

CHAPTER 1

INTRODUCTION

1.1 Introduction

In Afghanistan, girls can dream, but only the dreams of boys come true.¹ The truth is that young Afghan women face many conflicts, especially with regards to their matrimonial rights. Women have important roles to play, especially that of being a wife, sister or mother. Regrettably, lapses in women's privileges in Afghanistan are a serious social problem. Women in Afghanistan do not enjoy matrimonial rights despite the fact that such rights are guaranteed under Afghanistan's Constitution and Civil Law (Civil Code)². In addition, the declaration regarding Essential Rights of Afghan Women brought in by President Hamid Karzai in January 2002 offers women equal protection under the law. Nevertheless, the local *jirga* (traditional authorities of elders) often passes traditional laws that violate women's rights, which are also incompatible with Islamic rules, national and international laws, especially those regarding the matrimonial rights of women. It forces relationships and encourages the remarriage of widows to the deceased husband's friends or relatives. This prompts the urgent need of ensuring that women's matrimonial rights, as enshrined within the country's Constitution, has to protect and provide rights to

¹ Jean Sasson. 2010. *For the Love of a Son One Afghan women's quest for her stolen child*. UK: Transworld Publishers. p.1.

² Afghanistan. 1977. The Civil Law (Civil Code) of the Republic of Afghanistan: Official Gazette NO 353. In this study the Civil Code is referred to as Civil Law.

all women in Afghanistan. Muhammad Ali Jinnah, the founder of Pakistan, in 1944 stated:

“No nation may rise to its height of honour unless its womenfolk work alongside with men. Nevertheless, some tribal practices have made women as prisoners within the four walls of their houses. There isn't a sanction for this deplorable conditions through which Afghanistan women should live”.³

Throughout three decades of civil war in Afghanistan, there was absolutely no equal protection under the law for citizens, especially to women, who were deprived of matrimonial rights. The problem of matrimonial rights of women in Afghanistan have been historically constrained by (a) the patriarchal dynamics of gender in addition to social relations embedded in traditional communities, and (b) the existence of a weak central government and its inability to implement legislation for safeguarding women's matrimonial rights.⁴ Hence, based on researcher observation the women in Afghanistan face various types of violence, discrimination, and inequality in every aspect of life, especially under the Taliban Regime. Held back by tribal practices, lack of knowledge, and limited economic opportunities, Afghan women are not aware of their rights which are clearly provided by the law. The Preamble of Afghanistan Constitution states:

We the people of Afghanistan: ... with firm faith in God Almighty and relying on His lawful mercy, and believe in the sacred religion of Islam... for creating a civil society free of oppression, atrocity, discrimination, and violence, and based on the rule of law, social justice, protection of human rights and freedom of the people... Have adopted this Constitution in compliance with the historical, culture, and social requirements of the era, through our elected representatives in the *Loya Jirga* (Great Council) 1382 (January 4, 2004) in the city of Kabul.

³ Visalakshi Menon. 2003. *Indian Women and Nationalism, the U.P. Story*. Indian: Taj press. p. 170.

⁴ Emadi Hafizullah. 2005. *Culture and costumes of Afghanistan*. USA: Greenwood press. p. 169.

⁵ Constitution of Afghanistan, 2004.

Nonetheless, women continue to suffer from oppression and social injustice. The matrimonial privileges of women in Afghanistan are practically non-existent. For instance, parents can refuse a man of their daughter's choice in preference of another of their own choice. Protestation from the daughter will not carry weight, as parents can claim that the girl has been contracted in marriage to another person during her childhood.

Additionally, the Civil Code of Afghanistan provides that when a wise girl attaining her majority age marries, her marriage shall be binding⁶. The Constitution of Afghanistan offers proper rights to every person of Afghanistan, "Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited. The citizens of Afghanistan – whether man or woman - have equal rights and duties before the law".⁷ It is a major challenge for the government of Afghanistan if there would be an enactment of a legislation which would guarantee the matrimonial privileges of women in Afghanistan.

