IMPLICATIONS FOR AFGHAN WOMEN UNDER THE SECOND (2021) TALIBAN RULE
RESEARCH REPORT
JUNE 2022
“[W]e are ruled by men who offer us nothing but the [Qur’An], even though many of them cannot read...we are in despair.”

BACKGROUND

On April 14, 2021, American President Joe Biden announced a full withdrawal of US troops from Afghanistan by September 11, 2021, starting on May 1, 2021. Immediately following this announcement, the Taliban intensified its already multi-fronted campaign to fight and overcome the Afghan security forces and increase its territorial gains throughout the country. The climax of these developments was the fall of Kabul on August 15, 2021 when the Taliban entered Kabul and claimed control over the entire country.

The takeover was followed by two frenzied weeks of evacuations, mainly by Western governments of their citizens and Afghans who had worked with their forces and government agencies since 2001. Among those evacuated were also large numbers of civilian men and women who had worked as human rights and women’s rights activists, NGO employees, health and education professionals deemed as being at significant risk of reprisals by the Taliban.

Since early September 2021, the Taliban has tightened its control and announced that it will, on a temporary basis, adopt the 1964 Constitution with the caveat that provisions in the Constitution that they interpret as being incompatible with Shari’a will not apply.

Dominating the narrative and concern of the international community during the evacuation and its aftermath has been the situation for women and girls in Afghanistan vis-à-vis the Taliban rules on the place and role of women in society. The Taliban, however, is far from monolithic nor is it bound to the manner in which it ruled Afghanistan during its 1996-2001 iteration. To better understand and plan interventions to support Afghan women, this research examined the impact of the Taliban rule on the place of women in Afghan society through three dimensions. These were:

1. The extent to which Shari’a-based law making and practice by the Taliban will have foundations in edicts of Pashtunwali (regardless of their narrative),
2. The extent to which normative conflicts between Pashtunwali and Shari’a can be resolved, and
3. The extent to which the rule of law – based on Shari’a, Pashtunwali, or a combination – would be adhered to in the different and diverse communities throughout the country given the long history of a weak centralized rule of law in Afghanistan.

The rationale for conducting this research was that understanding the interface between Pashtunwali and Shari’a in theory and, more importantly, in practice, could inform engagement with the Taliban by the international community.

Cover photo credit: Daniel Arrhakis – Shadows of Betrayal (https://flic.kr/p/sm9pEctA)
OBJECTIVES AND METHODOLOGY

The three dimensions, above, were examined based on the available information from secondary sources and primary data collected through interviews with male and female experts with established knowledge of Pashtunwali and Shari’a.

A literature review examined the interface between Shari’a-based law making and Pashtunwali with a focus on identifying similarities and differences on the rights and places of women in society. The findings from this review informed the development of a set of guiding questions for conducting key informant interviews and (possibly) focus group discussions at a later date.

The guiding questions for the key informant interviews were aimed at establishing the degree to which the Taliban would rely on Shari’a and Pashtunwali in their formal law making and practice, particularly in terms of women’s rights. Interviews were held with seven scholars and experts of Shari’a and Pashtunwali, four civil society women’s rights activists, and one (de facto) government official. The interviews were carried out to provide practical nuances on the interplay between Shari’a and Pashtunwali and how this interplay might shape Taliban policy making regarding women’s rights.

The interviews were held in February and early March 2022. This period coincided with the Taliban increasing their hold in Kabul and the provinces. In late February the Taliban security personnel started a series of house-to-house searches in Kabul and the surrounding provinces, adding to the already high levels of anxiety and uncertainty. Increasingly, it became difficult to interview key informants because of their worries about being accused of anti-Taliban activities by giving interviews.

Regardless of the challenges in organizing interviews, patterns in key informant responses began to emerge after the first five interviews. The emergence of these patterns, coupled with the increased personal risk for the interviewers and interviewees, led to the decision that the data collected was sufficient for drawing indicative baselines and conclusions that could be tested further if permitted by the operating environment.

This paper is structured into two main sections. The first section provides a contextual background and a description of the key elements in the interface between Shari’a and Pashtunwali. In discussing this interface, brief descriptions are provided on Shari’a, Pashtunwali, the notion of honor and honorable behavior under both Shari’a and Pashtunwali, the Taliban’s utilization of Shari’a, and women’s rights according to Pashtunwali. The second part of the paper presents the key findings from the analysis of the data collected in interviews with the key informants. The paper concludes with highlighting the key findings from the analysis of the secondary and primary data and issues to consider in interacting with the Taliban and Afghan civil society on women’s rights.

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4 Recent indications suggest, strongly, that the new Taliban rule resonates rather closely with their 1996-2001 rule. Examples include the (re)establishment of the Ministry of Vice and Virtue (replacing the Ministry of Women’s Affairs), guidance on how men should wear their beards, limits on how far women could travel without a male chaperon, face covering by women, and strict rules of segregation between adolescent boys and girls in education. See, for example, Nikkei Asia (January 10, 2022), Taliban prepares to segregate sexes in Afghan universities, available from: https://asia.nikkei.com/Editor-s-Picks/Interview/Taliban-prepares-to-segregate-sexes-in-Afghan-universities
CONTEXTUALIZING RULE OF LAW IN AFGHANISTAN

There is recognition among development scholars and policy analysts that financial, human, and natural features of a geographic area have a major bearing on how the rule of law, formally and in practice, emerges in a given context. Collectively, these features have been referred to as “physical and material conditions.” Poor or underdeveloped physical and material conditions produce economic hardship and poverty with a constraining effect on what laws and related policies are made, how they are made, and the manner in which they are implemented. As such, these conditions have significant implications for understanding how the rule of law emerges and the politics of its implementation.

Since its emergence as a country in 1747, Afghanistan has never been fully, uniformly or effectively ruled by a centralized state authority, particularly in the more remote areas and away from the main population centers. The country is among the poorest in the world with an estimated 66 percent of employment being concentrated in mostly subsistence farming or farm-based activities. The challenges of governing a large, poor, and ethnically diverse population are compounded by the widely shared belief among local communities that national state laws and their enforcement are outside impositions and, as such, to be avoided.

Traditional codes of conduct, such as Pashtunwali, are used to resolve conflicts within and between communities. State-initiated formal justice system is used as a last resort and only when traditional conflict resolution systems fail to resolve a conflict to the satisfaction of all parties involved. This arms-length attitude toward the formal justice system has little to do with ideology or religion. Rather, it is the outcome of a historically weak national state combined with the prevalence of strong customary rules that have governed the many isolated communities around the country for generations. As a result, vast and sparsely populated areas of Afghanistan have functioned largely outside of formal government rules and institutions even when these institutions, such as formal justice, have been present.

