

CHALLENGES AND LEGAL PROTECTIONS: WOMEN'S RIGHTS IN INDIA AND AFGHANISTAN

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Abstract. *A comparative review is presented of the legal frameworks and societal challenges that mold women's rights in India and Afghanistan, respectively. Despite this fact, both countries have legislation that empowers them, though in practice, their enforcement remains faced with deep-rooted cultural mores and socio-political reasons. The article discusses some of the key legal provisions, including constitutional guarantees of gender equality in India and Afghanistan. The paper argues, with case studies, the divergence between legal theory and practice that has occurred in both countries, along with how such a gap might be bridged through legal reform, a change in societal values, and much-needed international cooperation. The article concludes by providing recommendations for strengthening legal frameworks and promoting gender equality through both legal and societal efforts.*

Keywords: *Gender Justice, challenges, Women's Rights, Afghanistan and India.*

ПРОБЛЕМЫ И ПРАВОВАЯ ЗАЩИТА: ПРАВА ЖЕНЩИН В ИНДИИ И АФГАНИСТАНЕ

Аннотация. *Представлен сравнительный обзор правовых рамок и общественных проблем, которые формируют права женщин в Индии и Афганистане соответственно.*

Несмотря на этот факт, в обеих странах есть законодательство, которое расширяет их возможности, хотя на практике их применение по-прежнему сталкивается с глубоко укоренившимися культурными нормами и социально-политическими причинами. В статье обсуждаются некоторые ключевые правовые положения, включая конституционные гарантии гендерного равенства в Индии и Афганистане. В статье с примерами из практики обосновывается расхождение между правовой теорией и практикой, которое произошло в обеих странах, а также то, как такой разрыв можно преодолеть с помощью правовой реформы, изменения

общественных ценностей и столь необходимого международного сотрудничества. Статья завершается рекомендациями по укреплению правовых рамок и поощрению гендерного равенства посредством как правовых, так и общественных усилий.

***Ключевые слова:** Гендерная справедливость, проблемы, Права женщин, Афганистан и Индия.*

Introduction

Human rights, intrinsically connected to the dignity and equality of every individual, are essential for the establishment of a just society. Typically codified in national constitutions and international agreements, these rights function as a universal assurance of the freedoms and protections to which each person is entitled, irrespective of their nationality, race, religion, or gender. The protection and promotion of women's rights has, however, enjoyed significant attention within the multidimensional platform of human rights due to the several inequalities women have had to face through history to date and continue to face in many parts of the world.

The quest for gender equality has, to this day, been a persistent and pertinent issue that has shaped legal and social foundations worldwide. Women's rights in South Asia, particularly in countries like India and Afghanistan, are a very multifaceted matter and greatly intertwined with the socio-cultural dynamics of these societies.

These countries, though geographically close to each other, show sharp differences in the legal systems and societal view of women. Nonetheless, they face common challenges, such as deep-rooted patriarchal norms, which pose an obstacle to fully achieving all women's rights.

India boasts a rich historical background and a diverse demographic structure. The country maintains a legal system with substantial protection for women. The Constitution of India stands out as one of the most progressive in the world, ensuring equal treatment before the law and Prohibition of discrimination on various grounds, including gender. Over the years, India has promulgated several legislative provisions for protecting women against violence, establishing their rights regarding marriage and inheritance, and increasing their participation in the job market and political life.

Despite such statutory provisions, the actual implementation of these laws often turns out to be ineffective, and deeply embedded cultural traditions and social perceptions remain strong barriers to fulfilling the goal of gender equality.

In juxtaposition, Afghanistan exhibits a more precarious legal framework, wherein the rights of women are frequently contingent upon the fluctuating dictates of political and religious powers.

The Afghan judicial system, shaped by the dual influences of Islamic jurisprudence and customary traditions, encounters substantial obstacles in safeguarding women against violence and discrimination. These challenges are further exacerbated by the fact that the country remains in a constant state of war and instability, which very negatively affects the realization of justice and full rights granted to women by law. This dissertation examines how the interaction between legal regimes, religious forces, and tradition shapes the protection of women's rights in Afghanistan and how protection may be strengthened through various means in the face of ongoing challenges. The present work aims at an in-depth analysis of the challenges and opportunities regarding the improvement of women's rights in India and Afghanistan by comparing the legal systems and social contexts of the two countries. The study will further offer recommendations to policymakers and relevant stakeholders with respect to the improvements of legal and institutional frameworks for the protection of women's rights.

