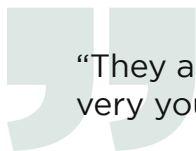


ARTICLE 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - a. The same right to enter into marriage;
 - b. The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - c. The same rights and responsibilities during marriage and at its dissolution;
 - d. The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - e. The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - f. The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - g. The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - h. The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.



“They asked for my daughter, but I refuse to give her up. She is still very young and has many hopes and dreams to fulfill.”

—Afghan mother who underwent an illegal operation to sell her kidney to spare her 8-year-old daughter from being married to an adult man as partial debt repayment¹

“Just with an oath, the Taliban ordered me to return to live with my divorced husband, regardless of the former court ruling. The Taliban officials told me that the ruling of Mohammad Ashraf Ghani’s government court is not valid. When I insisted that I would not return to live with that man, I was told that under Islamic law, a man has the right to beat his wife, and that such disputes happen in every home, and we should not destroy the foundation of the family.”

—Nurzia, a 36-year-old woman that a Taliban-led Jirga forced her to return to her former husband despite a court-ordered divorce. Forensic reports indicated that she had been beaten for years by her former husband²

Introduction

Article 16 of CEDAW addresses the elimination of gender-based discrimination within the context of marriage and family relations. It affirms the equal rights and responsibilities of women and men throughout all stages of marriage, including its formation, dissolution, and matters concerning children. The article guarantees that both partners have the right to freely choose a spouse and to enter into marriage with full and informed consent. It also ensures equality in personal matters such as the choice of family name, profession, and ownership of property.

Furthermore, Article 16 establishes equal rights for both spouses regarding decisions related to childbearing, including the number and spacing of children, and emphasizes the importance of access to the necessary information and services to support these choices. It provides for the equal treatment of women and men in the acquisition, management, and disposition of property during and after the marriage. In the event of divorce, it mandates equality in issues such as the division of property, child custody, and financial support.

Importantly, the provisions of Article 16 extend to de facto unions—relationships that function as marriages but are not legally recognized—ensuring that individuals in such arrangements are afforded the same protections and rights. Overall, the article seeks to guarantee women equal legal standing, authority, and autonomy within the family unit, in alignment with the rights accorded to men.³

In Afghanistan, deeply rooted socio-cultural norms that prioritize male authority and family honor have historically contributed to the continuation of violence against girls and women and have impeded access to justice for survivors. These norms dictate that maintaining the family’s integrity is more valuable than addressing or condemning violence inflicted by family members against women and children. There is a deeply ingrained belief that a “good” woman should obey her male relatives and endure domestic violence to uphold the family’s honor, reinforcing a cycle of abuse and silence.⁴

Marriage plays an important role in Afghan society by establishing kinship networks that families rely on for survival. Marriage strengthens community bonds while also serving as a mechanism to control girls’ and women’s sexuality through patriarchal norms that permit sexual activity only within marriage. In Afghanistan, these norms often lead to girls being married off at a young age to preserve family honor and solidify kinship connections. The practice includes a transactional and sometimes economic aspect, with girls and women exchanged between families and bride prices offered. These gendered conservative patriarchal practices perpetuate the subordinate status of girls and women.⁵ Certain interpretations of Shariah law and customary practices permit the marriage of girls based on their physical development and puberty. In conservative regions, a widowed Afghan girl or woman is often married off to her deceased husband’s brother or close relative. This practice aimed at preserving the so-called honor of the widow and the family, even if the male relative is already married.⁶

Girls and women often bring a bride price to their birth families when they marry, making them valuable economic assets. Families consider their future financial stability and prefer to arrange marriages early to secure a good future for their daughters, or as soon as a favorable proposal is available. Girls and women are expected to be virgins at marriage, and families fear that any unsupervised interactions with boys and men might jeopardize their perceived virginity. If girls and women are not married by what is deemed an “appropriate age,” their reputations may suffer, potentially making them unmarriageable. Marriage is thus seen to protect a girl’s and women’s reputation and that of her family, as well as to shield her from potential “vice” and rape.⁷