1.2 Brief History of Afghanistan as an Independent State

Afghanistan is an Islamic Republic, split into 34 provinces. There are at least 14 different ethnic groups along tribal and clan lines, namely *Pashtun*, *Tajik*, *Uzbek*, as well as *Hazarah* groups, which constitute the bulk of the Afghani population. It is a mountainous country, with an area of about 650, 000 km². Its total population has never been ascertained, but Abdur Rahman Ghafoori, the Director General of the Afghan Central Statistics, in his statement on the Tolo News on 25 Apr 2013, estimated it to be 27.5 million, with 51% of them being males, while 49% of them females. 80% of the

⁶ Art 80. Afghanistan Civil Code. 1977.

⁷ Art 22. Constitution of Afghanistan. 2004.

population are now living in rural areas, while 20% live in urban areas⁸. It borders Iran to the west, Pakistan to the south, and in the east by China and Pakistan, and on the north by Uzbekistan, Turkmenistan, and Tajikistan⁹. The people of Afghanistan speak different languages, but the official languages are *Dari* and *Pashto*.

The geo-strategic location of any country is an important factor in determining its foreign policy. Afghanistan shares a region with Soviet Union, China, Iran, as well as Pakistan, and due to its strategic location, it was always significant vis-à-vis Russia and United Kingdom.¹⁰ Being a small country, Afghanistan could not aspire to play the role of a regional power, at the same time; neither did it compromise its policy under pressure from either the Great Britain or Russia. Instead, it pursued an independent foreign policy of neutrality.¹¹ Nominally, Afghans have always been independent, which they fiercely preserve. Their attachment to their independence has resulted in three wars with the Great Britain. Following the mysterious death of Amir Habibullah Khan, his son, Amanullah Khan got independence in 1919 from Great Britain. Afghanistan became the one of the first few countries in the East to acquire independence in 1919. He established friendly relations with independent countries, abolished slavery, and developed a great education system in the country. Furthermore, he missioned children abroad for higher education, and enacted a Constitution.¹²

⁸ Abdur Rahman Ghafoori. 25 Apr 2013. *Afghan Central Statistic*. www.tolonews.com. Accessed: 30 Apr 2013.

⁹ Sayed Hassan Amin. 1993. *Law, Reform, And Revolution in Afghanistan: Implications for Central Asia and Islamic World*. UK: Royston Puplichers. p. 9.

¹⁰ Mohamad Khalid Maarroof. 1987. *Afghanistan in World Politics: (a study of Afghan-US Relations)*. India: Gain Publishing house, Delhi. p.9.

¹¹ Ibid. p.18.

¹² Anthony Arnold. 1985. *Afghanistan the Soviet invasion in Perspective*. Washington, D.C.: Hoover press publication. p. 9.

Likewise, King Amanullah Khan was prolific in his attempt to improve the situation of women. This initiative was supported by his wife Soraya, who launched the country's first magazine. In 1921, Amanullah Khan enacted the Family Law Code, which modified marriages and granted rights to widows to remarry men of their own choice. By 1924, Afghan women were granted the right to select their own husbands. Amanullah Khan believed that the cornerstone of the actual socio-economic structure in the new Afghanistan would be the emancipation of women, and he had given opportunities to develop their capacities to engage in the development and democratisation of the country¹³

1.3 Problem Statement

Almost all Afghans profess the religion of Islam. Throughout history in Afghanistan, a man can obtain a bride by way of these four methods: inheriting a widow, exchanged marriage, compensation to a crime or payment. These methods are inherently un-Islamic, not to mention their violation of human rights. Owing to the actual political situation, plus the social instability of Afghanistan for the last 27 years, it is not surprising that tribal legislation and traditions still prevail. Nonetheless, even Islam accords certain matrimonial rights for women, such as the right to marriage and dower. In addition to that, women are allowed to sue for divorce, and to not consent to polygamy if they sense injustice. These conditions notwithstanding, Afghan women have been denied these protections under the law, either by standard government decree, or by their immediate family members.