The 20th Century saw successive governments collapse in Afghanistan as a result of government-initiated efforts to introduce fundamental reform and effect social change. Resistance to King Amanullah’s reforms to modernize the Afghan legal system in the 1920s with new codes on the status of women and introduction of identity cards and family law resulted in his government’s downfall in 1929 and forced him into exile. The post-1978, Soviet-backed government’s decrees for radical land reform, equality for women, and attempts to abolish existing rural debts and different forms of marriage payments provoked a backlash against the government followed by the conflict that compelled the Soviet Union to send its army to prevent the government’s collapse. Similarly, when the Taliban imposed their strict, Deobandi (see below), interpretation of Islamic law after seizing power in 1996, they provoked antagonism by attempting to introduce a set of values that were as far from the Afghan mainstream as those championed by Amanullah and the Soviet-backed government. The main driver of the resistance against these central state measures for legal reform appears to have been opposition to state-imposed rule, rather than the ideology driving state-initiated reforms.

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10 Ibid.
Efforts by international experts during the 2001-2021 period to design and implement a formal legal system throughout Afghanistan were as uneven and ineffective as previous efforts since the 1920s to formalize the justice system. The added complication of the 2001-2021 interventions was the almost systemic subversion of justice within the formal legal system because of the interference by the powerful, impunity, and corruption at all levels.

SHARI’A AND PASHTUNWALI INTERFACE

The review in this section is intended to provide a general description of Shari’a and Pashtunwali, and where the two approaches might converge or diverge on the places and rights of women in society. As such, the information provided is limited in scope and depth, focusing only on the main – documented – tenets of the two approaches. While there is a wealth of documented knowledge on Shari’a from different perspectives, there is comparatively little scholarship on Pashtunwali.

Shari’a

Shari’a, meaning “path” in Arabic, governs all aspects of daily routines, familial and religious obligations, and financial dealings of Muslims. Shari’a developed several hundred years after the Prophet Mohammed’s death in 632 AD and evolved as Islam spread to North Africa and China. Differences of opinion on who should have succeeded the Prophet after his death resulted in the emergence of Shiites who supported Ali as the rightful successor of the Prophet as opposed to the overwhelming majority of the Muslims, the Sunnis, who believed Abu Bakr was the rightful successor. Sunnis make up between 85-90 percent of all Muslims around the world. Between 80 and 89 percent of Afghans are Sunni Muslims.

All Muslims are expected to follow the Sunna, or the way of life of the Prophet Mohammad. Under Sunnism, there are four main schools of thought: Hanbali, Malik, Shafi'i, and Hanafi. These schools differ according to the degree to which they draw on the Quran, Sunna (the Prophet’s sayings), Hadith (narrations attributed to the companions of the Prophet), and Ijma, the consensus of the religious community on interpretations based on these sources. While Shiites and Sunnis both reference the Quran for the bulk of their versions of Shari’a, there are differences between Shiites and Sunnis regarding the interpretation of Hadith since the Prophet’s rightful descendants and companions are viewed differently by Sunnis and Shiites.

Of note among these schools and in relation to what has come to be known as “jihadi Islam” is the Salafi school which bases itself on the Hanbali school but adheres mostly to the values and approaches practiced by the first three generations of Muslims after the passing of the Prophet. These values and approaches are revered as the purest form of Islam. The jihadists, advocating armed struggle to restore an Islamic order, are the smallest tendency within Salafism but have attracted the most attention due to their many violent activities in different countries.

Shari’a evolved particularly during the 8th and 9th Centuries AD, when Islamic jurisprudence (fiqh) developed and flourished as an elaborate science. The underlying belief of fiqh practitioners was that the primary sources of Shari’a, the Quran and Sunna, “were the roots of Shari’a that needed to be tended carefully in

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11 Abu Bakr did become the first successor of the Prophet while Ali became the fourth successor.
14 In Saudi Arabia, the dominant Wahabis are very closely aligned with Salafi principles.
order to grow into a plant of well-developed rules.”16 This tending by qualified religious scholars (mu'tahid) was called *ijtihad*, defined as “the maximum effort expended by the jurist to master and apply the principles and rules of *fiqh* for the purpose of discovering God’s law.”17

By 900 AD, after two centuries of elaboration, the sentiment among the practitioners of *ijtihad* was that all essential questions about the implications of the Quran and Sunna had been settled and that from then on, every Muslim must follow the rules of Shari’a.18 An issue not specifically addressed in Shari’a may be referred to a senior religious figure with authority to issue a *fatwa*, an edict or a ruling, on a specific issue. However, determinations on what is specifically addressed is highly subjective and permits scope for varied interpretations and instrumentalizations.

Fatwas are issued on everyday issues such as divorce, other family-related issues, or the amount of tax to be paid. Fatwas are also issued in relation to legal and political matters.19 Examples of political fatwas in relation to Afghanistan include one issued by the Chief of Afghanistan’s Ulema Council in response to a deadly attack on Kabul Military Hospital in March 2017 to dismiss the Jihad Fatwa of the Taliban in Afghanistan as incorrect, one in June 2018 stating that “the ongoing war in Afghanistan is forbidden under the Islamic law”, one by the grand Mufti of Egypt in May 2021 on peace and security (at the request of the Afghan government), and one issued by the Taliban in Herat soon after they took over the country on August 16, 2021 to ban co-education.20

The application of Shari’a to crimes committed varies from state to state in the Islamic world with crimes being divided into the three main categories of *Tazir* (the least serious crimes, punishable at the discretion of a judge), *Qisas* (reciprocal and retaliatory punishment of the offender by the victim), and *Hudud* (the most serious crime, committed against God).21

Shari’a is viewed by Muslims the world over as “God’s law” and thus being above all human-made edicts and rules. Shari’a’s broad principles of justice, fairness, and mercy are interpreted by senior religious figures to issue specific legal rulings and moral prescriptions. However, Shari’a is primarily a source of religious guidance and behavior for individuals, e.g., praying, fasting, and charity, rather than a coherent set of laws for governments to adopt and implement.22 Under Shari’a, men and women are “moral equals in God’s eyes” but with different and complementary rights and obligations.23

Arguably, fatwas based on consensus among religious leaders and scholars and government officials could be used to legitimate measures toward protecting, rather than undermining, human rights and promoting equal or more rights for women which are not contrary to the teachings of the Quran.

