



Women's Rights and Constitution: A Comparative Analysis of India and Afghanistan

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Abstract: human rights are the basic rights that belong to every person in the world, from the birth until death. Such rights are a natural part of every person, and no one can be deprived of them. The constitution of India guarantees human rights and ensures equality between men and women. However, in the part of women's human rights in India, there is still a wide gap between theory and practice. Indian society is a male-dominated society where men are constantly thought to be superior to their female fellow beings. Most of the time, women in India confront discrimination, injustice, and disrespect. However, the law has not given Indian women fewer rights than men. Still, with that much legal protection, their real status makes us hopeless. The status of women in Afghanistan is mostly the same as it is in India. Generally speaking, women in Afghanistan have faced a lot of challenges. The domination of men in society is the biggest challenge toward improving women's rights. Traditional ideologies regarding the role of women are the other big challenge. Despite legal protection of women and equal rights to all citizens in the constitution, women's enjoyment of equal rights is unrealized. Women are being harassed, humiliated, and discriminated against. This paper compares the Constitutions of India and Afghanistan, especially that provisions which deals with fundamental rights of women's.

Key Words: Women, Rights, Constitution, Law, Human Rights, Equality.

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I. Introduction:

Human Rights are those rights that every human being possesses by his birth; these rights are inherent and inalienable (Chaudhary, 2018). Scot Davidson defined human rights as closely connected with the protection of individuals from the exercise of state government or authority in certain areas of their lives. It is also directed towards creating social conditions by the state in which individuals can develop their fullest potential (Biswal, 2006). Human beings' history is full of disputes and conflicts. Most of these conflicts have been caused by disorders in all societies. These disorders have invoked scientists to research human rights issues. World War I and II is the dark point of human history that killed and injured millions of humans and caused a lot of destruction. In Afghanistan and India, many organizations work for gender equality and the promotion of women's fundamental human rights and compel the state to make laws for the protection of women's rights. The old customs are still existing among the Indian people and Afghanistan that prevent the progress of women, and this is a big challenge to women. The other important issue is about society when women feel safe in a society, that means the people believe in the quality of men and women, and they are safe. The Indian and Afghan societies are not that much safe for women to walk without any agitation, for that need to work hard and approve more laws to protect women's.

II. The objectives of the research are as follows:

- ✓ To know whether the Indian legal system can protect women's human rights.
- ✓ To know whether Afghanistan's legal system can protect women's human rights.
- ✓ To clarify whether the Indian laws address that protection better or those of Afghanistan.

1. Constitution of India and women

The constitution of India was framed by the constituent assembly of India which met for the first time on December 9, 1946. This constitution of India has given primary importance to human rights. The constitution of India, which came into force on January 26, 1950, with 395 articles and 8 schedules, is an important law of India that focused in some parts on fundamental human rights. The preamble of the constitution stated that "We the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic, republic and to secure to all its citizens: justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation: in our constituent assembly this twenty-sixth day of November 1949 do hereby adopt, enact and give to ourselves this constitution" (India Constitution, 2015). The constitution of India was written in an era when the social status of women in India was very poor and needed reform. Women faced many social problems and tolerated mental and physical torture from the family and society. But the women could not suffer and tolerate that much insult and torture from society; they started their struggles to find their position and place in society. For this purpose, some laws that could protect women's status have been needed. At that time, Dr. B. R. Ambedkar, the author of the Indian constitution, took constructive and important steps toward women's

human rights to improve and independent them in society and avoid social hatred from women. He created the concept of respect for women by legalizing women's rights under the constitution. Today we can see the result of past struggles and revolutionary change in the condition of women in India. Due to women's struggles and the framer of the constitution, the women's condition has changed, and they find their respectable place in society; according to the constitution, women and men have equal rights and shall be treated equally. If we look at the women in status in the current time, women are everywhere. Women are in politics, take part in making the economy, are active in society, work in companies, are in entertainment fields, etc. (N Nivedhaa, 2018).