¹³ My father chose three colors of Afghanistan's flag. n.d. (Translated by the writer from written record of Dari). Retrieved 25, Aug, 2012. From, <http://www.afghanpaper.com/nbody.php?id=40385>.

The main problem in Afghanistan is the fact that matrimonial protections under the Afghan law are deeply complex because of social and tribal customs. For example, parents may overrule their daughter's selection of a groom. The lack of legal protection and inappropriate punishment for those who violate these laws are enormous; resulting in the end as injustice for women. Another problem is that equal protection for individuals in Afghanistan still remains a great issue. Matrimonial rights of women, as guaranteed in the Constitution and Civil Code, and Law on the Elimination of Violence against Woman (EVAW), are enforced in the most modern parts of Afghanistan, but in other rural regions, they are irrelevant.

1.4 Research Questions

This study is intended to provide answers to the following questions:

- 1 What are the existing laws governing the protection of the matrimonial rights of women in Afghanistan?
- 2 How are the matrimonial rights of women dealt with in the courts of Afghanistan?
- 3 What are the proposed guidelines determined by the Constitution of Afghanistan, as well as the Civil Code which aim at protecting matrimonial rights of women in Afghanistan?

1.5 Research Objectives

The main objective of the study is to define the factors that support women's matrimonial rights, and also to examine the challenges for married women. The specific objectives of the study are:

- 1 To critically assess the prevailing laws on the protection of matrimonial rights of women in Afghanistan.
- 2 To analyse how the judicial trends of Afghan courts in addressing related matrimonial rights cases.
- 3 To propose a feasible number of protection guidelines of good matrimonial laws to ensure that the matrimonial rights of women in Afghanistan are guaranteed.

1.6 Significance of Study

The focus of the study is to highlight the challenges facing women regarding matrimonial matters. I will create educational pathway in helping women to be cognizant in understanding their legal rights including matrimonial one. With that, nearly all women will find it helpful to know about matrimonial protection under the law, and it helps them be more aware of the fundamental realities of the situation, and make sure they make choices that are in their best interest. This research also tends to elaborate on awareness programs such as information dissemination to women regarding their rights to a divorce as per both Islamic and domestic laws.

1.7 Legal Framework of the Study

Matrimonial rights of women are universal issue. To understand it more, we need to have an idea that these rights are protected by the international laws, treaties and declarations. Article 1 of the Declaration of Human Rights provides that “all human beings are born free and equal.” In 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the UN General Assembly. Article 15 of the Convention provides the women equality with men before the law, while article 16 clearly states that parties shall take all appropriate measures to eliminate discriminations against women in all matters relates to marriage and family relations and in particular shall ensure equality of men and women. Based on above mentioned articles, women have the same rights to enter into marriage with their free and full consent¹⁴.

The Afghanistan Constitution reaffirms the rights for equality between men and women as enshrined in Article 24 that “Freedom is the natural right of human being, which expects the liberty of others and public interest with no limitations as defined by the law. The freedom and dignity of human being are inviolable. The state shall respect and protect the freedom and dignity of human being”¹⁵. In addition to that, Article 22 of the Constitution clearly states, “Any type of discrimination or privilege among citizens of Afghanistan are prohibited. The citizens of Afghanistan either man or woman have equal rights and duties before the law”.

¹⁴ Carolyn Hamilton. 1995. *Family, Law and Religion*. Sweet & Maxwell: Publishing. P. 72.

¹⁵ Afghanistan. 2004. *Constitution of the Islamic Republic of Afghanistan*. Kabul, Afghanistan Art 24.