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16 ibid., page 337.
18 ibid.
**Pashtunwali**

Pashtunwali, translated as the “way of the Pashtun”, is followed by ethnic Pashtun communities concentrated in the mountainous region between Afghanistan and Pakistan, narrowing and spreading to the west to the border with Iran. An estimated forty million Pashtuns occupy a vast territory that has never been completely integrated into either Pakistan or Afghanistan. There are also a number of isolated pockets of Pashtun communities that spread around northern Afghanistan (Figure 1).

The estimate for Pashtuns as a percentage of the total population of Afghanistan varies widely, depending on the source. The range is between 38-52 percent or higher. However, there has not been a country-wide census in Afghanistan since 1979 and all percentages attributed to Pashtuns and other ethnic groups are merely estimates and subject to various forms of bias and distortion. What can be said with certainty is that Pashtuns are the largest ethnic group in Afghanistan though perhaps not the absolute majority as sometimes claimed.

**Figure 1: Pashtun Communities**

![Pashtun Communities Map](source: Benson and Siddiqui (2014))

Pashtunwali has a fluid normative content and does not provide detailed rules for every contingency. It is best characterized as customary law, a code of behavior to maintain community and individual honor rather than a formal legal code as understood in modern (Western) jurisprudence. Pashtunwali provides broad

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24 In addition to Pashtunwali, other tribal codes in Afghanistan include the customary laws of the Central Region (Hazarajat), the Nuristan Region, and the Northern Regions. For additional details, see: The International Legal Foundation (2004), The Customary Laws of Afghanistan, available from: https://www.usip.org/sites/default/files/file/ilf_customary_law_afghanistan.pdf

25 The most widely cited percentage is 42. See, for example: Reliefweb (2011), Afghan Ethnic Groups – An Investigation, available from: https://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation

outlines on what constitutes a conflict and what can be done to resolve a conflict and maintain peace within the community.

Pashtunwali is among the world’s larger customary conflict resolution systems in terms of the number of people subject to it. Pashtunwali’s principles and conflict resolution mechanisms are designed to minimize the escalation of private violence and hence preserve social peace in what appears to be a resilient system of self-governance and autonomy, particularly in areas where the state’s reach is weak or non-existent. All problems and conflicts, ranging from adultery to disputes over dowry, land and access to water, or where to build a new school or mosque can be brought before ajiga. Invoking outsiders (those outside the community) is avoided as much as possible and only as a last resort.

Pashtunwali’s principles and rules have maintained social order in the historically decentralized and autonomous Pashtun-dominated areas of Afghanistan. Pashtunwali has provided the Pashtun communities with stability, independence, and defense against external elements which consist of national governments as well as various foreign armies: the British, the Soviet Union, and more recently, the United States and NATO.

Pashtunwali is a system of values and rules of behavior, transmitted orally over generations. Unlike Shari’a, which is focused more on the individual, Pashtunwali applies to both the individual and social groups. The emphasis is on personal and community honor and shame, both pertaining to zan, zar, and zamin (woman, gold, and land).

Pashtunwali has been carried over from generation to generation mostly orally although there have been attempts at documenting it. Pashtunwali relies on mediation and arbitration to resolve problems from within the community and by reaching consensus through ajirga deliberations. While the ajirga itself generally lacks the power of coercive enforcement, a party that fails to abide by the ruling of the ajirga risks being shunned by the community members. In some cases where assets are submitted by a party as guarantee that the party abides by the ajirga ruling, going against the ajirga’s ruling results in the loss of those assets. The key tenets of Pashtunwali are adhered to in all Pashtun communities though the specifics in application vary widely and often idiosyncratically.

Central to Pashtunwali is its systemic refusal to accept government or other external authority. Other key tenets such as Baad, Badal, Thela, Melamastya, Nanawatey and Panah provide the guidelines for collective decision making, dispute resolution, codes of behavior in community interaction, and other collective obligations (Table 1).

Protecting the honor of oneself and one’s community, being brave and not shying away from fighting, respecting and protecting seniors, making decisions based on consultation, being sincere, generous and hospitable, and maintaining pride and zeal are the ideal characteristics of a Pashtun (man).

Giving women in marriage in Baad as part of a settlement between the feuding parties is justified in Pashtunwali because it binds together estranged groups through marriage ties, a practice, incidentally, employed widely by the warring aristocracies of the Europe of old to create social cohesion and peace.

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28 A jirga is an assembly formed of community leaders to resolve community conflicts or make community decisions based on consensus.
30 Benson and Siddiqui (2014).
33 Ibid.
34 See, for example, Benson and Siddiqui (2014) but also Rzehak (2011) and Landinfo (2011), Afghanistan: Blood feuds, traditional law (pashtunwali) and traditional conflict resolution (Oslo: Landinfo), available from: www.landinfo.no
TABLE 1 – KEY TENETS OF PASHTUNWALI

<table>
<thead>
<tr>
<th>TENET</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Baaad</strong></td>
<td>Giving of a woman as bride to another family as compensation for an offence committed by her family.</td>
</tr>
</tbody>
</table>
| **Badal** | There are two forms:  
- First is to give up a female family member to another family against whom the first family has committed an offence. This is based on the right of the offended family to exact proportional retribution. This rule can apply to individuals, families, sub-tribal groups, and whole tribes.  
- Second is an arrangement where one family gives a son or daughter for marriage to a second family and, in return, the second family sends one of its daughters or sons for marriage to someone in the first family. This practice is not limited to Pashtun communities and is typically carried out to reduce wedding costs. |
| **Thega** | A temporary truce declared between the feuding parties, at the request of one of the parties or initiated by tribal elders, enforced through Nagha – a heavy fine to be incurred by the party that breaks the truce. |
| **Melamastya** | Respect, care, and hospitality for any visitor from the same or another tribe or a stranger. |
| **Nanawatey** | A perpetrator of a crime voluntary turns himself to the family against whom the crime was committed to seek compassion and plea for forgiveness from the family against whom the crime has been committed. |
| **Panah** | Right to seek refuge in someone’s home as a means of protection against aggressors. |

Source: Adapted from Benson and Siddiqui (2014: 112)

Pashtunwali has also been summarized as being based on the following principles and rules:

- Honor is paramount and the honor of women is to be protected.
- Separation of sexes among the unrelated must be rigidly maintained.
- A person against whom a wrong has been committed has the right to compensation.
- Revenge to right a wrong is fully permissible and even encouraged.
- Apologies accompanied by compensation are to be accepted.
- Guests are to be sheltered.
- The jirga is to be obeyed.35

These broad principles and rules are intended to provide a framework for social behavior and conflict resolution. Their application, however, differs in different Pashtun communities and between social classes within Pashtun communities.36

While a formal legal system is designed to articulate norms for future behavior, Pashtunwali is concerned primarily with dispute resolution and not norm generation.37 The fundamental difference between Shari’a and Pashtunwali is one of focus. Shari’a focuses on individual rights and deeds whereas Pashtunwali is concerned primarily with group or community rights to which individual rights are subjugated.38

**Honor and Honorable Behavior in Shari’a and Pashtunwali: Implications for Women**

A key term shared by Shari’a and Pashtunwali is “honor” and “honorable behavior”, both with a heavy emphasis on how women should behave in family and society and how they should be protected by men.

