

CHAPTER 4

CONCLUSIONS AND RECOMMENDATIONS

4.1 Summary

The scholars and law makers have stepped up and created appropriate rules for the realization of human society's demand. Also they have attempted to establish new rules to protect fundamental human rights, freedoms, and more punitive measures against perpetrators.

Domestically, the Afghan scholars and law makers have taken similar trends, but still there are some traditional practices that contravene these laws regarding women's matrimonial rights. For example, the involvements of fathers in the marriage of their daughters, according to the local custom, the fathers would usually give their daughters to persons of their choices without the daughters' consent.

Among the loopholes embedded in the Afghan Civil Code is that the Code gives fathers the right to marry their daughters to whom they want even before attaining the puberty age. This seems somehow to be conflicting with Article 71 of Civil Code, which provides that the legal age of marriage for male 18 and for female 16. Moreover, Article 71 is boldly enshrined with the fathers' right towards daughters which notes that:

Where the girl does not complete the age provided under Article 70 of this Civil Code, the marriage may be concluded only through her father or competent court."

This article has been given the father the right to decide for his daughter's marriage before completing 16 years old. The rights provide grounds for committing more abuses and violations against women, and instigate the practice of inhumane marriages such as *baadal* and *baad* marriages. The above practices bring enormous problems and abnormalities in the societies ranging from domestic violence to suicide and self-immolation.

According to the Islamic teaching, it is prohibited to allow the pre-Islamic marriage practices. Islam is recognized by the Afghanistan Constitution as the country's religion as addressed in Article 3 of Chapter one. It provides that: "In Afghanistan, no law may be contrary to the beliefs and provision of the sacred religion of Islam."

Furthermore, the involvement of fathers in daughters' marriage decision-making is also a contributing factor of polygamy. For instance, if a person who is already married wants to get another wife, he would pay some money to the father of the girl in order to get his blessing even the daughter is not keen on that particular marriage. It is understood that several Acts of Civil Law were passed, but none of them address the issue of polygamy or even bothered to mention it. The Civil Code provisions are not properly adequate to address this problem. Fathers' involvement in daughters' marriages is a serious problem that Afghan girls are facing. Therefore, the government needs to take pragmatic step in addressing women right issues including polygamy and so forth.

4.2 Conclusion

In conclusion, the research reveals some relevant matrimonial cases that have occurred in Afghanistan, and how women's matrimonial rights are considered by the Afghan judicial system. In general, matrimonial practices existing in Afghanistan are more or less similar to those of the uncivilized period of *jahiliyyat*, where women were known to be victims of men. This horrendous behavior of men towards women is continuously being practiced in modern Afghanistan. It is very sad to find that a young daughter becomes victims of both her father and brothers. Widows are not allowed to remarry their own choices; men could marry more than one wife without taking into account the conditions of polygamy. While women face terrible conditions in their lives, nevertheless, they cannot ask for divorce because of detrimental traditions and customs. Even though their rights are guaranteed under the Islamic law and Afghan legislation, but it is not properly addressing the core problem. This justice solution can be achieved in the four ways:

1. By amending the laws
2. By properly interpreting the laws
3. By increasing cultural activities such as awareness-raising,
4. By applying equality;
5. By declaring this custom as contrary to the principle on the domestic and Islamic laws.

Therefore, the authorities are required to emphasize on legal and social reforms through which, women's right would be respected. Also the central government is obliged

to create more awareness programmes through the local authorities on educating women strategizing enforcement plans for effective policing. Likewise the government should step up efforts to prosecute husbands who are involved in domestic violence against their wives and children.

This study provides responses to the flaws enshrined in Afghan Civil Law, regarding women's matrimonial rights, and with that, the researcher makes some recommendation on these cases.

