

An Empirical Study of Women's Participation in the Legislative Process in Afghanistan (2001-2021)

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Abstract

The legislative trajectory in Afghanistan spans nearly a century, commencing in 1923 with the inception of its inaugural Constitution. Until 2001, men dominated Afghanistan's governmental and legislative landscape, holding pivotal roles in decision-making processes. However, 2001 marked a significant turning point, ushering in sweeping socio-political transformations within the country. The primary aim of this research is to investigate the involvement of women in the legislative process in Afghanistan, spanning the period from 2001 to 2021. The research endeavors to explore the intricacies surrounding the involvement of women in the legislative sphere through the lens of a human rights-based approach. The study adopts the Congruence Model as a theoretical framework for a comprehensive examination of women's roles in the legislative process in Afghanistan. Initially, a comprehensive review of legal statutes, scholarly articles, academic literature, and official reports was conducted. Subsequently, 36 questionnaires were distributed to individuals, comprising both women and men, who possessed a deep understanding of legislative processes. Also, 10 interviews were conducted with members of parliament and legal experts. The research shows women have played a relatively good role in various fields, including legislation and passing laws. However, cultural factors, weak governance, lack of rule of law, problems in the legislative process, and the Afghan parliament had caused women not to play a major role.

Keywords: Legislative Process; Women Participation; National Assembly; Wolesi Jirga; Meshrano Jirga.

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1. Introduction

The legislative trajectory in Afghanistan spans nearly a century, commencing in 1923 with the inception of its inaugural Constitution. This historical journey can be dissected into three distinct epochs: the era characterized by *Nezamnam*s, denoting foundational legal frameworks; the subsequent phase marked by *Osoolnam*s, signifying the consolidation and evolution of legal principles; and finally, the period delineated by the enactment of formal laws, encapsulating the contemporary legislative landscape.¹ Between 1923 and August 2021, numerous legislative documents received approval from both the government and the National Assembly of Afghanistan. These enactments were disseminated through approximately 1410 gazettes released by the Ministry of Justice, showcasing the extensive corpus of legal regulations promulgated over this extensive period.²

Patriarchy manifests as a multifaceted system across social, political, legal, and cultural spheres. Embedded within patriarchal cultures is the belief in male superiority, granting men greater rights in social interactions, familial dynamics, and legal frameworks, while imposing patriarchal norms on women.³ In societies such as Afghanistan, patriarchy permeates every facet of life, privileging men and centering their interests. This entrenched social structure perpetuates itself through various means. Legal and cultural mechanisms act as enablers, reinforcing and sustaining patriarchal norms and practices. Thus, the traditional patriarchal framework relies on the interplay between social structures, laws, and cultural norms to maintain its dominance and perpetuate its influence over time.⁴

Until 2001, men dominated the governmental and legislative landscape in Afghanistan, holding pivotal roles in decision-making processes.⁵ However, the year 2001 marked a significant turning point, ushering in sweeping socio-

1. Mohammad Hashim Kamali, *Law in Afghanistan: A Study of the Constitutions, Matrimonial Law and the Judiciary* (Leiden: Brill Academic Publication, 1985), 35.

2. "Officials Gazettes Database," Afghanistan Ministry of Justice- Islamic Republic of Afghanistan, accessed December 20, 2023, http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_D-header.htm.

3. Bentul Mawa, "Challenging Patriarchy: the Changing Definition of Women's Empowerment," *Social Science Review* 37, no. 2 (2020): 239-265.

4. Valentine M Moghadam, "Patriarchy, the Taleban, and politics of public space in Afghanistan," *Women's Studies International Forum* 25, no.1 (2002): 19-31, [https://doi.org/10.1016/S0277-5395\(02\)00224-8](https://doi.org/10.1016/S0277-5395(02)00224-8).