According to Afghanistan Civil Code, “Engagement is a promise for marriage and each of the two parties may give it up¹⁶. It is clearly provided in Article 71 of the same Civil Code that the marriage of a minor girl below 15 years old shall never be permissible. The Law on the Elimination of Violence against Women clearly states that “A person who marries more than one wife without observation of the provision of Article 86¹⁷ and 89¹⁸ of the Civil Code, he shall be sentenced to short-term imprisonment of not less than three months”¹⁹.

The principles of Islamic law set out the legal framework for equal protection in matrimonial rights for women: “and whoever does good deeds according to his capacity while he believes in Allah (s.w.t) and his messenger, will be welcomed into Paradise. They will never be wronged, not even as little as the speck in date stone. There is no distinction between man and woman”²⁰. Allah (s.w.t) says to the effect, “O you believe! the law of equality is prescribed to you in cases of murder; the free for the free, the slave for the slave”²¹. Furthermore, the Prophet Muhammad (s.a.w) demonstrated the need for consent in most cases and it was narrated by Khansa bint Khida in a well-known hadith which she says: “My father arranged marriage between me and his nephew, and I did not like it, so I complained to the Messenger of Allah.” He (s.a.w) said to me, “Accept what your father has arranged.” I said, “I do not wish to accept what my father has arranged.”

¹⁶ Afghanistan. 1977. *The Civil Law (civil code), of the Republic of Afghanistan: Official Gazette* NO 353. Article 64.

¹⁷ When the first wives are childless or when suffering from diseases which are hard to be treated.

¹⁸ During a marriage, when a person conceals his previous marital status from the newly wed-wife, and does not secure the clear consent and agreement of his wife, in the case where she contends to not continue living with the husband, she can demand divorce from the court.

¹⁹ Islamic Republic of Afghanistan. 2009. *The Law on the Elimination of Violence against Woman, Official Gazette. Issue* NO 989. Article 38.

²⁰ Al-Quran. Al-Nisa 4:124.

²¹ Al-Qur’an. Al-Baqarah 2:178.

He (s.a.w) said, “Then this marriage is invalid, go and marry whoever you wish.” I said, “I have accepted what my father has arranged, but I wanted women to know that fathers have no right in their daughter’s matter”²².

1.8 Definition of Terms

1.8.1 Definition of Women’s Rights

Women’s right in its literal meaning basically refers to a collection of rights, which tend to be exclusively enjoyed by women. In that regard, the definitional focus of rights tend to include matrimonial, socio-economic, cultural, and the legal setting of the particular country which the women represent.²³ Accordingly, the actual scope of protection under the law varies from country to country. This particular concept captures the quality of human rights, including universality, inalienability, as well as indivisibility.²⁴ Inalienability entails the actual inherent abilities that girls possess since birth as sensible creatures of God instead of being accorded through any material supply of power.²⁵ These abilities entitle them to a number of rights that cannot be dissociated without impairing their dignities.²⁶ The matrimonial rights which are inextricably linked with human nature cannot be taken away by force. It is clear that women’s matrimonial

²² Muhammad ibn Ismail. *Sahih Al-Bukhari*. (trans.) Muhammad Muhsin Khan. 1984. The translation of the meaning of Sahih Al-Bukhari, Arabic- English, vol. VII. chapter 43. P 52.

²³ Bunch C. 1990. *Women’s right as Human rights: Towards a Re-vision of Human rights*. Human Rights Quarterly 486.

²⁴ Kaye S & Piotrowicz R. 2000. *Human Rights in International and Australian Law*. Australia: Butterworths. p.3-4.

²⁵ Symonides J. 2000. *Human Rights: Concept and Standards*. Sydney: Ashgate UNESCO Publishing. p.35-37, Kamenka E and Tay A E .1978. *Ideas and Ideologies: Human Rights*. (ed), Australia: Edward Arnold. p.5.

