

## CONSTITUTIONAL AND LEGAL ASPECTS OF WOMEN'S RIGHTS

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**ABSTRACT.** The article is devoted to the problems of implementation women's economic rights in modern Afghanistan. The main purpose of this article is to analyze the economic rights of women under the 2003 Constitution of the Republic of Afghanistan. The authors tried to show on certain examples the successful implementation of the articles of the constitution on the economic rights of women in Afghanistan.

When writing this article, the authors used the method of system analysis, the historical method, as well as the statistical method. The scientific significance of the article lies in the fact that the authors tried to give a scientific analysis of the establishment and implementation of the economic rights of women in Afghanistan, showed the correctness of the norms of the 2003 Constitution. At the end of the article, the authors drew conclusions and gave specific recommendations for solving the existing problems with the economic rights of women.

**KEY WORDS:** economic rights, women's rights, constitution, economic achievements, quality of life.

## ӘЙЕЛ ҚҰҚЫҚТАРЫНЫҢ КОНСТИТУЦИЯЛЫҚ ЖӘНЕ ҚҰҚЫҚТЫҚ АСПЕКТІЛЕРІ

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**АНДАТПА.** Мақала қазіргі Ауғанстандағы әйелдердің экономикалық құқықтарын жүзеге асыру мәселелеріне арналған. Бұл мақаланың негізгі мақсаты Ауғанстан Республикасының 2003 жылғы Конституциясы бойынша әйелдердің экономикалық құқықтарын талдау болып табылады. Авторлар белгілі мысалдар арқылы Ауғанстандағы әйелдердің экономикалық құқықтары туралы конституцияның баптарының сәтті жүзеге асырылғанын көрсетуге тырысты.

Бұл мақаланы жазу кезінде авторлар жүйелік талдау әдісін, тарихи әдісті, сонымен қатар статистикалық әдісті пайдаланды. Мақаланың ғылыми маңыздылығы авторлардың Ауғанстандағы әйелдердің экономикалық құқықтарының бекітілуі мен жүзеге асырылуына ғылыми талдау жасауға тырысқандығында, 2003 жылғы конституция нормаларының дұрыстығын көрсеткенінде. Мақала соңында авторлар қорытындылар жасап, әйелдердің экономикалық құқықтарына қатысты туындаған проблемаларды шешу бойынша нақты ұсыныстар береді.

**ТҮЙІН СӨЗДЕР:** экономикалық құқықтар, әйелдер құқығы, конституция, экономикалық жетістіктер, өмір сапасы.

## КОНСТИТУЦИОННО-ПРАВОВЫЕ АСПЕКТЫ ПРАВ ЖЕНЩИН

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**АННОТАЦИЯ.** Статья посвящена проблемам реализации экономических прав женщин в современном Афганистане. Основной целью данной статьи является анализ экономических прав женщин согласно конституции Республики Афганистан 2003 года. Авторы попытались показать на определенных примерах успешную реализацию статей конституции об экономических правах женщин Афганистана.

При написании данной статьи авторы использовали метод системного анализа, исторический метод, а также статистический метод. Научная значимость статьи заключается в том, что авторы попытались дать научный анализ установления и реализации экономических прав женщин в Афганистане, показали правильность норм конституции 2003 года. В конце статьи авторы сделали выводы и дали конкретные рекомендации по решению сложившихся проблем с экономическими правами женщин.

**КЛЮЧЕВЫЕ СЛОВА:** экономические права, права женщин, конституция, экономические достижения, качество жизни.

**INTRODUCTION.** In every country, women make up half of society and play a significant role in the economy. Afghanistan is a country where the fires of war have affected all walks of life of its citizens, including the activities of women in the economic sphere. Women's activities in the economic sphere have grown slowly, and bad traditions have also had a negative effect on these activities. But despite all the difficulties, Afghan women are struggling with the challenges that lie ahead. The Government of the Republic of Afghanistan had claimed that since 2001, the international community, local civil society groups and institutions, and the Government of Afghanistan have made great efforts to protect the rights of women in Afghanistan. The republic government enacted the constitution in 2003, which took into account the fundamental rights of the people, especially women. The new law gave women economic, political, social and other rights.

