup>46</sup> Some women have been forced to marry Taliban members to be granted a divorce from their husbands. Others are imprisoned until they agree to marry or return to their abusers.<sup>47</sup>

To illustrate, a 16-year-old girl in northern Balkh Province was imprisoned after refusing to marry her abusive fiancé:

“Benafasha took her case to the Taliban court in Balkh province three months ago. According to Qudsia, the Taliban judge’s opening comments—without hearing from Benafasha or asking questions—told her that she had two options: prison or give up on divorce... The judge took her husband’s side saying women are always looking for a small excuse to separate. She quoted the judge as saying to Benafasha: ‘It looks like you don’t like [your fiancé] anymore and you want someone else. Look at the man, he’s healthy and handsome. What else do you want?’ Ultimately, Benafasha’s claims held no weight. ‘If your fiancé doesn’t want it, you have no right to separate from him,’ Qudisia said the judge told her...The only sentence the Taliban judge said was that the right of divorce belongs to the husband. Qudisia said that when given the options, her sister chose to go to prison. ‘The Taliban told her that as long as she refuses to live with her fiancé, she will remain in prison’”<sup>48</sup>

Afghan girls and women have also faced discrimination through the overturning of divorce cases, leaving them without access to meaningful legal remedies and undermining their rights. The Taliban has reversed tens of thousands of divorce rulings since August 2021, forcing girls and women to return to their ex-husbands, including in cases where abuse had been implicated or the woman had remarried.<sup>49</sup> Authorities have reportedly even forced some girls and women previously granted divorces to return to their husbands through non-judicial mechanisms.<sup>50</sup> Girls and women can face severe repercussions for going against Taliban decisions on this matter. To illustrate, one woman refused the Taliban’s order to re-marry her ex-husband, she, her current husband, and her father were imprisoned, and her daughter “was forcibly married to a member of the former fiancé’s family in *baad*.”<sup>51</sup>

Well-founded fear of revictimization and retaliation from Taliban authorities, as well as the absence of an operational legal system, has led girls and women to increasingly seek redress through non-judicial mechanisms.<sup>52</sup> However, Afghan girls and women have limited access to such channels. An International Organization for Migration, UNAMA, and UN Women report based on consultations with 888 Afghan women and 64 men in April 2024,

found that only 7 percent of women participants, compared to 50 percent of men participants, indicated that they had access to informal dispute resolution mechanisms.<sup>53</sup>

Afghan women who have their complaints or complaints addressed through non-judicial mechanisms experience discrimination in how they are treated and in the provision of remedies. Informal mechanisms often violate the rights of women and privilege men's priorities and the so-called "family or community cohesion" over women's and girls' rights and safety.<sup>54</sup> As a result of the patriarchal, conservative dispute mechanism, survivors are often forced to live with their abusers.<sup>55</sup> Informal justice systems tend to have minimal oversight or due process, putting women at additional risk of gender-based justice and inhibiting girls' and women's access to justice.<sup>56</sup> In a case that highlights the discriminatory nature of informal justice mechanisms' decision-making, a local jirga of male elders in Badghis Province ruled that for a man who assaulted his wife and fatally set her on fire, the punishment was to provide land to his late wife's father and family.<sup>57</sup>

Afghan girls' and women's inequality before the law in all stages of formal and informal justice processes has increased their vulnerability to violence, abuse, and other forms of harm. Gender-based violence survivors' lack of access to justice and meaningful redress for the harm suffered has emboldened some perpetrators in their abuse and increased threats of violence against girls and women.<sup>58</sup> For example, one woman, Marwa, was forced to return to her abusive ex-husband, who beat her so hard that she had her hands and teeth broken, fingers cracked, and chunks of her hair and scalp pulled out.<sup>59</sup> Blocked access to justice, in conjunction with the courts' violence towards girl and women survivors for attempting to bring complaints, "contributes to the further devaluation of women's lives, the neglect of their safety and well-being, and their erasure from Afghan society."<sup>60</sup> This impunity threatens to produce a cyclical effect of human rights violations, dissuading survivors from reporting their abuse in a context where the Taliban's systems of discrimination against girls and women have made violence against them more likely to occur.<sup>61</sup>

Furthermore, the Taliban have imposed numerous legal and procedural restrictions that have denied girls and women equal protection of the law. Such measures have violated girls' and women's right

to education, employment, access to healthcare, and freedom of movement. While some Taliban measures differ by locality, the restrictions have created a landscape in which legal protections concerning discrimination against girls and women are minimal, and laws that could be used to pursue justice are discriminatory.

The Taliban has implemented numerous laws and decrees limiting girls' and women's right to access education without discrimination. Most notably, the Taliban has banned primary school for girls above 10 years of age, and secondary and tertiary (university) education for girls and women.<sup>62</sup> They have closed multiple educational centers that provided education to girl students beyond the sixth grade.<sup>63</sup> Girls still allowed to attend school have been subjected to dress restrictions, with women's madrasa students in Kandahar required to wear burqas, and female students in education centers in Herat required to wear full hijabs.<sup>64</sup> The Taliban has prevented many girls from attending primary school, barring girls over 10 years of age from attending school in Kandahar.<sup>65</sup> (See Article 10 for more details.)

Taliban laws and policies have also violated older girls' and women's right to employment without discrimination. The Taliban has prohibited women from registering organizations and has imposed discriminatory restrictions targeting older girls and women working in specific sectors.<sup>66</sup> The latter set of laws and policies has included a ban on women working for international or national NGOs and the United Nations.<sup>67</sup> They have mandated that women TV presenters wear face coverings.<sup>68</sup> The Taliban issued an edict that women government employees should not work in offices or remotely.<sup>69</sup> (See Article 11 for more details.)

The Taliban has also denied girls and women equal protection to access healthcare. The Taliban ruled that girls and women need mahrams to visit health centers.<sup>70</sup> In Kandahar province, the Taliban completely banned young women from visiting health centers.<sup>71</sup> The Taliban have also prohibited any health programs related to female health offered by NGOs, further limiting girls' and women's access to healthcare.<sup>72</sup> Additionally, the ban on women's medical education has intensified longstanding shortages of women healthcare professionals.<sup>73</sup> (See Article 12 for more details.)

Taliban restrictions have gone beyond specific sectors, targeting all-encompassing areas of life,

such as girls' and women's freedom of movement. A recent law enacted on August 21, 2024, requires older girls and women to wear face coverings and veil their bodies in public, bans the transportation of older girls and women without mahrams or Islamic dress, and forbids men, older girls, and women from interacting with non-relatives.<sup>74</sup> The Taliban has also imposed further limitations on girls' and women's mobility, including ceasing the issuance of driver's licenses to older girls and women, and requiring girls and women to have a mahram with them for longer

domestic and all international travel.<sup>75</sup> Additional Taliban restrictions limiting girls' and women's access to places such as gyms, public baths, and parks have led to their exclusion from the public sphere.<sup>76</sup> (See Articles 7 and 13 for more details.) These policies have created a legal landscape that is fundamentally unequal and discriminatory, in violation of girls' and women's right to equal protection of the law enshrined in Article 15.

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