2. Gender Justice and Indian Constitution (fundamental Rights)

Dr. Ambedkar is a member and chairman of the drafting committee of the constitution. He was a person that the rights of women were very important to him. He said that we should consider women's rights under the constitution. He played an important role in the protection of women by the creation of provisions under the constitution. Before drafting the constitution, Dr. Ambedkar expressed his concern about the equality of women's rights and supported fairness. He generally estimated the "progress of a community in the lights of the progress of women." According to Article 14 of the Indian constitution, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Article 15(1) states, "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them". (2) "No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, ...". (3) "Nothing in this article shall prevent the State from making any special provision for women and children". Article 16 (1) states, "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State". (2) "No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. (India constitution,2015).

3. Indian Women Political Status

Women empowerment means equal status to women, having opportunity and freedom for their development and improvement. The focal point of empowerment is equipping women to be financially autonomous independent and have positive confidence to empower them to confront any troublesome circumstance. Furthermore, they should contribute to the decision-making as a citizen equally to the men. The Indian constitution, in many articles, expressed and tried to remove the discrimination and gender inequality among the citizens of India. It is also attempting to ban discrimination based on sex, class, race, and so on. And it is trying to prohibit the trafficking of humans and force work. And also to reserve a selected position for ladies. The involvement of women in political parties is the result of giving equal rights to women. Despite the protection of gender equality in the Indian constitution, women are still not able to decide by themselves in the parliament. But the Indian women do not have that much power, and they have a lower status than men in this regard. Still, the women of India face gender inequality in part of having access to education and

employment between women and men. In India, women's political participation is not comparable to that of men. This situation is not only in India but also in most countries around the globe. But women's status nowadays is better than in the past. There was a bill in 2008 as the ladies' reservation bill or 104th constitutional amendment, which expresses that ladies have 33% reservation to participate in politics. The Constitution of India guaranteed social, monetary, and political equity in such a manner. It additionally has guaranteed freedom of thought and fairness to all residents. Constitution has given to uniformity of ladies and men. It has called upon the state to take measures to expel and destroy the social, financial, education, and political disservices that have as a rule been looked at by ladies.

Article 243D (1) "Seats shall be reserved for—(a) the Scheduled Castes; and (b) the Scheduled Tribes. In every Panchayat and the number of seats, the same proportion of men and women shall be taken into consideration from the total number of seats. (2) At least one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat" (India constitution,2015).

In the seventeenth Lok Sabha house, 78 members are women out of 552(Loksabha, BETA). In the Rajya Sabha (council of state) house 24 members are women out of 250 (Rajya Sabha, BETA). But still, women's participation is not fairly dedicated and acceptable. As previously mentioned, the number of parliament members in both houses, it is indicating a low number of women taking part in the country's politics. And the provisions of the constitution regarding equality for all citizens are questionable. Despite all these issues, women are continually struggling to achieve their constitutional rights.

4. Afghanistan Constitution and Women

Part II of the Bonn Agreement submitted the transitional organization of Afghanistan to an interim framework until the establishment of the new constitution. The Constitution of 1964 is referenced twice in the Bonn Agreement and was seen as the foundation for the presentation of a majority rule government in Afghanistan. Constitution of 1964 It was thus used as a model in the 2004 draft constitution. On October 5 2002, President Hamid Karzai appointed a nine-section Constitutional Drafting Commission led by Vice-President Nematullah Shahrani to present a draft constitution. From 502 agents of constitutional Loya Jirga, Eighty-nine of the agents were women, who worked eagerly together to ensure that women would be permitted equality in the new constitution. Despite a few inadequacies, on January 25 2004, the new Constitution of the Islamic Republic of Afghanistan in 12 parts and 162 articles were signed by President Karzai. The framers of the constitution were aware of the situation of Afghanistan and the bad condition of human rights because of internal conflicts. By the consideration of all aspects and challenges, they could write a constitution that was passed by the delegates in Loya Jirga (Sevastik, 2019). In the part of Fundamental rights and obligations of citizens' Afghanistan Constitution States Article 22 "Any kind of discrimination and distinction between

citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man, and woman have equal rights and duties before the law". Article 33 states, "The citizens of Afghanistan shall have the right to elect and be elected. The conditions of exercising this right shall be regulated by law". Article 35 states, "To attain moral and material goals, the citizens of Afghanistan shall have the right to form associations by provisions of the law. The people of Afghanistan shall have the right, by provisions of the law, to form political parties, provided that:

- Their manifesto and charter shall not contravene the Holy religion of Islam and principles and values enshrined in this constitution;
- Their organizations and financial resources shall be transparent;
- They shall not have a military or quasi-military aims and organizations; and
- They shall not be affiliated with foreign political parties or other sources.