4.3 Recommendations

After analysing the women matrimonial rights under the Afghan law, which seems ineffective as a result of traditional factors, the researcher believes that a tremendous overhaul is required for the current laws vis-à-vis women's right. It means there is a need to regulate a comprehensive marriage law to present malpractices in the administration of law. On that basis, it is essential to briefly elaborate the followings:

4.3.1 Education

With the help of education, women have access to all legal rights. Knowledge is definitely essential for sensible decision-making in all areas connected with endeavours. Government mechanisms, Non-Governmental Organizations' "NGOs" roles, and gradual political foregathers should pay attention to women education. They need to be recognized in the society with no discrimination and violence against them. Everybody has a part to play; the government, politicians, religious elites, and all components of civil

society. It is their responsibility as advisors to provide education for women from their childhood time until achieving their career goals.

Government must establish more education institutions for women that are specifically relevant to law. This will help familiarise people with laws that they are unfamiliar with. Government entities and NGOs should employ all tools and strategies to encourage conventional families to enrol their daughters into formal education and learning places. This is a vital task to help break the centuries-old, traditional beliefs about the status of women. Women in rural areas who are illiterate will not be familiar with the lifestyle of individual rights connected with women, especially matrimonial legal rights if they remain uneducated. Education may be the actual bedrock of the country, a gradual society could be established only with the help of education, and also create chances for women to access equal on the matrimonial legal rights.

4.3.2 Role of Government

The Islamic Republic of Afghanistan has three pillars of power in its administrative structures: the executive, the legislative, and the judiciary. These branches all together enable the government to provide different services to the public. Each pillar works independently and has a scope of work. The legislative branch makes and approves laws; and on that ground, they should be the most powerful defender of women's right. The judiciary interprets promulgated laws and determine the legal decisions based on those laws. The existent of women judges are necessary in this branch to decide cases which are related to the women's right. The executive branch provides the security, public services and they should able to promote more women's right awareness.

First of all, the government should reform law regarding enforcement and the judicial system. As it obvious that this sector is the most corrupt government sector in the country, therefore, reforming it is the only way to ensure that impartial justice is being served. A reformed law on enforcement agency will certainly not only eradicate women troubles, but also other social troubles that are afflicting Afghanistan. Similarly, the federal government is ought to focus on improving the connection within the judiciary system, and address its shortcomings regarding laws on women. There must be courses, training, and workshops for those law enforcement officers and judicial staff so as for them to be thoroughly familiarised with the specific laws regarding women's rights protection. In brief, the government of Afghanistan has to take some serious steps to protect the matrimonial rights women by implementing the following suggestion.

- The Ministry of Justice and the Parliament of Afghanistan must approve marriage laws.
- Serious attention should be paid to marriage and divorce registrations. The government should design and implement rules and regulations for marriage and divorce registration.
- Swift legal prosecution against fathers and brothers who duress their daughters, sisters to be married without their consent, and force their through whilst underage.
- Permission for polygamy should be granted only by the court under clear and strict conditions.

- In the marriage certificate, it should be clearly mentioned that a second marriage of a man without fulfilling the condition of written law is prohibited.
- The government must put professional judges to conclude the matrimonial rights of women based on the provisions of the law and to prove the infringement of the rules by unprofessional judges.
- The government should support women economically, politically and socially. The government must put women as members of High Supreme Court; they must be aware of the cases that are related to the women's matrimonial rights.
- Women's rights should be included in the educational curriculum of schools starting from primary school onward.
- The government must take serious attention to prove that *jirga* has been violating the matrimonial rights of women.
- Those who violated the matrimonial rights of women and force them to marry to settle the family hostility or to repay a debt should be legally prosecuted and must be punished.
- The law should give rights to the mother to discuss with her husband regarding the daughter's marriage. Girls should be allowed to refuse the marriage before the age of 15.
- The government should promote an awareness program related to women's matrimonial rights under the law.

Justice is possible when people get access to it, and hence, it is important that family courts should be established in all provincial and district areas of Afghanistan, so as to

cope with up-growing women's rights abuses. Women as the principle subjects of detrimental marriage within Afghanistan must read more about their individual rights, mainly on the subject of family legal rights and issues relevant to matrimonial legal rights. By applying these measures, would help in identifying unjustifiable marriages.