The paper has chosen to investigate the legal structures and social situations that exist in India and Afghanistan as a means of protecting women's human rights. This paper aims at comparing the two countries based on their advantage and disadvantages of each country's strategies regarding women's rights and offering some perspectives on how to develop better protection and promotion strategies in both countries.

Research Objectives

- 1- To evaluate the effectiveness of the Indian legal system in protecting women's human rights.
- 2- To assess the effectiveness of the Afghan legal system in safeguarding women's human rights.
- 3- To compare the legal frameworks of India and Afghanistan in terms of their protection of women's rights and identify which system offers better safeguards.
- 4- To propose measures for enhancing the protection and promotion of women's human rights in both countries.

Research Justification

The protection and promotion of women's rights remain critical issues globally, particularly in regions where deep-rooted cultural, religious, and socio-political factors

undermine legal frameworks. This research, focusing on the challenges and legal protections for women's rights in India and Afghanistan, is justified by the urgent need to bridge the gap between existing legal provisions and their practical implementation. India, despite its robust democratic institutions and legal frameworks promoting gender equality, continues to struggle with pervasive gender-based violence, workplace discrimination, and socio-economic disparities. Understanding the effectiveness of legal protections and the societal barriers that hinder gender equality in these two distinct, yet comparable contexts is crucial for informing future reforms and advocacy efforts.

This research is particularly timely as it not only addresses the ongoing legal and societal challenges but also seeks to provide actionable recommendations for both countries. By conducting a comparative analysis, the study aims to identify best practices and areas where legal frameworks need to be strengthened or reformed. Moreover, it emphasizes the importance of societal change alongside legal reforms, highlighting the role of education, awareness, and international cooperation in advancing women's rights. Given the global significance of gender equality and the continued marginalization of women in many parts of the world, this research will contribute valuable insights to the academic community, policymakers, and human rights organizations. It will also serve as a resource for those working on the ground to enhance the protection of women's rights in challenging environments.

Literature Review

Literature review is the part of a research and it is connected with the present issue or problem that in earlier also some researcher have done about it. For that we should go through these research and see what their findings are.

Desai, N, Krishnaraj, M (1987) in a study on “women and society in India” they claimed that the Status of women in India is going to toward bad numerous progressions down the ages. He also said that the women in the ancient time had same position as men had and they enjoying from equal rights and were given particular treatment. In the Vedas, there are adequate confirmations of women researchers exceeding expectations in different scholarly exercises.

The Canadian Women for Women in Afghanistan Organization, published booklet “Understanding human rights in Afghanistan” in this booklet they discussed the background situation of Afghanistan women. The organization aim is to make one booklet for the Canadian student from grades 3 to 12, by the support of Canada government. Through the use of this resource Canadian student will learn about their own basic human rights and the concept of universality of

human rights. Using Afghanistan as a case study, they will examine how and why human rights need to protect and see example of what life is like these rights are taken away.

Research Methodology

This research adopts descriptive, analytical, and comparative approaches to study the legal statutes in India and Afghanistan on women's rights. Since this is purely a doctrinal study, the analysis for the paper is based on secondary data sourced from books, academic articles, reports, and electronic materials. A systematic survey will be made of the legal systems in both countries: focusing on constitutional provisions, subordinate legislations, and international conventions, to assess their effectiveness in protecting women's human rights. The comparison would, therefore, reveal Similarities and differences in the two legal regimes instructive of best practices and areas of improvement.

The Constitution of Indian and Women the constitution of India was framed by the constituent assembly of India which met by the first time on December 9, 1946. This constitution of India has given the primary importance to human rights. The constitution of India which came into force on 26 Jan 1950 with 395 articles and 8 schedule is the important law of India that focused in its some parts on the fundamental human rights. In the preamble of constitution stated that “We the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic, republic and to secure to all its citizens: justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation: in our constituent assembly this twenty-sixth day of November,1949 do hereby adopt, enact and give to ourselves this constitution.”¹ The preamble explain the specific facts that need to be explained before understanding the regulations in this law. As Basu has said, "A statute must be read as a whole and a preamble is as much a part of the statute as its enacting part." However, he made it clear that the preamble is not the source. It has every power and limitation and there is no revision of it, preamble is allowed to overcome explicit expression Constitution.² The constitution of India was written at an era when the social status of women in India was very poor and needed a reform. Women faced a lot of social problems and they were tolerated mental and physical torture from the family and society. But the women could not suffer and tolerate that much insult and tortures from the society, the start their struggles to

¹ Constitution of Indian, legislative department, New Delhi, 2015.