5. Mehdi J. Hakimi, *The Judiciary and the Rule of Law in Afghanistan* (Durham: Bolch Judicial Institute at Duke Law, 2021), 26. https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/judica105§ion=42.

political transformations within the country. The approval of the Bonn Agreement in Germany signaled the international community's commitment to fostering peace and establishing an inclusive government in Afghanistan.⁶

Amidst this backdrop of cultural shifts and concerted efforts by governments and international organizations to champion human rights and women's rights, the discourse surrounding gender equality gained prominence. Women's rights activists, alongside the government and international supporters, emphasized the seriousness of women's political participation, particularly their involvement in the legislative process.⁷ This heightened awareness and advocacy led to tangible outcomes, as Afghan women secured seats in parliament and assumed various governmental positions. These developments reflected a concerted effort to address gender disparities and enhance women's representation in decision-making arenas, marking a significant step towards greater gender equality within Afghan society.⁸

The primary aim of this research is to investigate the involvement of women in the legislative process in Afghanistan, spanning the period from 2001 to 2021. In this study, the term "law" is employed broadly, encompassing not only the Constitution but also laws ratified by the parliament and regulatory frameworks.

Existing literature indicates a considerable body of research on women's political engagement in Afghanistan.⁹ However, there is a noticeable gap in scholarship concerning the specific role of women within the legislative process. Thus, this research seeks to address this gap by examining the extent of women's participation in shaping legislative outcomes during the specified timeframe. By shedding light on this aspect of women's political involvement, this study aims to contribute valuable insights to the existing literature on gender and governance in Afghanistan.

Recognizing the pivotal role of law and the legislative process, this research examines women's participation within Afghanistan's legislative framework.

6. Conrad Shetter, *Publication series on Promoting Democracy in Fragile States under Conditions of State Fragility Issue 1: Afghanistan* (Berlin: the Heinrich Böll Foundation, 2006), 41. https://www.boell.de/sites/default/files/afghanistan_en.pdf#page=47.

7. Sebgatullah Qazi Zada, "Legislative, institutional and policy reforms to combat violence against women in Afghanistan," *Indian Journal of International Law* 59, no.1-4 (2021): 257–283. <https://link.springer.com/article/10.1007/s40901-020-00116-x>.

8. Muhammad Ibrahim and Razia Mussarat, "Women Participation in Politics: A Case Study of Afghan Women," *Journal of Public Administration and Governance* 4, no. 3 (2014): 441. <http://dx.doi.org/10.5296/jpag.v4i3.7190>.

9. Muhammad Tariq et al., "Political participation of women in Afghanistan in the present set up," *International Journal of Innovation, Creativity and Change* 15, no. 7 (2021): 812-824.

Adopting a human rights-based approach and employing the congruence model, the study seeks to unravel the extent of women's involvement in shaping legislation. The findings of this research hold paramount importance for the trajectory of Afghanistan. Insights gleaned from the strengths and weaknesses of the legislative process concerning women's roles during the republic period (2001-2021) can furnish valuable lessons for the nation's future governance and policymaking endeavors.

2. Conceptual Framework

The research endeavors to explore the intricacies surrounding the involvement of women in the legislative sphere through the lens of a human rights-based approach.¹⁰ The human rights-based approach is focused on advancing and defending human rights and is normatively grounded on international human rights norms. It aims to analyze the inequities at the core of development issues and address discriminatory behaviors and unfair power dynamics that obstruct development and frequently leave certain groups of people behind. The human rights-based approach will make it easy and clear to understand the role of women in the legislative process in Afghanistan in the last twenty years.

Furthermore, the study adopts the Congruence Model as a theoretical framework for a comprehensive examination of women's roles in the legislative process in Afghanistan. Originated by Michael L. Tushman and David A. Nadler in the early 1980s, the Congruence Model serves as a robust tool for diagnosing organizational performance issues and devising remedial strategies. Its fundamental premise asserts that organizational success hinges upon the alignment or congruence of its work, people, structure, and culture.¹¹

Although primarily conceived for resolving organizational challenges, the Congruence Model proves adaptable for scrutinizing women's engagement in legislative processes. These processes encompass four core components: work, people, structure, and culture. Firstly, work delves into the operational aspects of the organization, focusing on the enactment of laws in this context. Secondly, people encompass the individuals involved in legislative endeavors, including government officials and parliamentary members in the Afghan context. Thirdly, structure pertains to the procedural frameworks governing legislative activities within the Afghanistan government and Parliament.