4.3.3 The Role of Media

The media is struggling to be heard. If the government of Afghanistan wants to build a setting of consciousness towards women individual rights, the role of media must be defined and employed as an influential and effective tool towards this objective. The government must incorporate the use of media in disseminating women's right campaign into its day-to-day agenda. Regrettably, in Afghanistan, the media tend to focus on showing actresses, movies, singings, and many irrelevant programmes.

To be clear, the Afghan media are unconcerned with matrimonial rights, which make the situation detrimental for women. One of the hardest problems is that women's rights in Afghanistan are being portrayed in the western terms, which might be difficult to accept by the well-conserved traditional Afghan families. For that reason, the media should focus on issues that are related to matrimonial legal rights of women and solutions for those problems in the context of Islam, and not create more trouble for women's legal rights. The government should utilise the media in outreaching the entire Afghan society regarding the duties of both women and men towards each including other family matters.

In the countryside, many people listen to the radio, so the airwaves should broadcasting on these marital issues and educate women about the importance aspects of their matrimonial legal rights.

4.3.4 Role of Spiritual Leaders

The role of spiritual leaders is also crucial in derailing the country's old-fashioned society. This is because these leaders are influential and directly connected to the grass-root people in the Afghanistan. Changing that particular conservative approach of tribal management would be a huge challenge for the government. Therefore, the government should conduct workshops and training programs for those leaders and teach them about the legal and religious aspects of women's matrimonial rights. This would make these leaders and other extreme religious clerics to be more moderate in teaching their followers regarding violence, such as beatings, separation, divorce and so forth.

It is the moral and religious responsibilities of Islamic scholars to give spiritual speeches. Religious scholars and clerics are regarded as those who having a massive responsibility towards nurturing Islamic understandings to the general public. These kinds of speeches may considerably contribute changes in people's mind-set. For that reason, the government is required to financially support scholars in order to conduct many seminars vis-a-vis polygamy and other related issues.

4.3.5 International Organisations

International organisations, including the UN, the HRW, the Red Cross and others (NGOs), have played tremendous roles in advocating for women's rights in Afghanistan. However, the inaccessibility to all women who are experiencing domestic violence has made their efforts short-fall. Also it is clear that most of these organisations operate in isolation from the government, which undermine their work plans.

Therefore, strengthening cooperation string between the government and these NGOs is a key element in driving towards the elimination of domestic violence against women. On that basis, these NGOs should follow up more incidents of child marriage, force marriage, polygamous practices that lead to brutal violence or abuse against women. These NGOs are also required to design perfect programs that would develop more awareness among citizens. Again, they should put pressure on the federal government to abolish the practice of *jirga* (tribal councils), which is virtually more parallel to Afghan law in practice. They should also conduct regular seminars among scholars, cleric and judges about women's legal rights.

Besides, efforts and strategies in combating violence against women should be exercised in a coordinated approach for the objective of capacity-building and the improvement of women economic empowerment. Economic empowerment might help women to resist their husbands' polygamous practices if they are more financially independent. Therefore, the government must improve women' education system, grant them equal job opportunities and enhance their social living standards.

4.4 Recommendations for Further Studies

Many challenges regarding matrimonial rights of women are embedded in the Afghan traditional norms, which are based on discrimination and patriarchal structures. However, if the government is to ensure improvements in women's matrimonial rights, the following suggestions should be taken into consideration:

- 1- Revise the current matrimonial laws and amend provisions under Civil Code which appear to be conflicting with each other;

- 2- Abolish all traditional practices that are rigid and inconsistent with both the Islamic and domestic laws vis-a-vis matrimonial issues;
- 3- Enhance more judicial enforcement means through effective policing and speeding up prosecutions against women's rights violators; and
- 4- Set up more education and awareness centres and train more women's right advocates.

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