Formation and operation of a party based on tribalism, parochialism, language, as well as religious sectarianism shall not be permitted. A party or association formed according to provisions of the law shall not be dissolved without legal causes and the order of an authoritative court". In article 43 states "Education is the right of all citizens of Afghanistan, which shall be offered up to the B.A. level in the state educational institutes free of charge by the state". In article 44 also states that the government must pay attention to the education of women and deprived citizens. "The government shall devise and implement effective programs to create and foster balanced education for women, improve the education of nomads as well as eliminate illiteracy in the country". Article 48 states "working is right of every Afghan". According to this article, every citizen has the right to work. That means there is no obstacle for women to work. Article 50 of the constitution states, "The citizens of Afghanistan shall be recruited by the government based on ability, without any discrimination, according to the provisions of the law" (Afghanistan constitution, 2004).

5. Law on Elimination of Violence Against Women

Violence against women in Afghanistan is well known, but the attention toward this issue is not sufficient. It is also well-known that the women and girls of Afghanistan have been limited from enjoying all their human rights. The three or four decades of harmful conflict, lawlessness, insecurity, and weak governance have significantly impacted women's status and the situation in Afghanistan and impacted their empowerment. The Taliban regime had set up numerous strict rules and regulations that imitated the rights and freedom of all citizens, especially women. The strict and extremist interpretation of sharia law confined more women. The Taliban with their interpretation of Islamic law, marginalized and limited women. Women were not allowed out to public unless accompanied by a "Mahram³" (UN report,2009). With the establishment of modern government, some laws were enacted to protect women's human rights. But still, the women's status is not acceptable, and the government attempted with the international community's help to change their situation.

³ A male relative who serves as chaperone.

Based on articles 24 and 54 of the Afghanistan Constitution. Law on the elimination of violence against women has been enacted. In 2009 in 4 chapters and 44 articles.

In Article 2 the lawmakers discussed the objectives of this law.

"This law has the following objectives:

- Ensuring Sharia and legal rights and protecting the human dignity of women.
- Maintaining family integrity and fighting against customs, traditions, and practices which contradict Islamic Sharia and cause violence against women.
- Protecting women who are victims or at risk of violence.
- Preventing violence against women.
- Providing public awareness and training on violence against women.
- Prosecuting perpetrators of violence against women" (law on Elimination of violence against women,2009).

The Noble Quran and Prophet Muhammad's (PBUH) Sunnah illustrate equity and parity between men and women although their functions in marriage, family, and society are not the same. The Qur'an emphasizes that God in his perfect wisdom, has created all species; in pairs and males and females and males they are created in this way as stated: "He created you from a single being; then of the same kind made its mate" (Akmetova, 2015). Article 6 discussed the rights of victims:

- "Prosecuting the offenders of violence based on provisions of the law;
- Having access to shelter or another safe place (s) with the consent of the victim;
- Having free access to emergency health services;
- Having an advocate or legal aid provider;
- Compensation to damage resulting from the act of violence;
- Confidentiality of relevant matter; and
- Other rights which have been stipulated in the legislative documents for the victim".

Article 9 states the obligations of the ministry of religious affairs. "To prevent the violence, the Ministry of Religious Affairs shall adopt the following preventive measures:

- Developing regular programs for the presentation of preaches and orations regarding Islamic rights and obligations of men and women by Mullahs, preachers, and orators in Mosques and other religious places and making sure of its implementation.
- Conducting seminars, workshops, and conferences for Mullahs, Preachers, and orators.
- Explaining and describing the factors of violence and their consequences based on the provisions of the Islamic Sharia and law through the relevant publications".