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36 Karak (2005).
SHARI‘A AND PASHTUNWALI

(from men). More generally, behaving honorably means that community members refrain from invading other’s rights and property and from injuring one another. Violations are punishable by “appropriate retribution: an eye for an eye, a tooth for a tooth, a life for a life.”39 Under Pashtunwali, not seeking retaliation is deemed a sign of moral weakness (lack of Chayrat – see Table 2) of not just the victim but also of the kin group of the victim.40 This is in contrast to Shari‘a which views forgiveness as a positive act.

**Table 2: Multiple Manifestations of Honor**

<table>
<thead>
<tr>
<th><strong>TERM</strong></th>
<th><strong>MEANING</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Nāmūs</td>
<td>Honor and respectability of a kinship group associated with the behavior of the women in the group and that of men outside the kinship group toward the women.</td>
</tr>
<tr>
<td>Chayrat</td>
<td>Men’s duty to restore honor and respect in defense of Nāmūs (see above) by whatever means necessary. Chayrat is sometimes enforced by women also.</td>
</tr>
<tr>
<td>Aberu</td>
<td>Reputation of one’s respectability.</td>
</tr>
<tr>
<td>Nang</td>
<td>Lack of Aberu, resulting in shame</td>
</tr>
<tr>
<td>Ezzat</td>
<td>The male equivalent of Nāmūs, embodied in the behavior of men and how it reflects on his kin.</td>
</tr>
<tr>
<td>Effat</td>
<td>Chastity</td>
</tr>
<tr>
<td>Bekārat</td>
<td>Purity / Virginity</td>
</tr>
<tr>
<td>Sharaf</td>
<td>Pride / Respect</td>
</tr>
</tbody>
</table>

Source: Based on Martin (2021)

“Honor” is used in English to capture a wide range of notions about honor with roots in Arabic, Persian, and Pashto languages. These notions allude to propriety, decency, shame, respectability, protecting one’s own and one’s family’s standing and reputation, and modesty to the point of being asexual and invisible (Table 2).

Central to the notions about honor is “an ideal of male hegemony manifested through men’s ability to control women’s sexuality” with the implication that women are the weakest link in a family’s efforts to protect its good reputation and maintain honor.41 For women, Nāmūs consists of the manifestations of Effat (chastity) preserved by women being veiled and the physical distancing of men and women to prevent sexual desire, and Bekārat, associated with women’s obligation to keep virginity intact until marriage. The behavior of women in a kinship group is seen as reflecting on the reputation and prestige of the men in that group. These conceptions of honor govern the conditions under which social relations are maintained and delineate the (minimal) place of women in public spaces.42

At a personal level and from a male perspective, keeping the honor in relation to women means strict adherence by women to the codes of honorable behavior as defined by the patriarchal family and the male dominated community. Seclusion and the veil are two main instruments to control women and ensure that their behavior does not disgrace or dishonor their families and themselves. The logic appears to be that if women are as invisible as possible to the eyes of other people, they cannot disgrace themselves in the eyes of other people.43 This thinking has been reinforced and made even more extreme by the decades-long intermittent armed conflict which has created ongoing threats, fears, and uncertainty with women being among the most vulnerable targets.

40 Ibid. (page 7).
41 Ibid.
42 Based on Martin (2021).
The persistent conflict and uncertainty have reinforced, if not somewhat radicalized, conceptions of Namus, Aberu, and Effat as the means to maintain family and community honor. The extent to which men limit women’s presence and behavior in public spaces in Afghanistan has, therefore, been a function of the mix between customary (Pashtunwali and other codes) and religious (Islamic) traditions on the one hand and external conditions such as invasions and armed conflicts on the other.\(^44\)

In practice, a major source of tension and contention has been the arbitrary manner in which codes of honorable behavior are defined and how these codes vary from household to household and community to community.\(^45\) From time to time during the last few decades, these tensions have been exacerbated by attempts external to the communities to introduce women’s rights comparable or equal to men’s.\(^46\)

**Taliban and Shari’a**

When the Taliban took power in Afghanistan in 1996, they implemented an interpretation of Shari’a and Pashtunwali that forced men to grow beards and women to fully cover themselves and minimize their presence in public spaces. Girls’ schools were closed, male doctors were prevented from attending to female patients, and women were requested to have a male chaperon (mahram) to accompany them outside the home. Listening to music and watching TV or movies were also banned. Those that failed to comply with these strict rules were punished severely.\(^47\) Punishment ranged from receiving whip lashes, stoning (mainly for adultery), and hanging (for serious crimes). Gangs of rank-and-file Taliban roamed the streets of Kabul to whip women who dressed immodestly and men whose beards were shaved or trimmed.

The Taliban’s governing style and actions during the 1996-2001 have their roots in the evolutionary regression of political Islam.

There are three main groups or tendencies within the Salafi branch of Islam which emerged out of the orthodox Hanbali school.\(^48\) The largest is the introverted purists or quietists who do not engage in politics, followed by the second largest, the activists, who are active in politics. The third tendency, the jihadists, advocates armed struggle to restore the early Islamic movement and has gained significant ideological sympathy in Saudi Arabia and among the Taliban during its first rule during 1996-2001 in Afghanistan.\(^49\)

Before the Taliban’s first rule (1996-2001), references to Islam and Shari’a in Afghanistan’s lawmaking process since King Amanullah had been mostly to the mainstream Hanafi school.\(^50\) The political Islamization process in Afghanistan was set in motion in the late 1970s with significant support from a coalition of anti-Soviet countries headed by the United States with Saudi Arabia, Pakistan, and United Arab Emirates as main contributors among others. In their formative years in Pakistan, the Taliban received religious teaching in the many madrasas set up by the Pakistani government with support from its anti-Soviet allies.\(^51\) The Islamic curriculum of the madrasas was based on the teaching contents used at the Darul Uloom Deoband, founded in Deoband near Delhi in 1867 as a center for Sunni education.\(^52\)

The Deobandi movement is Islamic revivalist and adheres to the Hanafi school but it is also inspired by the Salafi school. The Deobandi school followers are Jihadist in that they seek to recover Muslim lands under

\(^{44}\) Martin (2011).