²⁶ Chitkara M G. 1996. *Human Rights: Commitment and Betrayal*. New Delhi: APH Publishing Corporation. p.12.

protection under the law tends to be natural right, written by God for them to enjoy, regardless of nationality, religion, traditions, or skin colour.

According to Farkhunda Zahra Naderi, Afghan Parliamentarian and women activist:

“Woman is like a broken word, a suspended tear drop and a painless pang. Woman reciprocates hate with love, treachery with loyalty, and violence with gentleness. Woman is the mother of human beings, woman is the essence of humanity, and woman is virtuous Maryam and Khadijah (wife of Excellency Prophet Muhammad (SAW). Woman is the oppressed Fatimah (Daughter of Prophet Muhammad (SAW) and wife of Caliph Ali, hail to him), but woman is also a Powerful Balqis (Prophet Solomon's wife). Exactly! Woman is fortifier of prophecy, the pigeon of peace and unity, because woman is the symbol of justice”.²⁷

1.8.2 Human Rights of Women

Before delving further into the details of matrimonial rights of women, it is essential to mention the important aspects of women's rights being guaranteed through international efforts notably the United Nations (UN) and other international bodies. Driving towards that objective, Afghanistan strived to ameliorate women conditions by complying with series of international norms on human protection. In 1964, Zahir Shah introduced a new constitution that instituted the monarchy's supreme control, but integrated provisions ensuring women's rights and the creation of an elected parliament.²⁸

To support this fact, before acceding to the UN, Afghanistan had drawn its Constitution where the first chapter, and both Articles 6 and 7 all provided that the state

²⁷ Farkhunda Zahra Naderi. 2012. 8, March women's day conference, (Translated by the writer from written record of Dari). Retrieved 25, Aug, 2012. From , <http://www.chadari.af/archives/200>.

²⁸ Malalai Joya. 2009. *Raising My voice the Extraordinary Story of the Afghan woman who Dares to Speak out*. p.10.

shall respect the UN charter, international treaties, as well as other ratified conventions including the Universal Declaration of Human Rights.²⁹ Article 6 provides that:

“The State shall create a prosperous and progressive society based on social justice, the protection of human dignity, the protection of human rights, and realization of democracy; ensure national unity and equality among all ethnic groups and tribes and provide for balanced development in all areas of the country.”³⁰

And with that, it is apparent for Afghanistan as required under the international customary norms to abide in the declaration of the UN and Human Rights with regard to women’s rights.

Meanwhile, the contemporary discussions relating to the rights of women at the global level started in 1945. Most researches concerning women’s rights, as well as feminist groups, had continued to be carried out since then. A series of international conventions and conferences have been concluded under UN’s auspices to reaffirm, as well as to elaborate women’s protection under various laws. For example, the Convention on the Political Rights of Women (CPRW) was invigorated in 1953, while the Convention on the Nationality of Married Women (CNMW) was held in 1957. Another prominent convention was the Convention on Discrimination in Education (CDE) in 1960. Significantly, the major achievement in this regard was the country’s ratification of the 1979 Convention of the Elimination of all forms of Discrimination Against Women (CEDAW)³¹

²⁹ Constitution of Afghanistan. 2004.

³⁰ *ibid.* 2004.

³¹ Bringing Equality Implementing the Convention on the Elimination of All forms of Discrimination against Women, CEDAW. Retrieved 6 Nov 2012 from <http://www.unifem.undp.org/cedawen4.htm>.

Paradoxically, many women in Afghanistan have been imprisoned for going against customary rules. Their crimes as alleged were escaping from a forced and violent marriage, and eloping. Unfortunately, the family court judges, police, and prison representatives are largely unaware of Afghanistan's commitment to international laws on women's right. Equally so, they lack adequate understanding about what is really a crime, fair trial, issues for arrest, as well as minimal basic specifications of imprisonment

Interestingly, the World conferences on women³² and the Vienna Declaration assert that women's protection under the law is an inalienable, integral and indivisible portion of universal human protection under the law. The result from the world conference in 1993 demonstrated the facility of women to elicit concern from the grassroots to the public arena.

