

EQUAL PROTECTION BEFORE THE LAW: A STUDY ON THE  
MATRIMONIAL RIGHTS OF WOMEN IN AFGHANISTAN

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## ABSTRAK

Hak-hak perkahwinan adalah salah satu isu penting dalam masyarakat kita yang berkait rapat dengan kebebasan dan sifat hormat kepada ahli-ahli dalam keluarga. Masalah yang dikaji dalam kajian ini berkisar kepada sebilangan besar wanita di Afghanistan yang tidak dilindungi hak-hak perkahwinannya, walaupun hak-hak mereka dijamin di bawah undang-undang Afghanistan. Ini adalah satu keadaan yang umum dan memerlukan perhatian segera untuk mengelakkan cubaan bunuh diri oleh wanita-wanita di Afghanistan. Objektif utama kajian ini ialah untuk mengkaji undang-undang sedia ada tentang perlindungan samarata wanita di Afghanistan dan menyarankan satu penyelesaian yang praktikal bahawa hak-hak perkahwinan wanita di Afghanistan dilindungi. Hakikatnya, walaupun hak-hak perkahwinan wanita di Afghanistan ada termaktub dalam Undang-Undang Sivil, ianya masih lagi terdedah kepada perkahwinan tradisional yang boleh memusnahkan mereka. Sebab-sebab utamanya ialah: kegagalan wanita mendapat akses kepada proseding undang-undang, pandangan-pandangan negatif tradisional dan budaya tentang hak-hak wanita, ketiadaan kerajaan yang bertanggungjawab dan telus, dan kelemahan sistem keadilan yang baik dan berkesan. Ia bertujuan mengkaji amalan-amalan dan hak-hak berkaitan dengan perkahwinan, maskahwin (*mahr*), poligami dan perceraian. Oleh itu, kajian ini adalah penting untuk mencari satu jalan penyelesaian kepada masalah-masalah matrimoni (perkahwinan) wanita-wanita Afghanistan dan juga memeriksa bagaimana mahkamah-mahkamah di negara ini mengendali dan memutuskan kes-kes perkahwinan yang dikaitkan dengan wanita. Wanita-wanita Islam akan menerima manfaat dari kajian ini kerana ia akan membantu dan menggalakkan mereka mengetahui hak-hak mereka dan bagaimana mendapatkan akses kepada perlindungan perkahwinan di bawah sistem undang-undang. Kajian ini membantu mereka lebih sedar akan realiti kehidupan mereka, dan memastikan mereka membuat keputusan yang tepat untuk melindungi hak-hak mereka sendiri dan kepentingan mereka dalam konteks perkahwinan, hak-milik hartabenda dan lain-lain hak semulajadi. Bergerak selangkah lagi ke dalam era kesamarataan wanita di Afghanistan, kajian ini menyimpulkan bahawa pendidikan boleh membantu wanita mendapatkan akses kepada hak-hak mereka, oleh kerana pengetahuan adalah penting dalam membuat keputusan yang wajar dalam semua aspek kehidupan mereka. Kajian ini juga menyarankan bahawa hak-hak perkahwinan wanita akan dilindungi dengan jayanya jika kedua-dua kerajaan dan ketua-ketua agama bekerjasama untuk reformasi umat Islam dalam semua aspek. Kaedah penyelidikan kualitatif telah digunakan dalam menganalisis data yang dikumpul berkenaan hak perkahwinan wanita dalam konteks undang-undang Afghanistan. Untuk teknik persampelan; sesi temubual telah diadakan bersama kumpulan dan individu terpilih bagi mendapatkan pandangan dan persepsi terhadap hak perkahwinan wanita.

## ABSTRACT

Matrimonial rights are one of the fundamental issues in human society that pertains to freedom and respect for all members of the family. The problem discovered by this research is that, majority of women in Afghanistan are not protected by their matrimonial rights despite being guaranteed under the legislations of Afghanistan. This is a general situation and requires immediate attention to avoid suicidal attempts by the women of Afghanistan. The main objective of study is to assess the existing laws about equal protection of women in Afghanistan and propose a feasible solution towards addressing this issue. Reality indicates that although matrimonial rights of women in Afghanistan are provided under Civil Code, still they are subject to detrimental traditional marriages. The main reasons are: women's inability to access on legal proceedings, the negative traditional and cultural views on women's rights, the absence of an accountable and transparent government, and the lack of an efficient judicial system. It sought to analyze the practices and rights surrounding marriage, dower (*mahar*), polygamy, and divorce. Hence, this research is crucial in finding a solution to the matrimonial problems of women in Afghanistan and also to examine how Afghanistan courts handle and decided matrimonial cases associated with women. Muslim women will benefit from this study as it helps and encourages them to know about their rights and how to access to matrimonial protection under the law. This study also helps to make them more alert to the fundamental realities about their lives, and also ensures that they make right decisions to protect their own interests in the context of marriage. Moving forward to the equality era of the Afghan women, this research concludes that with the help of education, women can have access to all their rights as knowledge is an essential to sensible decision-making in all areas of endeavor. It is also recommended that women's matrimonial right will be successfully protected if both the government and the religious leaders work together for reforming the Muslim *Ummah* in all aspects. Qualitative methodology was applied in the analysis of the collected data in the issues of women's matrimonial rights within the context of Afghanistan laws. For sampling technique, selected groups and individuals have been interviewed to give their views and perceptions in terms of women's matrimonial rights.

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## TRANSLITERATION

Jahād	جهاد
Mujāhadīn	مجاهدين
Mahir	مهير
Hanafīyy	حنفى
Madhab	مذهب
Talāq	طلاق
Shāfi'īyy	شافعى
Sharī'ah	شريعة
Jannah	جنة
'Ulamā	علماء
Nikāh	نكاح
Imām	امام
al-Shigār	الشغار
Zina	زنى
Muakhar	موخر
Mu'ajal	معجل

Mālikiyy	مالكى
Hanbaliyy	حنبلى
Dīnār	دينار
Dīrhams	درهم
Walīmah	وليمة
Mandūd	ممتحب
Wājib	واجب
'Adl	عدل
al-Bid'ah	البدعة
al-Ahsan	الاحسان
al-Hasan	الحسن
Fasakh	فسخة
khul'a	خلع
Tafriq	تفريق
Fiqah	فقه
Darar	ضرر

## ABBREVIATION

AFP	Agency France Press
AIHRC	Afghanistan Independent Human Rights Commission
BRA	Bokhdi Reports Agency
CDE	Convention on Discrimination in Education
CEDAW	Convention of All Forms of Discrimination against Women
CLRF	Children Legal Research Foundation
CNMW	Convention on the Nationality of Married Women
CPRW	Convention on the Political Rights of Women
DW	Deutsche Welle
EVAW	Elimination of Violence against Woman
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
MWA	Ministry of Women's Affairs
MPI	Max Planck Institute
NGOs	Non-government organizations
RAWA	Revolutionary Association of Women of Afghanistan
UDHR	Universal Declaration of Human Rights
UN	United Nation
UNAMAHR	United Nation Assistance Mission in Afghanistan Human Right
USAID	United States Agency for International Development
UNICEF	United Nations International Children's Emergency Fund