² Durga Das Basu, Commentary on the Constitution of India. P, 66,67, Vo 1.1, fifth Edition, S.C.Sarkar and Sons Private) Ltd, Calcutta, 1965.

find their position and place in the society. For this purpose, some laws that could protect the women status have been needed that. At that time Dr. B. R. Ambedkar, the author of Indian constitution took constructive and important steps toward the women human rights that to improve and independent them in the society and avoid the social hatred from the women and he created the concept of respect to the women by legalizing of the women rights under the constitution. Today we can see the result of past struggles and revolutionary change in the condition of women in India. Due to women struggles and framer of constitution the women condition has changed and they find their respectable place in the society, according to the constitution, women and men have equal rights and they shall be treated equally. If we have a look to the women in status in the current time, women are in everywhere. Women are in politics, take part in making the economy, are active in the society, they work in companies, they are in entertainment fields and etc. This is a pleasure that the position of Indian women have improved from the past decades. But still there are women in somewhere of India that they are struggling to gain their dignity and freedom.³

The constitution of India in its “fundamental rights” section guarantees various rights. The rights which are important to the women in the Indian constitution is right to equality which states in article 14 of constitution and in article 15 takes about the prohibition of discrimination.⁴ One of the objective of the constitution is to maintain equal justice to the men and women, that means in all aspect of live such as social, Gender is the state of being male or female in relation to the social and cultural roles that are considered appropriate for men and women.⁵ Justice is a concept of moral rightness based ethics, rationality, law, natural law, religion, equity and fairness, as well as the administration of the law, taking into account the inalienable and inborn rights of all human beings and citizens, the right of all people and individuals to equal protection before the law of their civil rights, without discrimination on the basis of race, gender, sexual orientation, gender identity, national origin, color, ethnicity, religion, disability, age, wealth, or other characteristics, and is further regarded as being inclusive of social justice.⁶ Dr Ambedkar, estimated the “progress of a community in the lights of the progress of women”. Dr Ambedkar in the paper “Caste in India-Mechanism, Genesis and Development” talked about the relationship between caste and gender.

³ N Nivedhaa, R. Dhivya, The Constitutional Status of Women in India, p. 1866, 1867, International Journal of Pure and Applied Mathematics, 2018.

⁴ The constitution of Indian, legislative department, New Delhi, 2015.

⁵ Definition of Gender, available at: <https://www.collinsdictionary.com/dictionary/english/gender>. (visited on April 7, 2024).

⁶ Science daily, available at: <https://www.sciencedaily.com/terms/justice.htm>. (visited on 8, 2024).

In his work he become to this result that the caste system in the ancient India created by Brahmins. The Brahmins found the method of controlling the brains of ladies and enslaving them. Dr.Rajendra Prasad in the book “correspondence and Select Documents” “education should be given to girls, including those of backward classes and they should be encouraged to earn a living both through skilled and unskilled labor. He also said that women should be included in village council, education councils, local bodies and legislatures in the country and they must be encouraged to fill up political posts”.⁷ The preamble of Indian constitution specifically states that the constitution should give equality to the all citizen irrespective of any differentia. It ought to be comprehended that ensuring rights for people of a Society gets vain except if and as long as these rights are practiced similarly by all individuals of that community.

The committee or people which were responsible to make the constitution had recognition from the Indian community and prominent in the preamble of constitution equality of condition and opportunity. In the Indian constitution the framers emphasized on the equality that means it's very important issue in the Indian constitution that we can say equality is the foundation of constitution. The introduction of the Constitution discussed about economy, social and political equivalent for all citizens of the nation. Political justice is very important issue in the life of women and man because its ensures that there should be no any discrimination among men and women in the political space, that means every person can access to the political post in the country as per his/her knowledge. Furthermore, the preamble discussed about the dignity of the individual and this dignity must be guaranteed through it ensuring equal fundamental rights for all. All the basic rights which in the part third of Indian constitution is applicable to the all citizens without discrimination based on sex, caste, religion etc.⁸ According to the Article 14 of Indian constitution that states “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.⁹ According to this provision the state is responsible to apply the law equally to the all citizens and no one is above the law. Article 15(1) states “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them”. (2) “No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them” (3) “Nothing in this article shall prevent the State

⁷ Chakraborty Ankita, Gender Justice Under Indian Constitution, P, 20,21, International Journal of Legal Developments and Allied Issues.