As part of its initiative, the Vienna Declaration called on the General Assembly to undertake the Declaration for the Elimination of Violence against Women (DEVAW) in 1993. The significance of this declaration is that, it is bit more explicit, and clearer than earlier conferences in defining the character and scope of violence against women. Article 3 of DEVAW offers that women are entitled to the equal entertainment, protection of all human rights, as well as fundamental freedoms from the political, economic, social, cultural, and civil fields. These protections under the law included the protection of life,

³² Four World Conferences on women have been held under the UN framework. The basic themes of the first two conferences, one held in the Mexico City in 1975 and the other in Copenhagen in 1980, concentrated on education, development and empowerment of women and on raising awareness to this end. The 3rd World Conference, held in Nairobi, Kenya in 1985, adopted forward looking strategies for the advancement of women, the strategies called for sexual equality, women's autonomy and power.

matrimony, equality in the eyes of efficient justice system. It also provided that the protection of women under the law was universally indivisible.³³

As matter of progress and improvement in this arena, the international community, the Afghan government, and the Afghan Civil Community met in London in 2006 in order to review and agree on an instrument called “the Afghan Compact.” The Afghan Compact clearly stated that women had equal protection under the law with men, and should be given opportunities to develop their capacities to engage in the development and democratisation of the country.³⁴

1.9 Scope and Limitation of Research

This research is devoted to the issue of equal protection before the law with regards to the matrimonial rights of women in Afghanistan. It also sought to analyse controversial issues such as local practices, rights surrounding marriage, dower (*mahar*), polygamy, as well as divorce. Afghanistan is a large country, so it is difficult to focus on every single province. This research was confined to these problems with emphasis for the protection of women’s rights and the deterrence of violence against women.

This research is organised in the following order: The first chapter is the introduction and the part that is relating to the history of Afghanistan. The second chapter involves marriage status of women: The disparity between laws and traditional norms in Afghanistan. And the third chapter throws lights on the practices of polygamy and

³³ Bunch, Charolotte & Reilly, Niamh. 1994. *Demanding accountability: the global campaign and Vienna tribunal for women’s human rights*. New Jersey: center for women’s global leadership.

³⁴ *Afghanistan Compact*. 2006. Retrieved. 25, July, 2012. From <http://www.ands.gov.af>.

divorce in Afghanistan. Chapter four entails the conclusion of the research and furnishes some recommendations, along with the bibliography of the study.

1.10 Research Methodology

The methodology which was used for collection of data in this study is dynamic to use materials gathered from library, court of law document and internet. Materials collated included the primary source like legislation, commentary of Quran and hadith, and text book by all respected schools of Islamic laws. The secondary sources are journals, articles and conferences proceeding are also consulted. Both Kitchin and Tate have defined methodology as “The set of rules and procedure which can be investigated a phenomenon or situation.”³⁵ Each methodology represents a different approach to evaluation. Just like any other process, one of the most crucial steps in carrying out a successful evaluation is choosing the best way to go about it. Qualitative methodology was applied in the analysis of data collected around the issues of women’s matrimonial rights in the context of Afghanistan laws. Kitchin and Tate argued that, “qualitative data consist of words, pictures and sounds and are usually unstructured in nature”³⁶. If the study’s design is well suited to the questions currently being posed, the whole process is going to be considerably easier.

1.10.1 Justification

The qualitative techniques aims at understanding human action by using non-numeric data with the employment of different methods such as open-ended interviews,

³⁵ Kitchin, R. & Tate, J. N. 2013. *Conducting Research in Human Geography; theory methodology and practice*. New York: Routledge. p.6.