Article 10 states the obligations of the ministries of education and higher education. "To prevent the violence, the Ministries of Education and Higher Education shall adopt the following preventive measures:

- To include issues about violence and its consequences and the ways of its prevention in the related educational curriculum.

- To conduct seminars, workshops, and conferences for the relevant students and staff.
- To take appropriate measures to prohibit the occurrence of violence in the relevant academic areas.
- To explain and describe the factors of violence and their consequences based on the provisions of the Islamic Sharia and law through the relevant publications".

Article 12 states the obligations of the ministry of justice. "To prevent violence, the Ministry of Justice shall adopt the following preventive measures:

- To increase the awareness level of men and women of their legal and Sharia rights and obligations.
- To facilitate explanation and description of matters about the factors of violence and its consequences for men and women under detention and custody or imprisoned by the relevant authorities and other relevant social organizations.
- To conduct seminars and workshops for the awareness of Hoquq and Legal Aid Departments staff regarding the provisions of this law and facilitating its better implementation.
- To assign a legal aid provider if requested by the victim of violence".

Article 24 states about selling and buying women for or on the pretext of marriage.

"A person who sells a woman for marriage, or purchases a woman or facilitates the process, considering the circumstances he/she shall be sentenced to long term imprisonment not exceeding 10 years".

Article 25 states about giving Baad.

(1) "If a person marries with or gives in marriage a woman under the name of Baad, considering the circumstances the offender shall be sentenced to long term imprisonment, not exceeding 10 years.

- (2) In the situation mentioned in paragraph (1) of this Article, considering the circumstances the persons involved {the witnesses, the proxy, Acid (one who weds the couple), and the conciliator} each shall be sentenced to medium imprisonment, and based on the request of the victim and by the provisions of the law the marriage contract shall be revoked".

Article 26 states forced marriage.

"If a person engages or marries a woman who has attained the legal age of marriage without her consent, considering the circumstances he/she shall be sentenced to medium imprisonment of not less than 2 years, and the marriage or engagement shall be revoked by the provisions of law". Article 28 states underage marriage.

"If a person marries a woman who has not reached the legal age of marriage without considering Article 71 of Civil code, the offender considering the circumstances shall be sentenced to medium imprisonment of not less than 2 years, and based on the request of the victim the marriage shall be revoked by the provision of law" (Law on Elimination of Violence Against Women, 2009). And others articles supported the rights of women and guaranteed rights to the women that they can act as citizens which has all the rights a man has.

6. Conclusion

Human rights are defined as rights that human beings deserve because they are human. Respect for human rights is the ethical responsibility of all humankind and governments. Discrimination exists in the laws of many countries: criminal law, marriage law, inheritance, and property. Even in countries where women have achieved legal equality, discrimination continues in practice. The proportion of women in decision-making positions is very low. Violence against women is often caused by insufficient laws, barriers to justice, and the inaction of government officials who tolerate this violence. Despite the many inequalities between men and women, states have taken steps to reduce women's justice movements in their countries and to perpetuate their rule. However, women have not given up on their justice-seeking movements and have demanded their rights by their country's constitution. India is the biggest democratic country in the world and the constitution of India is also the largest constitution in the world. The Indian constitution in its fundamental rights of citizens which contains articles 12 till 35 broadly discussed the rights of its citizens, for example, Article 14 states "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". or in Article 15(1) states "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them". Also, the third clause of this article has permitted the state to make laws for the promotion and protection of women and children. On the political ground also the women have a good position according to the 2008 bill called the reservation bill for women or the constitution amendment 104th that clearly states that women have 33% reservation in participation in politics. On the other hand, Afghanistan constitutions, in its preamble talks about equality, human rights, fraternity, social justice, freedom of expression, rule of law, elimination of discrimination and violence, etc. the constitution of Afghanistan in article 22 states "Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man, and woman, have equal rights and duties before the law" also in the article 43 states "Education is the right of all citizens of Afghanistan, which shall be offered up to the B.A. level in the state educational institutes free of charge by the state". Article 44 states "The state shall devise and implement effective programs to create and foster balanced education for women, improve the education of nomads as well as eliminate illiteracy in the country". It shows that the constitution of India provided more rights to the women than the constitution of Afghanistan.

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