⁸ Ibid, p. 22

⁹ The constitution of Indian, p.6, legislative department, New Delhi, 2015

from making any special provision for women and children”.¹⁰ Each clause has of this article has its point, the first and second clauses of article 15 states the prevention of any discrimination against citizens of India, the third clause of this article states the positive discrimination to improve and protect the status of women and specifically allowed the state to make special provision for women. The article 16 (1) states “There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State”. (2) “No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State”.¹¹ There also the law makers emphasized on the equality and justice to the equal opportunity for employment to the all citizens, this show the awareness of the law makers from the India situation and community with diverse tribes.

The Indian constitution in its fourth part that is the Direct Principle of State at the article 39 states that “The State shall, in particular, direct its policy towards securing- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood”.¹²

In case of *Air India v. Nargesh Meerza*¹³ Nargesh Meerza filed a writ petition, in this case, the air- hostesses of the Air-India International Corporation had approached the Supreme Court against, again, discriminatory service conditions in the Regulations' of Air-India. The rules provided that an air-hostess could not married before completing four-years of duty. Usually an air-hostess was recruited at the age of 19 years and the four-year bar against marriage meant that an air-hostess cannot married as per the regulation till she become 23 years. Suppose she married earlier than the date which determined before, she had to resign from her job. But if she gets married after 23 years she can continue as a married woman, but she had to resign on becoming pregnant. If an air hostess could pass these filters, she can continue her work till the age of 35 years. On the behalf of air hostesses that is claimed those provisions were discriminatory on the ground of sex, because there is no any provision for same work to the male employers.

The Supreme Court accepted the first requirement that an air-hostess should not marry before the completion of four years of service. The court held that:

"It was a sound and salutary provision. Apart from improving the health of the employee it helps a great deal in the promotion and boosting up of our family planning programme."

¹⁰ Ibid, p.7.

¹¹ Ibid.

¹² Ibid, 21.

¹³ *Air India v. Nargesh Meerza* AIR (1981) 4 SCC 335

However, the argument put forward by the Court for criticism is that because the requirements of age and family planning were guaranteed by the state's population policy, and when the government set the age of marriage at 18, it was an advanced argument for it is supported. The camouflage law was a genuine concern.

According to the decree of Supreme Court that the Air India's rules on air hostess in regards of retirement and pregnancy bar on the services are illegal, the regulations are completely irrational and arbitrary. The impugned Regulation 46 provided that an air hostess would resign from the administration of the organization after achieving the age of 35 years or on marriage, if it happened inside 4 years of work, or on first pregnancy, whichever occurred earlier. Under Guideline 7, the Overseeing Chief was vested with inside and out watchfulness to widen the time of retirement supported at 45 years. Both these rules were struck down as encroachment of Article 14, which precludes amazingness and mediation.

In case of *Madhu Kishwar and Others Vs. state of Bihar and Others*¹⁴, the petitioners who were member of Ho and Oraon clans of Bihar tested the vires of Chhota Nagpur Tenancy Act, 1908 on the ground that under the said Act the progression of property was just restricted to male successor. The petitioner contented that the Act violated the basic Rights to equality. The Court opined that as resident of the nation, the female member of these clans were qualified for Constitutional assurance given to them under Article 14. In any case, rather than choosing the case on merits the Court guided the State of Bihar to explore this possibility if the females could also be entitled to inherit.