Afghanistan has one of the highest rates of violence against girls and women in the world, with 90 percent experiencing intimate partner violence.⁸ In 2019, an Iranian-Canadian photographer, Kiana Hayeri, visited Herat Women’s Prison in Afghanistan. Having spent years documenting girls and women who endured abuse but stayed with their husbands, Hayeri sought to understand what drives someone to take extreme measures for self-preservation. She discovered that many of these Afghan women’s lives were ruled by fear, which had evolved into anger after years of physical and verbal abuse. Their will to survive had pushed them to violent acts. By the time she encountered them, these women, now imprisoned and facing lengthy sentences, had transformed into different individuals. She noted that, “These women were filled with emotions, resilience, life, and most importantly, hope.” Despite the harsh conditions of overcrowding, many Afghan women inmates shared with her that they felt freer in prison than they had in their marriages.⁹

During the Republic Period (2004-2021), Afghanistan made progress in improving conditions for girls and women regarding violence and marriage. The establishment of the Afghanistan Independent Human Rights Commission and the Ministry of Women Affairs marked significant steps towards addressing violence against girls and women. These institutions worked tirelessly to advocate for girls’ and women’s rights and provide support to victims of violence. The adoption of the 2004 Constitution was another milestone, as it recognized equal rights for all of Afghanistan’s citizens.¹⁰ The Constitution provided a foundation for further advancements in girls’ and women’s rights and protections. In 2009, the Elimination of Violence Against Women

Law (EVAW) was enacted, representing a major legislative achievement. The EVAW criminalized 22 acts of violence against girls and women, including sexual assault, forced marriage, underage marriage, forced prostitution, beating, and causing injury and disability.¹¹ The EVAW law provided legal recourse for victims to hold perpetrators accountable, signaling a commitment to tackling gender-based violence.

Despite these legislative and institutional efforts, deeply entrenched patriarchal, sexist socio-cultural norms continued to pose significant barriers to justice for girls and women. Many girls and women remained reluctant to report violence in their marriages due to fear of social stigma, retribution, and the belief that enduring abuse was necessary to preserve family honor. The tension between progressive legal reforms and conservative patriarchal norms create a complex environment where girls’ and women’s rights are still frequently compromised. The deeply rooted belief that a married girl or woman must endure and obey her husband persists, resulting in an ongoing struggle for gender equality and justice in the country.¹²

Forced Marriage

Since the Taliban’s takeover in August 2021, they have systematically marginalized women and girls in their choice of if they will marry and if so, who they will marry. They have also barred women and girls from almost every facet of public life thus barring their chances of having a life outside of marriage and child-bearing. Additionally, Taliban violations against married girls and women by the Taliban have had severe consequences, stripping them of fundamental rights and freedoms. Forced marriages rob girls and women of autonomy and often subject them to abuse. Restrictions on contraceptives and the banning of *mehria* undermine their reproductive rights and financial security. Invalidating divorce cases traps girls and women in abusive relationships, while employment bans curtail their economic independence. These actions contribute to a broader environment of systemic oppression and gender-based discrimination, exacerbating the suffering and marginalization of Afghan girls and women.

As the Taliban advanced in 2021, a significant reason for families fleeing Afghanistan was the fear that their daughters would be forced to marry Taliban members.¹³ For those who could not flee, some chose to marry their young daughters to non-Taliban

members to try and protect them. Abdul Zaher, 50, quickly arranged a marriage for his 14-year-old daughter as the Taliban seized Herat province. Having worked in the government and dealt with the Taliban cases, Zaher was terrified of their potential retribution. “You can’t understand a father’s fear,” he says. “I worried they might forcibly marry my daughter as revenge.”