10. Gauri Varun and Siri Gloppen, "Human Rights-Based Approaches to Development: Concepts, Evidence, and Policy," *Polity* 44, no. 4 (2012): 485–503, <https://doi.org/10.1057/pol.2012.12>.

11. "The Nadler-Tushman Congruence Model," Mind Tools, accessed August 20, 2022, <https://www.mindtools.com/adof5j/the-nadler-tushman-congruence-model>.

Lastly, culture encapsulates the overarching ethos and norms prevalent within these institutional settings.

Employing the Congruence Model, the study endeavors to elucidate the intricate interplay among these four pivotal components concerning women's participation in the legislative arena.

3. Literature Review

Amanullah Khan's sanctioning of the initial constitution marked a pivotal moment in Afghanistan's legal evolution.¹² Subsequent to his reign, the nation underwent various legal epochs, with particular significance attributed to the constitutional era during Zahir Shah's tenure. This era was succeeded by a new epoch wherein the nation's legal framework was primarily anchored in the newly established constitution, serving as the foundational cornerstone upon which subsequent legal codifications were built post-2004.

The comprehensive analysis of Afghanistan's legal system, particularly concerning the involvement and impact of women in the legislative process, remains an area with limited scholarly exploration. Despite the evident significance of understanding the dynamics of legal development and the role of gender in shaping legislation, there exists a notable gap in research and documentation in this domain. This gap hinders a nuanced understanding of the complexities inherent in Afghanistan's legal framework, as well as the challenges and opportunities faced by women within the legislative arena. As such, further scholarly inquiry and empirical studies are imperative to elucidate the intricacies of the legal system and to shed light on the extent to which women are engaged in and affected by legislative processes in Afghanistan. Such analyses can offer valuable insights for policymakers, legal practitioners, and advocates seeking to promote gender equality and inclusive governance within the country.¹³

This section will provide a concise overview of the legislative process in Afghanistan before and after the year 2001, highlighting key changes and developments that occurred during these distinct periods.

12. Nargis Nehan, "The Rise and Fall of Women Rights in Afghanistan," *London School of Economics* 2, no. 3 (2022): 115. <https://doi.org/10.31389/lseppr.59>.

13. Sayed Ali Motahari, "Optimal legislation and its components in Afghanistan's legal system," *Andiasha Mahasir* 4, no.13 (2018): 243-291. <https://www.andisha.af/fa/journals/76/Contemporary-thought-quarterly-for-political-studies-and-governance>.

3.1. Legislation and Women's Participation before 2001

The legal landscape of Afghanistan is characterized by a multifaceted complexity stemming from its diverse array of legal systems.¹⁴ Despite the formal existence of a singular legal framework, known as the subjective legal system, the practical reality reveals the coexistence of two additional legal systems that often intersect and influence the subjective legal system and legislative processes. These parallel systems include the Islamic legal system and the customary legal system.¹⁵ In parallel, Afghanistan also operates under a customary legal system, which is deeply entrenched in traditional practices, norms, and community-based decision-making. This system, shaped by centuries of cultural heritage and tribal customs, often governs disputes and issues within local communities, particularly in rural and remote regions where formal legal institutions may be less accessible or trusted.¹⁶

The inaugural constitution of Afghanistan, known as the *Nizamnamah-Ye-Asasi-E-Daulat-E-Aliyah-E-Afghanistan*, was ratified during the Loya Jirga assembly of 1923. This foundational document laid the framework for the country's governance structure and legal principles.¹⁷