Political Status of Women

Women empowerment means equal status to the women, having opportunity and freedom for their development and improvement. The focal point of empowerment is equipping women to be financially autonomous, independent and have a positive confidence to empower them to confront any troublesome circumstance. And furthermore, they should contribute in the decision making as a citizen equally to the men. The Indian constitution in many articles expressed and tried to remove the discrimination and gender inequality among the citizens of India. It is also attempting to ban discrimination based on sex, class, race and so on. It is trying to prohibit trafficking of human and force working. And also, to reserve selected position for women. The involvement of women in the political parties is the result of giving equal rights to women. Despite protection of gender equality in the Indian constitution, but still the women are not able that much

¹⁴ *Madhu Kishwar and Others Vs. state of Bihar and Others* AIR 1996 5 SCC 125

to make decision by them in the parliament. But the Indian women do not have that much power and they have a lower status than men in this regard. Still the women of India face with gender inequality in part of having access to education and employment between women and men. In India the political participation of women is not comparable to that of men. This situation is not only in India but it is the most of the countries in the globe. But the women status nowadays is better than the past.¹⁵ There was a bill on 2008 as women' reservation bill or 104th constitutional amendment which obviously expresses that women have 33% reservation to participation in politics. The Constitution of India guaranteed social, monetary and political equity in such manner.

It additionally has guaranteed the freedom of thought and fairness to all residents.

Constitution given to uniformity of women and men. It has called upon the State to take measures to expel and destroy the social, financial, education and political disservices that have as a rule been looked by women. Provision 14 of Indian constitution ensures correspondence under the steady gaze of the law and guarantees equivalent assurance of laws inside the Indian Territory. According to this provision every citizen of India has equal rights, that means women should be treated as men. And there should not be any differentiation between them in any case.

Article 15 states the prohibition of discrimination on the basis of religion, race, sex, caste and place of birth. Section 3 of this article states that the state shall make special provision for protection of women and children. This provision is totally denying the discrimination against women in all aspects. Article 39 we read that “(a) for an adequate means of livelihood for all citizen. (d) has provisions for equal pay for equal work for both men and women. (e) Has provisions for securing the health and strength of workers, men and women, and not to abuse the tender age of children”.¹⁶ we can see the goodness of Indian constitution from above provisions that clearly discussed and denied the discrimination between men and women. When they have equal rights that mean women also can participate in political dialogue and they can be as candidates and as voter, completely like the men of the country.

In every Panchayat and the number of seats, the same proportion of men and women shall be taken into consideration from the total number of seats. This proportion is to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area.

¹⁵ Nisha M. Ameen and Dr,D Venthan Vezha, Political Empowerment and Participation of Women in India, p.4722. International Journal of Pure and Applied Mathematics,2018.

¹⁶ Constitution of Indian, p.6,7,21,22, legislative department, New Delhi, 2015.

And the Scheduled Tribes in that Panchayat area shall bear to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.¹⁷

Article 326 reads that “The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than[eighteen years] of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election”. The 73rd and 74th Amendment to the Constitution of India with 33.33% booking for women has given chance for the section of enormous number of socially underestimated class, for example, women to go into the space of nearby organization and they are encouraged a lot in their presentation.¹⁸

The Constitution of Afghanistan and Women

Part II of the Bonn Agreement submitted the transitional organization of Afghanistan to an interim framework until the establishment of new constitution. The Constitution of 1964 is referenced twice in the Bonn Agreement and was seen as the foundation for the presentation of majority rule government in Afghanistan. Constitution of 1964 It was thus used as a model in the 2004 draft constitution. In June 2002, 1,500 Emergency Loya Jirga (ELJ) representatives were selected Hamid Karzai as the head of the Islamic Transitional Government of Afghanistan, he was the head of transitional government for two years until he was elected as the president in December 2004. On 5 October 2002, President Hamid Karzai appointed nine-section Constitutional Drafting Commission lead by Vice-President Nematullah Shahrani to present a draft constitution. The draft was then submitted to another 30-section holy review commission presented in March 2003 by the last King, Zahir Shah.

After one month, the draft constitution was presented to the Constitutional Loya Jirga (CLJ) for discussion and correction. The December 2003 Constitutional Loya Jirga was a national social event of 502 agents that included 52 presidential candidates and 450 region delegates which had been selected from 1500 ELJ local delegates. Among the delegates were democrats, yet likewise warlords, mullahs, and jihadi pioneers, tremendous quantities of whom had obliged regular preparing and had never scrutinized a constitution.

¹⁷ Constitution of Indian, p.131,132, legislative department, New Delhi, 2015.

¹⁸ Sumitra Mahajan, women be given reservations in politics respectfully, India express.com (2017).