Shafiq, aged 45, arranged marriages for her two daughters early in the Taliban’s takeover of the country due to worsening conditions in Afghanistan and fear of Taliban marriage proposals. Her 16-year-old daughter, Nazanin, who was a tenth-grade student with plans to study engineering, felt compelled to accept an arranged marriage after the Taliban banned girls’ education and out of fear of Taliban suitors. “Given the circumstances and my mother’s worries about my future, I agreed to marry a relative’s son. I’ve been engaged for six months. I’m not happy about it, but felt I had no choice but to accept it.” Human Rights Watch reported that some single women in Herat believed their only way to survive was to marry, allowing them some freedom to move around the city.¹⁴

Since the Taliban’s takeover of Afghanistan, there has been a significant rise in cases of forced marriages with substantial age disparities. There has been a rise in marriages occurring at younger ages, with 69% of respondents reporting that they know of a girl who was married as a child bride.¹⁵

By January 25, 2023, the Taliban instructed pharmacies to cease selling contraceptives, labeling them as *haram* (forbidden) under Islamic law.¹⁶ This action severely restricted girls’ and women’s reproductive rights and their ability to plan their families.

On August 13, 2021, the Taliban ordered imams to compile and submit lists of unmarried girls and women between the ages of 12 and 45, intending to marry them off to Taliban fighters as so-called *Ghanimat* (war spoils).¹⁷ Amnesty International documented instances of girls and women being forcibly married to Taliban members, along with attempts to coerce them into such marriages. Their investigation found that those who refused faced abduction, intimidation, threats, and torture by the Taliban. Amnesty International cited the case of a 15-year-old girl who was forced to marry a Taliban figure despite her family’s objections in Takhar province in August 2021, and a 33-year-old

female journalist and social activist who was forcibly married to a Taliban commander the following month.¹⁸ On the Pakistan border that geographically comes under Afghanistan, Shabnam, a high school student, was systematically harassed by a youth Taliban loyalist in Parwan province. He threatened that if the Taliban came into power, then she must lose her virginity to them. When the Taliban took control of her district, she said, “The same boy who harassed me simply claimed me as his wife and received permission from the local Taliban leaders.”¹⁹

Afghan women, scholars and international human rights organizations reported that Taliban fighters use violence to force girls and women into marriages.²⁰ Despite Taliban spokesman Zabihullah Mujahid’s denial that forced marriages and child marriages continue, victims reported occurrences in Badakhshan, Takhar, and Bamiyan provinces.²¹ One of the victims, Sooma, a mother of five whose police officer husband was killed four years ago, was forced to marry a Taliban fighter when Herat fell on August 13, 2021. The Taliban threatened to kill her children if she refused. With the Taliban’s complete takeover, she felt she had no choice but to comply.²² In early August, the Taliban seized government offices and the police station. In an interview, she recounted how one fighter threatened to rape her and kill her children if she did not marry him. The woman said, “He persisted, and I had no choice. He forced me to marry him in September with a mullah’s consent... It’s like he rapes me every night. I’m in a bad way and want to kill myself, but I have to protect and raise my children.”²³ The Taliban have argued that their arranged marriages for widows benefit society and the children of single mothers.²⁴

On December 4, 2021, likely as part of an attempt appeal to international donors who had frozen funding due to the Taliban’s treatment of girls and women and to hide the widespread practice of the Taliban forcing girls and women into marriage, Taliban leader Haibatullah Akhundzada issued a decree emphasizing the importance of women’s consent in marriage (*Nikah*) and recognizing that women are noble and free individuals, not property.²⁵ He also banned the practice of *baad*, where girls or women are given as compensation to resolve disputes, and the forced remarriage of widows. However, Haibatullah Akhundzada’s declaration has not changed the reality on the ground for girls and women regarding forced marriage.

A 2022 Taliban edict banned polygamy, although exceptions are made for Taliban members. The Taliban assert that *Hanafi fiqh* is the current source of law, claiming that pre-2021 laws remain valid if they do not conflict with Shariah. In practice, however, the Taliban practice forced marriage, including demanding lists of unmarried women and girls over the age of 12 for their fighters to marry, and have nullified girls' and women's divorces and sent them back to their abusers.²⁶ Despite the decree, on July 11, 2022, girls and women in the Balkhab district of Sar-e-Pol were forcibly married to Taliban soldiers.²⁷ On February 17, 2023, tribal elders, influenced by the Taliban, banned the practice of girls and women receiving a *mehria* (a mandatory payment made to the bride by the groom) for marriage. Additionally, the Taliban banned the bride price (*toyana*) nationwide.²⁸