\(^{48}\) Ibid.


\(^{50}\) Fitz Gibbons, K. (2021: 14-15), Pashtunwali: Pashtun Traditional Tribal Law in Afghanistan, Cultural Property News


occupation – or usurp Muslim regimes regarded as traitorous – and they are Salafist in that they demand a return to a strict Islam, untainted by local customs and culture.\(^{53}\)

During their formative years in 1994-1996, the Taliban recruited mainly among Deobandi-styled madrassas in Pakistan. These madrassas were run by Jamiat-i-Ulama-i-Islam and the students were particularly poor and generally war orphans. In the tradition of reformist Sunni movements in the region, the Taliban sought to purify society from non-Islamic influences. To do so, they adopted “a rigid puritanical version of Islam [that] views the outside world and modernity with hostility.”\(^{64}\)

When in power during 1996-2001, the Taliban emphasized the individual dimension of faith as the basis for rebuilding the umma, the view that Muslims must first return to the true faith before it becomes possible to issue any call to jihad.\(^{55}\) To realize this goal, an Islamic state was established to rule by edict. These edicts controlled most aspects of life, from how women dressed to the length of a man’s beard to what was deemed as appropriate family activities. The religious edicts were enforced by the Saudi inspired “Department for the Promotion of Virtue and the Elimination of Vice” – the raison d’être of the Taliban.\(^{56}\) The Department was the most cohesive organization in the Taliban’s otherwise inchoate structure, institutionalizing Shari’a-based law making. Over 30,000 Taliban were tasked with enforcing the observance of religious service, dress codes, and the ban on all forms of entertainment. Public punishment for breaking these rules was a cornerstone of the administration under the Taliban’s Shari’a courts during their first rule.\(^{57}\)

The Taliban’s approach to punishment is in conflict with the restorative approach used by most Pashtun tribal elders who seek to restore community harmony where social bonds have been ruptured by the actions of one or both parties. The Taliban’s repressive gender policy during 1996-2001, however, has been attributed to, or at the very least is said to have roots in, Pashtunwali. The severe rules on seclusion of women are more closely aligned with rural Pashtun life than interpretations of Shari’a.\(^{58}\)

The link between the Taliban’s version of Islam and Darul Uloom Deoband is historical rather than current or actual.\(^{59}\) The Pakistani madrassas attended by the Taliban augmented some of the central components of the Deobandi approach with input from the jihadist Mujahedin teachers who were strongly influenced by Salafist / Wahhabist principles. Many of the Taliban attending these madrassas did not fully qualify or graduate in their studies. Despite the Taliban identifying with the teachings of the Deobandi school, their conflict tactics which included indiscriminate bombings in pursuit of political objectives led to the denunciation of the Taliban by the leaders of the Deobandi School.\(^{60}\) Of concern in the current calls for a return to Shari’a-based law making are the extreme fundamentalisms expressed under “political Islam” and an assortment of usually younger and empowered jihadis claiming allegiance to Shari’a.

Typically, new interpretations for legal purposes under Shari’a would be carried out by senior, qualified, religious figures and documented in manuals as prescriptions and proscriptions. This openness to interpretation has created a vulnerability to misinterpretation or biased interpretation for political or prejudicial purposes by “a new generation of self-made scholars who have been labeled ‘lumpen intelligentsia’.”\(^{61}\) This generation has been largely responsible for uninformed and arbitrary references to


\(^{56}\) Ibid, 2-3


\(^{59}\) The Print (2021), We’re Indians first, Taliban view of Islam not ours, say Deoband Islamic scholars, locals. Available from: https://theprint.in/india/were-indians-first-taliban-view-of-islam-not-ours-say-deoband-islamic-scholars-locals/720283/


Shari’a and “traditional” Afghan values without specification but in direct counter-position to Western, secular ways of thinking and being.

The Afghan Taliban have been a subject of journalistic and academic outpourings reiterating misogynistic aspects of their ideology attached to their Salafi, Wahhabi or Deobandi postulations, depending on the writer.\(^62\) Arbitrary or self-serving positions, pronouncements, and actions by the Taliban government of 1996-2001 and numerous others have been attributed to Shari’a rules and principles despite protestations by the more educated, mainstream Islamic scholars. Objections to how the Shari’a as implemented contradicts the historical Shari’a based on precedence are not raised because “few will dare to oppose the regime [that] claims to hold on to the true Shari’a. Hence, Shari’a can be abused or misrepresented with impunity.”\(^63\)

The legal system in Afghanistan has historically been composed of three competing parts: the state legal codes, Islamic religious law (based on an Hanafi interpretation of Shari’a), and local customary law.\(^64\) The first iteration of the justice system under the Taliban’s first rule was based on a hybrid of Pashtunwali principles and Salafi interpretations of Shari’a.\(^65\) Government officials appointed by the Taliban were mostly poorly educated clerics rather than Islamic scholars. As a result, there was minimal institutional capacity to develop and administer Shari’a-based law.\(^66\) The lack of institutional capacity combined with the rejection of a secularized state model under the Taliban’s first rule “marked the high water mark of clerical influence [while] it proved a low ebb for Islamic jurisprudence.”

More generally, the lack of religious knowledge and ignorance of “street Islamists” – even when their demand is for a just social and legal system based on Shari’a – combined with a tendency toward authoritarianism disallows attempts to discuss, debate, ask questions, or express disagreements about the injustice of government-imposed rules. Such attempts have been typically met with accusations of being a kafer (non-believer) or daring to question the legitimacy of the (undefined) divine. The mob that brutally murdered Farkhunda – the young Afghan girl who called out a fraudulent mullah who in turn falsely accused her of burning the Quran – in broad daylight in 2015 in front of a mosque in Kabul was very much a manifestation of the actions in the last three or so decades by the lumpen intelligentsia and street Islamists.\(^67\)

The prevalence of street Islamists within the ranks of the jihadist Taliban and the lack of knowledge of both Pashtunwali and Shari’a among the decision making officials make it difficult to attribute the actions of the Taliban in practice entirely to Pashtunwali or Shari’a. At the same time, direct conflicts between Pashtunwali and Shari’a remain unresolved. Past practices in Pashtun communities have demonstrated that when archaic notions of honor and rights regarding women based on Pashtunwali or other traditional codes have been challenged using Islamic discourse, the tendency has been to revert to “tradition” which typically contains elements of both Pashtunwali and Shari’a.\(^68\) That said, on the notion of honor in relation to women and their place in society, there are fewer contradictions between Shari’a and Pashtunwali.