Eighty-nine of the agents were women, who worked eagerly together to ensure that women would be permitted equality in the new constitution. In spite of a few inadequacies, on 25 January 2004 the new Constitution of the Islamic Republic of Afghanistan in 12 parts and 162 articles was signed by President Karzai.¹⁹

Have, herein, approved this constitution in accordance with the historical, cultural and social realities as well as requirements of time through our elected representatives in the Loya Jirga, dated January 3, 2004, held in the city of Kabul”.²⁰ The framers of constitution were aware of the situation of Afghanistan and the bad condition of human rights because of internal conflicts. By the consideration of all aspects and challenges they could write a constitution that passed by the delegates in Loya Jirga. Afghanistan Constitution in its Fundamental rights and obligations of citizens’ part states: Article 22 “Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law”.²¹ This provision directly forbids the discrimination among citizens and inequality. That means there shall be no difference between man and woman before the law. The law which was approved by the parliament will be implemented in the territory of Afghanistan equally to all citizens. The other point of this provision is that no one is above law whither man, women, president, etc. Article 33 states “The citizens of Afghanistan shall have the right to elect and be elected. The conditions of exercising this right shall be regulated by law”.²² The word “citizens” in this provision includes man and women they can participate in election to vote and can be candidate. This provision gives political right to the citizen to select their leader and guarantee their future. Article 35 states “To attain moral and material goals, the citizens of Afghanistan shall have the right to form associations in accordance with provisions of the law. The people of Afghanistan shall have the right, in accordance with provisions of the law, to form political parties, Provided that:

 Their manifesto and charter shall not contravene the Holy religion of Islam and principles and values enshrined in this constitution;

 Their organizations and financial resources shall be transparent;

 They shall not have military or quasi-military aims and organizations; and they shall not

¹⁹ Sevastik Per, rule of law, Human Rights and Impunity: The Case of Afghanistan, p.10,11, Hague Journal on the rule of law, Stockholm, Sweden, 2019.

²⁰ Constitution of Afghanistan, p.2, Kabul, 2004.

²¹ Ibid, p. 17.

²² Ibid, p. 20

be affiliated with foreign political parties or other sources. Formation and operation of a party on the basis of tribalism, parochialism, language, as well as religious sectarianism shall not be permitted. A party or association formed according to provisions of the law shall not be dissolved without legal causes and the order of an authoritative court". This provision gives right to the citizens to establish party as per the law of Afghanistan and also gives political rights to the people. In the article 43 states "Education is the right of all citizens of Afghanistan, which shall be offered up to the B.A. level in the state educational institutes free of charge by the state". In article 44 also states that the government must pay attention to the education of women and deprived citizens. "The government shall devise and implement effective programs to create and foster balanced education for women, improve education of nomads as well as eliminate illiteracy in the country". Article 48 states "working is right of every Afghan". According to this article every citizen has the right to work. That means there is no any obstacle for women to work. Article 50 of constitution states "The citizens of Afghanistan shall be recruited by the government on the basis of ability, without any discrimination, according to the provisions of the law." According to this provision any kind of discrimination in the employment of citizen whether man or women is forbidden. Article 54 states "The government shall adopt necessary measures to regulate medical services as well as financial aid to survivors of martyrs and missing persons. And for reintegration of the disabled and handicapped and their active participation in society, in accordance with provisions of the law. The government shall guarantee the rights of retirees, and shall render necessary aid to the elderlies. Women who are without caretakers, disable and handicapped as well as poor orphans, in accordance with provisions of the law should be protected".²³

Conclusion

Human rights are defined as rights that human beings deserve because they are human. Respect to the human rights is the ethical responsibility of all human kind and government. India is the biggest democratic country in the world and the constitution on India is also the largest constitution in the world. The Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles discussed about the equality to the women and men.

The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favor of women. Within the framework of a democratic polity, our laws, development policies, Plans and Programs have aimed at women's advancement

²³ Constitution of Afghanistan, p.24,25, Kabul, 2004.

in different spheres. The Indian constitution in its fundamental rights of citizens which contains article 12 till 35 broadly discussed about the rights of its citizens as example the Article 14 states “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. Women’s tumultuous situation in Afghanistan has been one of the major concerns for Afghan government and the international community. The constitution of Afghanistan in article 22 states “Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law” also in the article 43 states “Education is the right of all citizens of Afghanistan, which shall be offered up to the B.A. level in the state educational institutes free of charge by the state”. In article 44 states “The state shall devise and implement effective programs to create and foster balanced education for women, improve education of nomads as well as eliminate illiteracy in the country”.

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