Local sources reported to the Hasht-e Subh Daily that the Taliban were forcibly marrying girls in Faryab province. On September 17, 2022, the head of Taliban intelligence in the Chehelgazi district raided a girl's home late at night. After a marriage proposal was rejected, he arrested the girl's brother, Habibullah, and subjected him to torture. The Taliban official threatened to destroy Habibullah's entire family if his sister did not marry the Taliban official. This incident reflects broader trends of girls and women being coerced into marriages with Taliban members throughout Afghanistan.²⁹ At the same time, some families with limited economic or educational opportunities and facing rampant poverty felt they had no option but to give in to demands to marry their daughters to Taliban members.

Additionally, the dire economic and political conditions, especially in rural areas where most of Afghanistan's population resides, have driven families into dire cycles of debt.³⁰ As a result, some families are choosing to marry off their daughters at younger ages than they would prefer to prevent or pay off debt. Women-headed households in Afghanistan are more likely to marry off their daughters at a young age compared to male-headed households, highlighting how severe economic conditions contribute to child marriage.³¹ Rahmatullah Anwari, aged 30, borrowed money to support his family of eight and cover his father's medical expenses. Unable to fully repay the money, the lender demanded Rahmatullah's 8-year-old daughter as partial repayment for the debt. Nazdana, aged 25, one of Rahmatullah's two wives and the girl's mother,

sold her kidney instead—a practice so widespread in the camp that it has become known as the “one-kidney village.” Despite having recently undergone the illegal surgery, her family's debt remains only partially resolved. “They asked for my daughter, but I refuse to give her up,” Nazdana said. “She is still very young and has many hopes and dreams to fulfill.”³²

Women and Girls Trapped in Abusive Marriages

The Taliban have dismantled the previous legal system, and progressive violence against girls and women and marriage laws have been eradicated and replaced with laws that violate their human rights. The Law on the Elimination of Violence Against Women is no longer enforced, the Ministry of Women's Affairs and family courts have been dismantled, and the majority of women's shelters have been compelled to shut down.

On December 6, 2021, Amnesty International reported that essential services for girls and women who survive gender-based violence in Afghanistan have been shuttered by the Taliban. The Taliban have closed shelters and released detainees from prison, including many convicted of gender-based violence offenses.³³ With shelters closed, staff had to send many girls and women survivors back to their families, and others were forcibly taken back by relatives. Other survivors ended up living with shelter staff, on the streets, or in other tenuous situations. A shelter director, now hiding with some survivors, told Amnesty International, “We don't have a proper place. We can't go out. We are so scared. Please get us out of here. If not, you can wait for us to be killed.”³⁴

Azad, a woman defense lawyer in Balkh Province, reported that during the Republic Period, family cases in Mazar-e-Sharif were handled by the Personal Affairs Division of the Municipal Primary Court. Since August 15, 2021, this court no longer exists, and there is no dedicated family court for women. Instead, family cases are now dealt with by the Civil Court, which primarily handles monetary and land disputes. Azad states that women's petitions for separation are often rejected outright. In one case, a Taliban judge dismissed a woman's plea for separation, stating that complaints about husbands were unwelcome and disregarding her concerns about her husband's absence and drug addiction. The judge told her, “You women always

complain about your husbands. I swear, if you are ungrateful to your husbands, you do not know God at all. Leave, girl. Don't pursue such things. Don't waste our time."³⁵

In Afghanistan, divorce is stigmatized, and cultural norms often punish women who leave abusive marriages.³⁶ Nazifa, a lawyer who handled around 100 divorce cases, noted that during the Republic Period, awareness of divorce as an option grew among women despite societal taboos. However, under the Taliban, divorces are granted only in specific cases, such as drug addiction or abandonment, but not for domestic violence unless the husband agrees. The Taliban assert that divorce is permitted under Sharia law, yet support systems for girls and women have been eradicated, and the Ministry of Women's Affairs and Human Rights Commission have been shut down.³⁷