Articles 40 and 48 of this law establish the economic rights of women. It recognized the right to work, having prosperity to all citizen including women. This constitution considers the all fundamental rights to all citizens without any discrimination. Therefore women had started economic activities according to the constitution and played a basic role on country's economy. However, there are still growing concerns about the plight of women in Afghanistan and it is one of the major concerns of women in this country. International organizations have also repeatedly stressed that the situation of women in Afghanistan is unfavorable and that they are facing a very miserable and fragile situation in terms of legal, professional, personal, economic and social life.

Unfortunately, the republic government fell by Taliban in 15 August 2021. They terminated the constitution, and due to that all achievement of Afghan women in these 20 years destroyed. They announced that their law is according to sharia law and they will act according to that. In the new realities, Afghan women were deprived of most of their economic rights.

In this article, we are going to analyze the economic situation and economic rights of Afghan women over the past 20 years of the republic's rule, briefly explain the compliance of the constitutional norms with Sharia law.

**MATERIAL AND METHODS OF RESEARCH.** Women's economic rights on the light of the

constitution.

With the advent of the new system in Afghanistan, a constitution was drafted that recognized women's rights. The Afghan constitution also explicitly states: "Afghan citizens, both men and women, have equal rights and duties before the law. Article 40 of the Constitution states that property is inviolable. No person shall be prohibited from acquiring or possessing property except within the limits of the law [2]. Afghan law also recognizes the right to work as a human right for women. Even in the bills of the Ministry of Labor and Social Affairs, women have been allocated 50 percent of the right to work in government positions.

Afghan law also gives women the right to work. As Article 48 of the Afghan Constitution states: "Work is the right of every Afghan." In this sentence, it did not state that Afghans are men, but absolutely stated that every Afghan has the right to work, whether he is a man or a woman. In another article, it implicitly confirms the same meaning and the same sentence and says about the employment of the people of the country: "Citizens of Afghanistan are admitted to the service of the government on the basis of their competence and without any discrimination and in accordance with the provisions of the law." Sovereignty has also been respected in international law [2]. Article 17 of the Universal Declaration of Human Rights, adopted by the French Constituent Assembly on August 26, 1789, states: "Property is the right of every person and no one shall be deprived of it except by law [9].

In this regard, the Government of Afghanistan has comprehensively reviewed the "Strategy for Economic Rights and Occupational Safety of Women" by the Committee on Women and Youth Affairs under the leadership and chairmanship of the Second Vice President of the Islamic Republic of Afghanistan and finalized in May 2016. The preparation and implementation of this strategy is of special importance from a gender perspective and in line with the work for empowerment in various fields, especially women's economic activities, is considered necessary and will have positive and significant consequences. Of course, it should be noted that the implementation of this strategy requires the necessary coordination between relevant agencies to address the problems and challenges in gender equality and barriers to opportunity and capacity for women in government

and non-government agencies.

For this reason, international human rights instruments oblige member states to eliminate discrimination against women in any form, and also emphasizes and recommends that all countries pursue a policy of discrimination against women promptly and appropriately. As Afghanistan is a member of the international community, it has accepted these documents and worked to implement them.

Article 3 of the Covenant on Economic, Social and Cultural Rights states: "States Parties to the present Covenant undertake to ensure the equal rights of men and women in the exercise of their economic and social rights." "The provisions of this Covenant are the primary source for the recognition of the economic, social and cultural rights of women." Article 7: Fair wages and equal pay for work, with equal value and without any distinction. In particular, women should ensure that the conditions of their employees are not lower than the conditions used by men, and that they receive equal pay for men for equal work Men receive [1].

Although the issue of employment has not been addressed in general between 2002 and 2012, the economic empowerment of women in government policies and strategies has not been specifically addressed. More importantly, the issue of gender remains multifaceted in the strategies of multilateral institutions, and as a result, projects designed and implemented to address the needs of women have less resources than other projects. For example, the total of all projects funded by the World Bank in Afghanistan from 2002 to 2012 was worth \$ 5.4 billion, of which only \$ 597.4 million was spent on projects specifically targeted at women [3].

Afghanistan's economic system is based on the constitution, a market economy in which the government has the least intervention [2]. This is neither in favor of the poor nor equal, especially given the lack of social support facilities and the high rate of poverty and homelessness. Social and cultural traditions have made the role of men in the market more than the role of women. Here, when most economic activities are carried out with cash and in public places, the improvement of women's economic conditions is facing various obstacles, and in fact, their participation in such a market is completely prohibited.