**Women’s Rights Under Pashtunwali and Shari’a**

Historians of Afghanistan have made references to “Pashtun’s Shari’a” to capture the hybrid codes of social regulation of the country’s Pashtun-dominated areas that seem misaligned with certain Shari’a provisions.\(^69\) The extreme and severe position of the Taliban on the seclusion of women from public life is “more strongly

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\(^{63}\) Ibid., 53


\(^{66}\) Barfield (2008: 4).


\(^{69}\) It is worth noting that hybrid moral codes, containing pre-Islamic values, are forbidden in Salafi Islam.
rooted in rural Pashtun life than interpretations of religious law.” Research conducted in Khost province cites Pashtun men defending this localized, hybrid version of Shari’ah by stating that “what is in the Quran is not in Khost – and what is in Khost is not in the Quran.”

A key limitation in women’s rights in Islamic theology and Pashtunwali is that no distinction is made between rape and consensual sex. In practice, this lack of distinction results in the rape victim being held responsible for the crime, carrying the burden of proof, and being punished:

[Under Shari’ah] a woman who has been raped must provide four male witnesses to the rape to substantiate her claim. In the absence of these, she will be liable for adultery or fornication, depending on her marriage status, as she has already admitted to a sexual encounter. This reading of sexual assault is directly tethered to a purported misreading of a Qur’anic verse, and feminists have little leverage to argue for an alternative interpretation. Pukhtunwali does speak of killings as a result of voluntary or involuntary sexual encounters. The frameworks, Islamic and Pukhtun, provided to address concerns of women continue to limit the questions that can be raised about sexual rights. Instead of constraining the domain of Shari’ ah, Pukhtunwali, in subtle ways, in fact corroborates certain Islamic notions of sexual fidelity, conjugal unions, and marital configurations.

Divorce is almost impossible in Pashtunwali while it is relatively easy to obtain under Shari’ah. Similarly, women have no rights to property and inheritance under Pashtunwali but have some rights under Shari’ah.

In practice, however, daughters who are entitled under Shari’ah to half a brother’s share of the inheritance are expected to give their shares to their brothers. If a daughter has no brothers, the inheritance is given to her father’s brothers or other male relatives who, in return, must maintain the daughter until she is married.

The multiplicity of terms, and impreciseness in descriptions, of what constitutes honor and what is permissible for women in society are used as instruments of enforcing patriarchal social relations. While there is broad agreement that there are major differences between Pashtunwali and Shari’ah regarding women’s rights, in practice, there has been a tendency to lean toward Pashtunwali and other forms of traditional justice mechanisms – particularly regarding women’s rights.

The restrictions imposed on women by the Taliban, actually or allegedly, under the auspices of Shari’ah and customary law mechanisms including Pashtunwali, are in contravention of the provisions in international conventions on gender equality and human rights. The offering of women as compensation for offences committed by their families (Baad) or as one of the two types of Badal (Table 1) are among the most notorious customs to which women are subjected. The treatment of women as property to be traded has been compared to the conditions of slaves in the Confederate states in Southern United States before the American Civil War.

At the same time, women play quite significant roles as “guardians of the standards of Pashtunwali” by ensuring that the principles of Pashtunwali are followed by all. Women are also sometimes tasked with instigating the cessation of a blood feud. At the village level female village leaders witness women’s ceremonies, mobilize women to practice religious festivals, prepare the female dead for burial, perform services for deceased women, arrange marriages for their own families, and arbitrate conflicts for men and

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70 Barfield (2008: 13).
72 Pukhtunwali and Pashtunwali refer to the same system of rules. Pukhtunwali is used in mostly eastern Afghanistan while Pashtunwali is used mostly in southern Afghanistan.
73 Ahsan (2015: 57).
74 TLO (2013: 8). Where Do We Go from Here? Towards Improved Structures for Dispute Resolution in Afghanistan (Kabul: TLO) and Ahsan (2015).
women. At the family level women are in charge of the internal workings of the household including the delegation of various household duties and resolving conflicts among the women within the household.\textsuperscript{78}

Pashtun women have played remarkable roles in the history of Afghanistan as a nation and continue to have significant roles in their communities and families.\textsuperscript{79} Oft-used examples are Nazoo Anaa, the mother of the Afghan nationalist Mir Wais Hotaki, and Zarghona Anaa, the mother of Ahmed Shah Durani. Nazoo Anaa was highly respected within her community. Her poems promoted the virtues of keeping to Pashtunwali code while calling for Pashtunwali to become the law of the confederacy of the Pashtun tribes in their efforts to confront the Persian rulers. With the deaths of Mir Wais Hotaki and Nazoo Anaa, another woman, Zarghona Anaa took the helm in the Afghan nationalist cause. Zarghona Anaa’s son, Ahmed Shah Durani, eventually united the Pashtun tribes and formed the Afghan state. Nazoo Anaa and Zarghona Anaa, and their sons, Mir Wais Hotaki and Ahmed Shah Durani, were all in favor of Pashtunwali as the main institution of governance.\textsuperscript{80}

**WHAT TO EXPECT UNDER TALIBAN’S SECOND RULE**

To gain additional insights into what to expect from the Taliban in relation to their treatment of women, interviews were conducted with key informants with expertise on Shari’a, Pashtunwali, and the politics of the Taliban.

Two main differences were identified between Shari’a and customary law including Pashtunwali. First, unlike Pashtunwali and other forms of customary law which are devised by humans, Shari’a principles are referred to as divine and therefore unquestionable by humans. As such, any ruling based on human traditions is (or should be) superseded by rulings based on Shari’a. However, problems arise when misinformed interpretations of Shari’a are used to make laws. Second, customary law rules including Pashtunwali have been devised to govern whole communities, with rights of individuals being subordinated to maintaining peace and stability within the community. Under Pashtunwali, those whose actions undermine peace and stability are severely punished through measures that include compensatory acts targeting the offender’s family members as collective punishment. In contrast, Shari’a focuses on the individual and is concerned with the degree to which actions of individuals adhere to the (divine) principles of Shari’a.

Another major thread in the discussions during the interviews was the question of whether and how to incorporate customary law mechanisms, particularly Pashtunwali, in a formal justice system guided by the Shari’a principles. Given the centrality of this question, the key informants were asked for their views on how they envisaged law making and changes to the legal system in Afghanistan under the latest Taliban rule.