In 1931, under the reign of Nader Shah, Afghanistan saw the approval of its second constitution, titled *Osol-E-Asasi-E-Daulat-E-Aliyah-E-Afghanistan*. An innovative feature introduced by this legislation was the establishment of two distinct legislative bodies within Afghanistan: the Senate and the Wolesi Jirga, also known as the National Assembly. Members of the Wolesi Jirga were elected by the populace for three-year terms, while the Senate consisted of appointees chosen by the king. Notably, women were not represented in either of these legislative chambers. Despite their existence, the legislative authority wielded by these bodies was largely symbolic, with the king retaining the ultimate power to enact laws.¹⁸

14. Esther Meininghaus, *Legal pluralism in Afghanistan* (Bonn: Department of Political and Cultural Change Center for Development Research, University of Bonn, 2007), 1. <https://www.econstor.eu/bitstream/10419/88370/1/77277594X.pdf>.

15. Naajma Yassari and Mohammad Hamid Saboory, "Sharia and national law in Afghanistan," in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden: Leiden University Press, 2010), 273-317.

16. Amy Senior, "Rebuilding the Judicial Sector in Afghanistan: The Role of Customary Law," *Al Nakhla* (2006): 1-10. https://ciaotest.cc.columbia.edu/olj/aln/aln_spring06/aln_spring06d.pdf.

17. Kamali, *Law in Afghanistan*, 29.

18. Shamshad Pasarlay, "The Making and the Breaking of Constitutions in Afghanistan," *Arizona Journal of International and Comparative Law* 40, no. 1 (2023): 60-102. <http://hdl.handle.net/10150/669703>.

The enactment of the third constitution in 1964 marked a pivotal moment in Afghanistan's legal evolution, as it introduced the term "law" into the lexicon of the country's legal culture for the first time. This milestone reflected a significant shift in the conceptualization and formalization of legal principles and processes within the nation's governance framework.¹⁹

The implementation of the 1964 Constitution in Afghanistan marked a notable advancement in democratic principles by extending the right to vote to all Afghan citizens aged twenty and above.²⁰ This pivotal development paved the way for increased political and legal engagement, particularly for women within the nation. As a direct consequence, in 1965, during the Afghan Parliament elections, a historic milestone was achieved as four women were elected to the Wolesi Jirga, marking the first instance of female representation in this legislative body.²¹ This momentous event symbolized a significant stride towards gender inclusivity and broader political participation within Afghanistan's democratic processes.

Furthermore, in a significant demonstration of progress towards gender inclusivity, two women were appointed as representatives to the Senate by the reigning king. This decision marked another noteworthy step forward in promoting women's participation in Afghanistan's legislative affairs, underscoring a growing recognition of the importance of gender diversity and representation within the nation's political institutions.²²

In 1973, Daud Khan orchestrated a coup, overthrowing the royal government and subsequently establishing a republic in Afghanistan. Four years later, in 1977, Daud Khan's government ratified a new constitution. Notably, the 1977 constitution placed a strong emphasis on women's rights, signaling a commitment to gender equality within the legal framework of the country.²³

However, despite the inclusion of provisions for a unicameral parliament in the constitution, the envisioned establishment of this legislative body did not materialize. This failure was due to the collapse of Daud Khan's government

19. Sabahudin Koshkaki, *The Decade of the Constitution* (Peshawar: np, 1986).

20. Sarwar Danish, *Constitutional Law of Afghanistan "Hoqooq Asasi Afghanistan"* (Kabul: Ibn Sina University, 2010), 88.

21. Moazima Stanikzai, *Women Representation in Politics: A Case Study of Afghan Women* (University of Gothenburg, 2021), 7. <https://gupea.ub.gu.se/handle/2077/69644>.

22. Deniz Kandiyoti, *The Politics of Gender and Reconstruction in Afghanistan* (Geneva: United Nations Research Institute for Social Development, 2005), 5. <https://www.unrisd.org/publications/opgp4>.