A female defense lawyer in Mazar reported that Taliban courts widely ignore women's requests and threats against the women bringing cases by their family members and Taliban court officials are common. This has drastically limited women's access to justice, with cases often decided in men's favor without hearing girls' or women's arguments. Legal representation is also complicated, as male lawyers risk harassment for representing girls or women.³⁸

Jirgas, one of the only bodies left to adjudicate marriage cases, are widely criticized for unfair trials and discriminatory decisions against women. For example, one of the victims of a Jirga decision is Nurzia, a 36-year-old woman. On September 21, 2021, a Taliban-led Jirga forced Nurzia to return to her former husband despite a court-ordered divorce. Forensic reports indicated that she had been beaten for years by her former husband.³⁹

Legally Separated and Divorced Women and Girls

Afghan girls and women who were granted legal separation and divorce under the previous government now legitimately fear that the Taliban will reverse their separations and divorces. For example, under the previous government of Afghanistan, girls and women from western Afghanistan could obtain a divorce by testifying to their husband's abuse, even if he did not appear in court. Thousands of Afghan girls and women had previously secured divorces without their husbands'

presence. These "one-sided" divorces were primarily granted to girls and women fleeing abusive or drug-addicted husbands.⁴⁰ Under the previous Afghan government, Marwa was one of the women granted a divorce in Afghanistan. However, when the Taliban took control in August 2021, her husband convinced local commanders to annul the divorce and force her back into the marriage. "My daughters and I cried a lot that day. I felt like the devil had returned."⁴¹

Since the Taliban's return to power in 2021, divorced husbands, especially those with Taliban ties, have gained the upper hand. To illustrate, one woman, originally from a rural area but living safely in an urban setting, saw her legal protections and security disappear with the fall of the Republic government. She started receiving threats from her ex-husband shortly after the Taliban takeover. He claimed to have alerted Taliban members in her home village about her situation and that they were helping him locate her for revenge. With the women's shelters closed by the Taliban, she was forced to go into hiding.⁴²

On March 4, 2023, the Taliban invalidated thousands of divorce cases that had been decided during the Republic Period, effectively trapping many girls and women in unwanted and abusive marriages without legal recourse.⁴³ A woman's defense lawyer recounted a case where a woman seeking divorce due to her husband's violence was insulted by the judge and her case was dismissed. "The judge said 'You came because of a beating? Curse the father of the Republican government for teaching you "violence". This is not violence. I slapped my wife more than a hundred times, not once did she ask, 'Why did you slap me?' You are shameless. You women are incorrigible.'"⁴⁴ The Taliban judge ordered her return to her husband, then sentenced her to imprisonment because she refused to accept the verdict.⁴⁵

Taliban judges repeatedly threaten imprisonment of girls and women who refuse to return to their abusive husbands. The condition of Taliban prisons is appalling, especially for girls and women. Afghan prisons are burdened with individuals charged with "moral crimes" such as drug use, running away from home, and sex outside of marriage—including rape, which can be investigated through coerced virginity tests. In Herat's Women's Prison, around 20 women face charges or convictions for murdering their husbands. Many of these women were forced into marriages as teenagers with significantly older men, who were often criminals, insurgents, or drug

addicts. They endured severe physical and verbal abuse, lacked financial resources, legal protection, and any means to seek divorce. The Taliban legal system offers almost no recourse for violence against girls and women.⁴⁶

Lawyers report that local Taliban commanders with no legal standing are also reversing divorces and forcing girls and women back into abusive marriages. While the Taliban claim this is not official policy, investigations confirmed such cases occurred. For example, for months, Marwa endured relentless

beatings, confined to her home with broken hands and cracked fingers. “There were days when I was unconscious, and my daughters had to feed me,” she recalled. “He pulled my hair so hard that I became partly bald. He beat me so severely that all my teeth are broken.” Summoning the courage to escape, she fled hundreds of kilometers to a relative’s house with her six daughters and two sons, all using fictitious names. “My children say, ‘Mother, it’s okay if we are starving... Mother, after seeing your suffering, we hate the word ‘husband.’”⁴⁷

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