In 2002, women made up 17% of the total non-

agricultural working population. According to the National Risk and Vulnerability Assessment Report 2003, (women) had the lowest income in economic activities in the agricultural sector, according to which a woman's income was 40 to 50 percent less than a man's income Since 2007, women in some urban centers of Afghanistan have been able to start their own businesses or work in other occupations such as education or health, etc.

At the level of rural employment inequality persists and women are employed only in low-income jobs: By 2013, only 3% of women were in the formal economy, 20% in private work, and 78% in income-generating economic activities in the home. 44% of women were employed in livestock and agricultural activities, 70% of the handicraft sector was employed, and 95% of women were employed in vulnerable economic functions and activities. In 2008, the share of women in economic activities in the non-agricultural sector was 18.4% [3]. Miladi, the service and health sector has had the greatest ability to employ women. As in these sectors, the role of gender and the separation of work and occupation can be done well. Meanwhile, in the production sector, good conditions have been created for women's employment.

**RESULTS AND THEIR DISCUSSION.** Medium and small enterprises and women's economic participation.

Afghan women are small in trade and capital. They are usually engaged in small businesses and need the help of national and international institutions in this way. According to the Afghan Women's Business Federation, the employer and economic activities of Afghan women have changed significantly in the last decade. For example, women who used to trade individually are now engaged in 144 business groups. Like women's participation in MFI, women who do business as a group can experience multiple indicators of progress. These indicators include greater trust, greater ability and mobility, a larger network of friends, more scientificity, responsibility, decision-making and a better social and economic status.

Representatives of organizations working in the field of women's rights and women's economic empowerment noted that projects run by donors tended to focus on vocational training courses, in addition to using ambiguous incomprehensible planning. And they ignore the marketing, sales and

data support of these projects. [4].

The main challenges facing businesswomen in Afghanistan include conservative behavior that makes it difficult for women to make decisions and participate in economic activities without consulting a father or husband. Other challenges include physical mobility, interaction with non-mahrams, extreme insecurity, and corruption. Other restrictions for women include:

- Illiteracy and ignorance of the account;
- Lack of access to 146 economic and social capitals;
- Limited skills in market management, credibility and understanding;
- Limited access to quality raw materials and technology;
- Incomplete awareness of the legal requirements for converting a profitable business into a formal business;
- Lack of space, equipment, facilities, quality control, packaging, market information and transportation for products;
- Lack of proper access to national and international markets.

Access to electricity remains a challenge. Access to electricity is based on the distribution of the electricity grid, and the necessary attention has not been paid to renewable sources of electricity, especially the solar power system in the 147 house, which is also in great demand for this type of energy today. In addition, from a gender perspective, women have less access to energy sources such as wind, water, electricity, central heating, etc. than men.

Relationships to potential markets for businesswomen and employers need to be established locally, nationally and internationally. To turn it into a dynamic source of employment, access to the international market through trade is essential. The low-income domestic market is not able to absorb all the products of medium and small enterprises in order to create tangible employment. Overall, the lack of institutions to develop and implement technical and business training courses, including accounting, librarianship, mathematics, and the ability to generate revenue and understand a business plan at the local and regional levels is deeply felt. Obeying government laws or receiving sheriff's loans to develop women's business often becomes a problem and challenge for women's

economic development [6].

The Afghan women engaged in economic activities, 32.1% of them were engaged in agriculture. Female farmers are usually the main players in Afghanistan's agricultural economy; although their share of land ownership is much lower than men. On the other hand, women earn most of their income from the agricultural sector. Women are an important part of Afghanistan's informal economy and play a key role in the value-added process in agriculture. Although women are affected from different areas, they have an equal role in the agricultural sector as men.

The participation of women in this section is related to their region, place, ethnicity, age and social class, number and age of other women in the family and other factors. Women whose families are in a good economic position (from peasantry and agriculture) are more engaged in household chores, while women from peasant families work on the land with their husbands in agriculture. Married and single women are rarely owners. Sometimes girls, married or single, may have access to land only for the purpose of not owning it.