23. Amin Tarzi, "Islam and Constitutionalism in Afghanistan," *Journal of Persianate Studies* 5, no. 2 (2012): 205-243. <http://dx.doi.org/10.1163/18747167-12341244>.

shortly after the constitution's approval, preventing the full implementation of the constitutional framework, including the formation of the proposed parliament. Throughout the Democratic People's Party of Afghanistan's tenure from 1978 to 1992, the regime underscored its commitment to gender equality by explicitly enshrining equal rights for men and women within its policy framework.²⁴ Article 12 of the regime's policy articulated this commitment, emphasizing gender equality across various spheres of society, including social, economic, political, cultural, and civil domains. Subsequent to the downfall of the People's Democratic Government in 1992 and the subsequent ascension of extremist Mujahideen factions, Afghanistan entered a tumultuous era marked by significant hardships for women. The victory of these factions resulted in widespread deprivation and suffering, with many schools and universities shuttered for extended periods, depriving women and girls of educational opportunities. Moreover, the protracted conflict between warlords exacted a heavy toll on women and children, leading to the loss of countless lives.²⁵

The emergence of the Taliban regime from 1996 to 2001 exacerbated the plight of Afghan women, as they faced severe restrictions on their rights and freedoms. Under Taliban rule, women were systematically barred from engaging in employment, teaching, and pursuing education, severely curtailing their participation in social and public spheres. The draconian policies imposed by the Taliban further marginalized women, depriving them of agency and relegating them to subordinate roles within society.²⁶

3.2. Institutional Developments after 2001

The period from 2001 to 2021 witnessed significant political transformations in Afghanistan, peaking with the formulation of the 2004 Constitution. These developments were driven by a concerted effort to establish a political system that adhered to human rights principles and international conventions, aimed at garnering international cooperation for the country's reconstruction and

24. Patrice Sarmachar, "Political Regime: An overview existence of the democratic republic of Afghanistan 1978-1992," *Kazan Socially-Humanitarian Bulletin*, no. 5 (2016): 4-8. https://scholar.archive.org/work/flgk44wkwfehzhbyjb6r5fcz2q/access/wayback/http://kazanve.stnik.ru/files/4-8_Patrice.pdf.

25. Huma Ahmed Ghosh, "A History of Women in Afghanistan: Lessons Learnt for the Future or Yesterday and Tomorrow: Women in Afghanistan," *Journal of International Women's Studies* 4, no. 3 (2003): 1-14. <https://vc.bridgew.edu/jiws/vol4/iss3/1>.

26. Kalsoom Hanif et al., "Women's Rights in Afghanistan under Taliban Rule 1996-2001 and 2021-2022: A Comparative Study," *Journal of Namibian Studies: History Politics Culture* 32 (2022): 314-332.

development efforts. Central to this shift was the integration of human rights norms into Afghanistan's political-legal framework, with the Charter of Human Rights exerting notable influence.²⁷

Despite the notable progress made in creating opportunities for women in Afghan society during this period, women's participation in politics and broader societal roles has encountered numerous challenges. Deep-seated traditions, entrenched societal norms, and conservative interpretations of religious doctrines have served as significant obstacles, hindering women's ability to assert meaningful influence in political participation and legislative processes.²⁸

One illustrative example of these challenges can be observed in the legislative arena, particularly in the case of the law prohibiting violence against women. Despite being endorsed by a legislative decree in 2010, the passage of this crucial legislation faced staunch opposition from conservative factions within the *Wolesi Jirga*. Criticisms centered around perceived conflicts with Islamic Sharia, with opponents citing religious justifications to impede the law's approval despite persistent advocacy efforts by women's rights activists.²⁹

A review of scholarly works produced over the past two decades highlights a growing emphasis on issues related to women's rights within Afghan and international academic circles. While significant attention has been devoted to exploring women's political, social, and cultural rights, as well as their rights to employment and education, there remains a notable gap in the literature concerning the role of women in the legislative process. Despite extensive examinations of Afghanistan's legal system, comprehensive studies examining women's involvement and impact in legislative decision-making are notably absent, representing a significant lacuna in the research landscape within this field. Addressing this gap is essential for fostering a deeper understanding of the dynamics shaping women's political participation and advancing gender-inclusive governance in Afghanistan.