There was broad consensus among the key informants that the most likely and practical form for Afghanistan’s legal system is a hybrid system that fully adheres to Shari’a but with provisions based on Pashtunwali and local customs. One interviewee argued that “...a good law should be compatible with the social norms and religious commands.”\textsuperscript{81} A number of major caveats needed to be considered, however.

The first caveat is that Pashtunwali, while widely recognized, accepted, and practiced in Pashtun communities, is not accepted or practiced in non-Pashtun communities. Other ethnic groups tend to have

\textsuperscript{78} Kakar (2005: 8-9).
\textsuperscript{79} Ibid.
\textsuperscript{81} K1-F-GO-1, interviewed on February 5, 2022.
their own, sometimes different from Pashtunwali, forms of customary justice. If customs and traditions are to be incorporated into the formal legal system, customary justice rules of non-Pashtun communities should also be accommodated as long as these rules do not undermine Shari'a principles.

Second, in their law making, “... the Taliban are likely to draw on Pashtunwali, explicitly and implicitly, because they are overwhelmingly Pashtun and, in addition, come mostly from rural parts of Afghanistan where anti-women’s rights sentiments are very strong.” The severe rules on seclusion of women are more closely aligned with rural Pashtun life than interpretations of Shari’a. Given the tendency to exclude women, efforts must be made to ensure that property and inheritance rights are legislated using Shari’a principles rather than the customary tradition. Property and inheritance rights can facilitate independence for women and are perfectly in line with the provisions of Shari’a. These rights also “empower women to have access to other rights.” However, objections to how the Shari’a as implemented contradicts the historical Shari’a based on precedence will be difficult to raise because of the authoritarian mode of governance likely to be established by the Taliban.

Third, customary law proceedings need to be documented to allow for their formal incorporation into the formal legal system and to ensure that legal decisions follow precedence rather than the whims of individual judges. Documentation would also significantly increase transparency and accountability of the legal system, creating a foundation for further reform. As one key informant put it,

*The major difference between Shari’a and customary law is that [deliberations on] Shari’a have been documented. A lot of research was done in the 8th and 9th Centuries and ... so many aspects of Shari’a have been recorded. Pashtunwali is much less documented and there is great variation of its practice among different Pashtun communities.*

Fourth, there needs to be a clear division of tasks between the formal justice mechanism and the customary law mechanisms. Criminal cases such as rape and murder should only be handled by formal legal mechanisms while local conflicts over resources and other non-criminal issues could be handled customary legal mechanisms. In essence, customary legal mechanisms would serve as local conflict resolution mechanisms rather than criminal courts. Also, a clear division of roles between the formal and customary law systems would prevent opportunism by those who might choose one or the other system depending on the type of punishment regarding the same offence.

Fifth, conscientious and explicit efforts will need to be made by the national government to educate local and national justice officials on formal laws and standardized customary practices to prevent street jihadism by ill-informed or ill-intending justice officials whose rulings can be “arbitrary and not fully based on Shari’a or Pashtunwali.” Education or re-education of justice officials would need to be accompanied with an oversight system to ensure conformance, however.

Sixth, instances of street jihadism in the justice system would need to be reduced by applying strict criteria in appointing judges and those who draft laws. Such criteria would include literacy, formal training in Shari’a, formal training on international conventions, and proven knowledge of local customary practices. These steps would prevent the re-emergence of a justice system similar to the one adopted by the Taliban during 1996-2001, which “was neither based on Shari’a nor on Pashtunwali but some very narrow interpretation by the officials in charge at the time.”

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83 KI-M-AC-2, interviewed on February 14, 2022.
84 KI-M-AC-2.
85 KI-M-CS-1, interviewed on February 3, 2022.
86 KI-M-AC-1, interviewed on February 3, 2022.
87 KI-M-AC-3.
88 KI-F-CS-2, interviewed on February 18, 2022.
89 KI-M-AC-2, interviewed on February 14, 2022.
90 KI-M-CS-3, interviewed on February 21, 2022.
Seventh, a consensus needs to be reached on which elements from, and which version of, Shari’a to adopt for Afghanistan’s formal legal system given the wide range of practices of Shari’a throughout the Muslim world.

Eighth, in drawing on Pashtunwali and other customary law provisions to draft laws, the tendency could range between selecting the most just and egalitarian rules and the most austere rules. The egalitarian or austere tendency in selection of the rules from customary law and Shari’a provisions will depend on who does the selection and the degree to which law making includes multiple stakeholders and particularly those most affected by the laws.91

Attention was also drawn by some of the key informants to the gaps that are likely to emerge between formal laws and policies and their implementation. Some argued that making laws or signing international conventions were the relatively easier part of establishing the rule of law. The more difficult part is the implementation of the laws. As one of the interviewees observed,

I think we have over signed (international conventions) beyond our capacity to deliver. The Afghan government of 2001-2021 was not able to meet the requirements of the protocols signed and fell short on meeting the various requirements. Rather than signing any new protocols, we should concentrate on establishing mechanisms for implementing the protocols already signed.92

A defining feature of an established rule of law is the degree to which rights according to the law are consistent with rights in practice. To illustrate, according to Shari’a, women have the right to ask for divorce and can get divorced if the husband consents. However, this limited right is rarely exercised by women, particularly the poorer and the less educated and those who fear the consequences of material insecurity and social stigma.

The same reluctance applies to practicing the right to complain about domestic violence or the right to inheritance and property ownership. While these rights are provisioned for women under Shari’a, most women choose, or are forced, not to exercise them in order to maintain domestic peace and harmony.

Some have suggested that, given Afghanistan’s ethnic and religious diversity, Shari’a could serve as a unifying foundation for law making since the vast majority of Afghans see themselves as Muslim first. The most practical approach to law making is, therefore, to start with Shari’a and complement it with elements from the different customary systems as long as these elements do not contradict Shari’a rules, particularly as they pertain to women’s rights.93

CONCLUSION

As social institutions, Shari’a and Pashtunwali and other forms of customary law are designed to bring order to social relations and interactions. The starting point for Pashtunwali is to resolve conflicts with roots in the past as a means to institute peace and stability within the community. The starting point for Shari’a is the individual and individual deeds in perpetuity. Shari’a is concerned with what the individual must do to become an honest net contributor to the community. Attempts to combine Shari’a and Pashtunwali need to be based on the recognition that any hybrid mixture of two is likely to have built-in tension between the focus on the individual (Shari’a) and the focus on the community (Pashtunwali).