Deprivation of women of economic opportunities and their lack of economic independence, on the one hand, severely limits their role-playing and influence in decision-making processes within the family and in society, and on the other hand, provides the basis for various types of violence against them. Therefore, in the discussion of social and economic inequalities, addressing the issue of gender and women is one of the most serious issues. Because throughout history, as well as today, the most important example of inequality; Inequality is based on gender. Women are deprived of political, social and economic opportunities because of their gender. Achieving relative equality requires special attention to women's empowerment, especially in the economic sphere.

There is no doubt that the economic and social success of women depends on the level of education of women. Education, in addition to increasing the power of women, is also effective in reducing violence against them and transforming their value system. Various assessments show that educating women increases their economic independence, reduces fertility, increases women's attention to health issues, and consequently reduces mortality and improves the general state of family life [4].

Afghan women, like women in most countries of the world, have access to the least economic opportunities. Women's limited access to economic opportunities, along with other influential factors, has created the context for various forms of violence and deprivation against women. According to the International Labor Organization, Afghan women face serious barriers to participating effectively. Low level of education and specialization, multiple cultural and social challenges, over-employment in raising children, low job opportunities, low work experience, lack of security, low access to labor market information, lack of legal framework to support women's work And most importantly, discrimination against women in the labor market; It is one of the most important challenges that has limited the field of women's participation in the labor market.

Therefore, to reduce violence against women, education and support for women's participation in economic activities is central. Science education and economic independence give women more power, and this power also affects women's role and success in decision-making processes within the family and society. Women's economic independence, while increasing the empowerment of the next generation of women, reduces violence against them and empowers women. In liberation from relative deprivation, it also transforms the relations governing the social and political structure and the divisions of power in the family and society. Therefore, the high focus on women's empowerment through education and economic independence should be the most central goal in the strategy to reduce violence against women. Supporting women's education, recognizing women's property rights, protecting women's work, and creating a legal framework to fully support women in economic activity can be fundamental strategies to reduce violence and increase women's empowerment.

However, there are challenges and problems related to women's economic rights and their financial independence, but after 2013, women's economic activities increased and a number of women gained economic independence. Institutions that work on women's economic activities consider women's activities in economic sectors to be important and vital. Manijeh Wafiq, head of the Afghan Women's Chamber of Commerce and Industries, said that after

2015 more than 2,471 women have been working in the formal business sector and more than 54,000 in the informal business sector. According to Wafaq, a survey of how businesswomen invest in Afghanistan shows that women have invested more than \$ 90 million in various sectors. "Women have gone from being economic workers to economic activists, and now they have \$ 800 million in sales a year, and these economic activists have already created jobs for 130,000 women," [5]. Wafiq said. According to women rights activists, if more education is provided for women, they can have many activities in the economic field in society. For examples:

Mina Rezaei established the Sample Cafe in Kabul. With her creativity and innovation, she proved that women in the traditional Afghan society can successfully establish and run restaurants. Mohseneh Saqib, owner of the clothing company Jame Dizan, which is also a clothing designer. We had 6 employees and now we have 35 employees. "400 women work with the Jame Dizan factory and sew at home, 80 percent of whom are women." [7].

However, a number of women in the provinces are engaged in planting and harvesting saffron. In this way, in addition to their economic growth, they have been able to provide employment opportunities for other women. "By creating a union, I have created jobs for a thousand women," said Shafiqa Atai, a producer and head of a saffron company in Pashtun Zarghun, Herat province. "Saffron is one of Afghanistan's most important exports." But Ms. Atai complains about the decrease in the price of saffron, the lack of machinery and the non-export of this precious commodity.

From the above examples, it can be seen how the constitution contributed to the realization of the economic rights of women in Afghanistan. In order to show how the constitutional norms did not contradict the canons of Islam, we would also like to talk about the economic rights of women in Islamic law and Sharia.

Women's rights in Islamic law and Sharia.

When one refers to the Holy Qur'an and the hadiths of the Prophet (PBUH), it becomes very clear that Islam explicitly grants women economic rights, including the right of property, trade, inheritance and other economic rights, and gives them as an independent and Supreme Being. Human beings have the right to own property and do business like men. Here we refer to the Holy Quran and the

Prophetic Hadiths:

The Holy Quran says in this regard: "Do not wish that which Allah has made some of you superior to others, for men is a benefit from what they have earned, and for women is a benefit from what they have earned. They have gained a benefit, and ask God for grace, for God knows everything."