³⁶ Ibid, p.211.

unstructured interviews, observation and document analysis that generates data³⁷. This study deals with the asses human experiences about the issues of women's matrimonial rights in the context of Afghanistan laws.³⁸

1.10.2 Sampling Technique

Sampling as defined by Rice, "is the acquisition of information about a relatively small part of the larger group or population, usually with the aim of making inferential generalizations about the larger group"³⁹. Sampling is necessary because it is often not possible or practicable to obtain information from an entire population.⁴⁰ The sampling technique which has been used in this study is purposive. Kumar, R. argues that "the primary consideration of purposive sampling is the judgment of the researcher as to who can provide the best information to achieve the objectives of the study."⁴¹ The researcher has decided to select purposive sampling focusing on matrimonial rights of women in Afghanistan, because the social structure of the people in the area can reflect some important features which are shared by people in Afghanistan. In this sampling technique, are selected groups of people who in one way or another share the practices or experience

³⁷ Ibid, p. 211.

³⁸ M.Gaffiki and H.J.Irvine. 2006. *Getting in, getting on and getting out: reflections on a qualitative research project*. H. J. Irvine. University of Wollongong, helen.irvine@qut.edu.au . M. Gaffikin University of Wollongong, gaffikin@uow.edu.au).

³⁹ Rice, S. 2010. *Sampling in Geography*. In Clifford, N. & Valentine, G. (eds) *Key Methods in Geography*. London: SAGE publications. p 230.

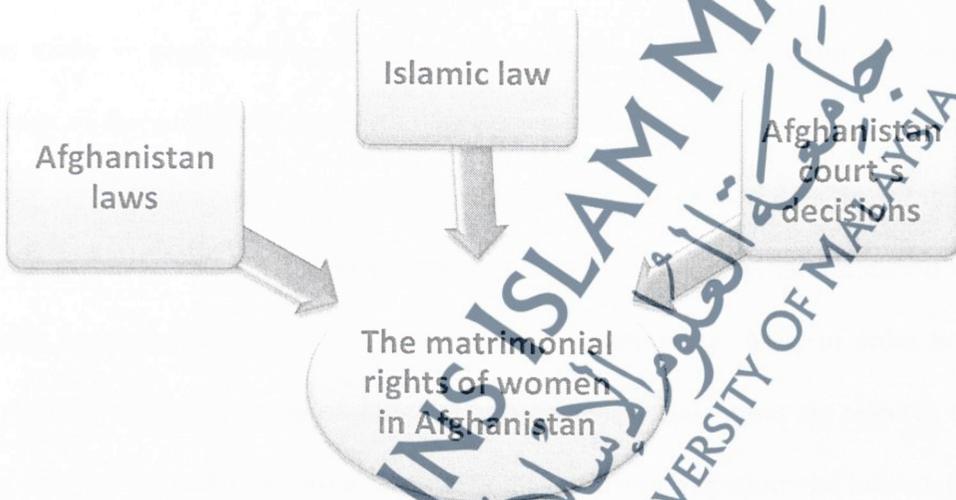
⁴⁰ ibib

⁴¹ Kumar, R. 2011. *Research methodology, a step-by-step guide for beginners*. Lodon: SAGE Pulication. p.212.

that discriminate women to matrimonial rights. In this regard, married women were interviewed to give their views and perceptions in terms of women's matrimonial rights.⁴²

1.10.3 Design of Study

DIAGRAM 1.1: DESIGN OF STUDY



1.10.4 Justification of Paradigm and Methodology

- Collection and overview of the relevant primary and additional literature on matrimonial legal rights of women in Afghanistan.
- The evaluation of judicial decisions concerning the matrimonial rights of women in Afghanistan.
- Appraisal of the initial state reports while using the CEDAW committee, as well as other UN bodies.

⁴² The interviews were carried out for 20 women who were victims of force marriage, *baddal* and *badd* marriages and also with women activists, health care professionals, lawyers and judges.

- Study of relevant public information, available statistical data, and selected reports published by the government of Afghanistan.
- Research of press and media reports, and the annual evaluation reports of countrywide and international non-government organizations.