It is too early to decipher the type of government the Taliban will put in place and the limits to which women’s rights will be subjected. In the months since taking power in August 2021, the Taliban have

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92 KI-F-CS-2, interviewed on February 18, 2022.
repeatedly stated that women have the right to participation in all spheres of life on the condition that exercising these rights is carried out within the bounds set by Islamic principles. The concern for many observers is that “Islamic principles” are open to interpretation and the level of knowledge and expertise to interpret is not uniform among Taliban decision makers who are overwhelmingly traditionalist appointees with varying degrees of familiarity or expertise on Islamic jurisprudence.

While the lack of basic education, qualification, and professional skills among the new law makers has a direct, negative, bearing on informed law making, ideological variations within political Islam are likely to play a major role in defining the contents and form of the rule of law, the rights of women in Afghan society, and the degree to which social freedoms are delineated more broadly. Who decides on the content and form of the rule of law depends on the outcome of an internal political struggle within the Taliban between contenders ranging from the socially conservative though possibly principled to the outright misogynist.

The twenty years that have passed since the first Taliban’s first rule during 1996-2001 are likely to have had some effects on the world view of not only the Taliban but also on the people they will have to govern. To illustrate, despite earlier attraction to some aspects of the Salafi jihadism among the Taliban preceding and during their first rule during 1996-2001, allegiance to or interest in Salafi thinking is now mostly relegated to the Afghanistan’s own version of Daesh. The new Taliban is more media savvy, more cognizant of the need to work with the international community, and possibly not as uniformly hardline as it was during 1996-2001. These developments should not, however, suggest that the Taliban would not return to its hardline, Salafi-inspired posturing. A return to the hardline can be a result of the Taliban hardliners winning the internal struggle for power, pressure and/or incentives from outside Afghanistan, or a combination of these factors.

Women’s rights are likely to remain politically contentious in Afghanistan. Substantial amounts of money and other resources were allocated by the international community in development interventions to raise Afghan women’s awareness of their fundamental rights and to create economic and social opportunities for them. This mostly exclusive focus on women appears to have been ill-informed, resulting in the interventions being seen by the vast majority of Afghans as being based on “Western ideas” and therefore unsuited to Afghanistan’s conditions.

During the 2001-2021 period, the international community also had a major focus on instituting a rule of law in Afghanistan. While formalized structures were built and various laws were passed, there was great difficulty in integrating the largely undocumented customary law mechanisms and practices with the formal justice structures and rules modeled after western formal justice systems. There were major challenges in implementing the many laws that came into effect during this period. This inability to change practices was particularly the case in areas outside the major cities.

Top-down interventions to formalize customary conflict resolution systems are difficult under all circumstances and in the absence of longer term incentives and bottom-up support. Past efforts by King Amanullah, the Soviet-backed regime of 1979-1989, and the NATO-backed governments of 2001-2021 to create rapid universal changes in a full range of governance structures throughout Afghanistan resulted in a loss of political legitimacy and ultimate failure. To a large extent these failings were because the interventions moved against traditional conservatism without winning the consent of those that had, for generations, lived by those traditions.

There are centuries of scholarship on Shari’a, particularly around 8th and 9th Centuries but also since then. While there are significant differences of opinion in the interpretation of Shari’a among Islamic scholars, the bulk of this scholarship has emerged based on a documented discourse. In contrast, Pashtunwali and its numerous variations remain largely undocumented, increasing the risk of arbitrariness in interpretation and reducing opportunities for scholarship on the subject.

Further analysis needs to be undertaken to understand the degree to which Pashtunwali can be aligned with international standards of fundamental human rights. It is clear, however, that mechanisms such as jirgas or shuras to resolve local disputes have at times proven to be effective in resolving community-level
conflicts. As such, these mechanisms could conceivably function under a formal rule of law system but with added transparency and accountability which could be put in place through mainstreaming efforts such as training and mentoring. Also, there is a need for training those who preside over the customary justice systems such as Jirgas to ensure that they understand, and practice on the basis of, the principles of just decision making in line with the national laws and international justice conventions.

Creating popular demand for institutional change toward a fair and equal justice system will require longer term investment in human capital through the education system, for example. Bringing consistency in undocumented justice systems based on fluid mechanisms of Pashtunwali and, to a lesser extent, Shari’a, requires efforts to document proceedings and establishing precedence. Recording and documenting proceedings and precedence are likely to increase the legitimacy of customary mechanisms and create opportunities for reform.

While both Shari’a and Pashtunwali are explicitly restrictive of women’s role in society, efforts can be made by Afghan and international civil society and international donors to press the Taliban for rights, particularly for women and particularly in relation to property ownership and mobility, based on Shari’a provisions and consistent with women’s rights in other Muslim countries.

RECOMMENDATIONS

- A first step in pragmatic intervention programming in Afghanistan is to accept the Taliban as the government in Afghanistan. Continued talks around recognition are distracting from the human rights crisis that continues to unfold. This acceptance would place the international community in a position to operationally engage and seek consensus with the Taliban on women’s rights and human rights more generally – rather than simply demanding that the Taliban respect women’s equal rights.

- A second step in pragmatic intervention programming in Afghanistan is inclusion in design and implementation, as much as possible, of those most affected by the intervention. In addition to the direct beneficiaries, those affected include the government.

- Innovation is needed in developing a lingua franca based on Islamic principles in engagements with the Taliban by the international community.

- To increase effectiveness, interventions to protect and promote women’s rights in Afghanistan need to resonate with traditional modes of governance which tend to draw on both Shari’a and customary law. To maximize resonance, interventions need to be designed with full and up-to-date knowledge of Shari’a and customary law – particularly Pashtunwali.

- Since the popular and official views are that Shari’a is divine and supersedes all human-made rules including Pashtunwali, efforts must be made by the international community and Afghan civil society to use Shari’a principles to contest some of the harsher aspects of Pashtunwali and other forms of customary law which are pervading the Taliban conception of Shari’a.

- Support should be provided for initiatives to implement best practices in religious education based on curricula in use in other Muslim countries. Over time, promoting best practices in religious education is likely to counter “street jihadism”, institutionalized misogyny, and arbitrary decision making by government officials and politicians.

- Support should be provided for cultural exchanges between Afghanistan and other Islamic countries, particularly in terms of women’s rights and access to basic services. Explore enhanced cooperation and coordination with the Organization of Islamic Cooperation (OIC).
- The international community must innovate in their response to Taliban edicts. For example, where the Taliban say that girls cannot attend schools because there are insufficient female teachers, more female teachers should be trained. Creating the enabling environment and conditions which do not directly counter Taliban proscriptions is key.

- Protection and promotion of women’s rights needs to be contextualized in broader development and humanitarian programming. Improving the conditions of women in Afghanistan is in part a function of improvements in the physical and material conditions in Afghanistan.

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