This verse affirms the equal right of women to seek work and gain. According to Islamic law, a husband cannot take possession of his property without his wife's permission, that is, he can neither sell it, nor give it away, nor any other possession. The principle of a woman's inheritance is one of the principles of Islamic law. With the light of Islam and the revelation of verse 7 of Surah Nisaa, the principle of the sharing of the deceased's property by men and women was recognized and objectified, and with this transformation, new legal relationships emerged that women also benefited from inheritance [10].

Almighty Allah says: "For men, there is a share of what their parents and relatives leave behind, and for women, there is a share of what their parents and relatives leave, whether that property is small or large." This is a determined and payable share". In this verse, the ruling on the inheritance contract for women is given in an independent and separate sentence. This is because it expresses the independence of women in inheriting like men.

In the verse that Almighty God said in this matter, it means that each man and woman, what they get, whether it is voluntary, such as earning money, or non-voluntary, such as inheritance, etc., is reserved for them. They will have the right to use and operate independently. A woman in an Islamic society can become an owner, dispose of her property; she inherits from her relatives or even earns and trades in a legitimate way. The rights that Islam has considered for women are dowry. Dowry is money that a man is obliged to give to a woman on the occasion of marriage. For this reason, the silence of both parties in the marriage, even the agreement that the woman is not entitled to dowry, cannot eliminate the duty of the man in this regard [10].

Although the basic evidence in the Qur'an and hadiths considers women to have equal rights with men in terms of property, some traditions contrary to Islamic law in Afghanistan tend to deprive women of this right. Not only in the history of Islam,

working women was one of the accepted practices of Muslims, but also in the time of the Prophet of Islam (PBUH) and with his approval, women were practically engaged in various social activities from military work to sewing and medicine and so on [8].

Khadijah was a capable and powerful woman of the Arabian Peninsula. He was one of the prominent figures and prominent businesswoman of Saudi Arabia and its neighboring countries, who bought and sold large quantities of the required goods. After the mission of Prophet Mohammad, that great wealth was spent in the way of Islam so that the new religion could achieve its goals. Apart from Hazrat Khadijah, other rich women were engaged in buying and selling goods, who sometimes learned the rules of Islamic trade from the Prophet.

A number of women in the era of the Prophet (PBUH) were engaged in perfume sales. They traveled to people's homes and offered their wares. These verses, examples and citations are religious reasons that can be argued. It proves that Islam has no problem with the role of women in economic activities and wealth creation, and encourages women to participate in the economy. Because the Taliban government claims that we follow the Sharia law, but this is just a claim and they do not apply any of the Islamic laws regarding women. And deprived women of their religious and human rights.

**CONCLUSION.** In conclusion, we would like to emphasize again that after a long period of war, during of the 21 years, afghan women could appear in society in economic spheres and had significant achievement in economic era and played an important role in economic development in the country. They could able to run NGOs, led the teams and paved the way for many people to work and earn incomes to their self by establishment of restaurants, shops, producing industrial goods and many other ways. Despite the war and insecurity in the country, Afghan women have always fought and spared no effort to build their capacity. But with the few gains they made after the formation of the new government, all of them were unfortunately destroyed when Afghanistan fell back to the Taliban. The United Nations Development Program (UNDP) said in a new report that the Taliban's restrictions on working women could cost up to \$ 1 billion, or 5 percent of the country's gross domestic product [11]. Women make up 20 percent of the country's workforce, and preventing them from working

alone could reduce half a billion dollars in domestic consumption alone.

According to a UN report, the group told all female government employees to stay at home and barred most girls from going to school after coming to power in August. Only a small number of women have been asked to resume work in essential jobs such as nursing, that they can only treat or curing women.

Therefore, to solve this problem, we suggest the above points:

- The Taliban must go to the polls and base their government structure on the consent of the people;

- Adhere to international laws and principles to protect women's rights;

- Provide women with the right to work and education, and enable women to return to their duties and jobs;

- Accepting the presence of women in society;
- Lifting restrictions on women's clothing, duties, travel and education;

- Women's participation in the country's economic growth and efforts for women's self-sufficiency.

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