1.10.5 Ethical Considerations

This study is going to be morally approved following the program of conducts at every stage of the study process, due to the nature of data collection and report creating. The study consequences are going to be treated sensibly as private data due to the nature of the respondents. The individual information of the respondents is not shown without them fully understanding the protection of their confidentiality. Also, in order to ensure the correctness and consistency of the study results, individual values are rejected through the data analysis procedure in order to prevent the inclusion of prejudicial information.

1.11 Literature Review

Owing to the political situation and the social instability in Afghanistan for the past 27 years, academic research regarding the country is understandably quite limited. Since the publication of Kamali's book, "*Law in Afghanistan: A Study of the Constitutions, Matrimonial Law and the Judiciary*" in 1985, little progress has been made. There are small scientific studies available, but no fieldwork being undertaken in Afghanistan recently.

Matrimonial rights involving women in Afghanistan falls within an area regarded as being a serious social problem. As an Islamic nation, its constitution stipulates that no law

can contradict the beliefs and provision of Islam.⁴³ This is why this study looks at matrimonial rights regarding Afghan's women in the context of both Islamic law and Afghanistan laws. The criticality of the social living factor in Afghanistan has been covered by several books; a few of which are quickly reviewed below.

In the book entitled *Law, Reform, and Revolution in Afghanistan* written by Sayed Hassan Amin (1993), the author mentions legal reforms on problems concerning women of all ages such as abolition of excessive dower, compulsory education, and additional emancipation for women. He also observed that girls holds really low social standing in Afghanistan. Furthermore, he discussed how laws associated with family, marriage, divorce proceedings, and personal status, which is based mainly on the Hanafiyy *Madhab* should be interpreted. However, he did not touch upon the position of other *madhabs* along with the customary law vis-a-vis matrimonial rights within the Afghan context.

In the book titled "*Feminist Sexual Politics & Family Deconstruction: An Islamic Perspection*" by Zeenath Kausar (2001), the author contends that sexuality in Islam is far from trivial or based on male lust. In reality, sexuality is perceived to be essential and subject to regulation through proper guidance. She also mentions that pre-marital sex is forbidden in Islam, and that sexual relations can only become lawful in the context of marriage. However, she avoids from discussing the subject of marital rape. This study intends to shed light on this issue, especially with regards to women having the right to report their husbands in the event of marital rape.

⁴³ Art 3. Constitution of Afghanistan. 2004.

Furthermore, in a book called “*Women in Islam*” which is written by Ahmad Zaki Yamani (2005) has broadly discussed the practice of polygamy. The author believes that polygamy is a common practice which is limitless. However, his book did not cover issues pertaining to the permissibility of a man to take another wife without the permission of his primary wife.

Another book titled “*Blackstone’s Law Queries & Answers Constitutional & Administrative Legislations*” by Richard Clements, and Jane Key (2001), looks at the women’s functions from the perspective of the constitution for a new country. The authors discuss how liberty of speech is one the most important civil liberties in a democratic society, because doing so allows citizens to state or write about what they think in an equal manner. It is difficult to view how a democratic system and equal protection before the law can possibly be practiced without freedom of expression.

Meanwhile, Jamila Hussain (1999) in her book titled *Islamic Law and Society: An Introduction*, discusses the position of women in the Qur’an and Hadith.⁴⁴ She notes that in the Qur’anic story involving creation, the humankind was created from a solitary soul; in the expulsion through the Garden of Eden, Adam and Hawa (Eve) were equally guilt ridden and equally understood by God. Besides, she also mentions the varieties of divorce (*talāq*). She explains that according to both Hanafiyy and Shāfi’iyy jurists, a *talāq* is a divorce initiated by men when he pronounces the *talāq* three times.

⁴⁴ The Hadith refers to the collection of the Prophet Muhammad’s sayings, actions, and teachings.