27. Sayed Edris Hashimi, "Education Right of Women in Afghanistan After 2001," *Technium Social Sciences Journal* 16 (2021): 41-51. <https://techniumscience.com/index.php/socialsciences/issue/view/32>.

28. Mundayat Meera and Khatera Yakta, "The Challenges to Political Participation of Women in Afghanistan: Historical and Cultural Perspectives," *Asian Studies* 9, no. 1 (2021): 65-91. <https://doi.org/10.4312/as.2021.9.1.65-91>.

29. Torunn Wimpelmann, "One step forward and many to the side: Combating gender violence in Afghanistan 2001–2014," *Women's Studies International Forum* 51 (2015): 101-109. <http://dx.doi.org/10.1016/j.wsif.2014.11.007>.

4. Research Methodology

The methodology employed in this research involved a dual approach to data collection. Initially, a comprehensive review of legal statutes, scholarly articles, academic literature, and official reports was conducted. Subsequently, a series of 36 questionnaires were distributed to individuals, comprising both women and men, who possessed a deep understanding of legislative processes. The majority of these participants were alumni of the Faculty of Law and boasted over two decades of experience either within governmental institutions or as advocates for civil rights. Additionally, 10 interviews were conducted with key stakeholders, including members of the Afghan parliament, legal experts, and advocates for women's rights.

The participant demographics were intentionally diverse, spanning various age groups, in order to capture a wide range of perspectives and experiences. The distribution of participants across different age categories is presented in Table 1. Similarly, efforts were made to ensure representation from both genders to encompass a holistic viewpoint. Furthermore, the educational qualifications of the participants were documented, showcasing a spectrum ranging from Bachelor's to Ph.D. degrees. Table 2 provides an overview of the educational attainment of the participants. The gender distribution among the participants is outlined in Table 4, highlighting a slightly higher representation of women compared to men.

Table 1. Age of Participants

Age	Number	Percentage
25-35	15	41.1
36-45	12	33.3
46-55	6	16.7
Over 55	3	8.3
Total	36	100%

Table 2. Education of Participant

Age	Number	Percentage
BA	19	52.8
MA	14	38.9
PhD	3	8.3
Total	36	100%

The occupational backgrounds of the participants were varied, encompassing roles within the Afghan government, parliamentary positions, and activism in the realms of human rights and women's rights advocacy. Table 3 delineates the distribution of participants across various occupations. Through this meticulous approach to data collection and participant selection, this research aimed to garner a comprehensive understanding of the subject matter, drawing on diverse perspectives and experiences within the Afghan context.

Table 3. Occupation of Participants

Occupation	Number	Percentage
MPs	2	5.5
Provincial council	1	2.7
Professor/ Researcher	6	16.6
Civil service employee	11	30.5
Civil society activist	8	22.2
Lawyer	5	13.8
UN or NGO Staff	3	8.3
Total	36	100%

Table 4. Gender of Participants

Gender	Number	Percentage
Women	21	58.3
Man	15	41.7
Other	0	0
Total	36	100%

5. Legislation Process and Women's Participation after 2001

Studies suggest that an augmented presence of women within parliamentary bodies tends to engender heightened attention towards issues pertinent to women. The realization of gender parity and the authentic manifestation of democratic principles hinge significantly upon the active involvement of women in political processes.³⁰ Following the establishment of the republic framework in Afghanistan, the socio-political landscape witnessed an opening

30. "Political Participation of Women," *UN Women*, accessed August 15, 2022, <https://asiapacific.unwomen.org/en/focus-areas/governance/political-participation-of-women>.

for women's engagement, facilitated by the backing of the international community. The 2004 constitution underscored the significance of women's role and presence within the societal framework. Specifically, Articles 83 and 84 of the Constitution solidified the assurance of women's representation in both the *Wolesi Jirga* (House of Representatives) and the *Meshrano Jirga* (Senate) of Afghanistan.

Women assumed diverse governmental roles, evidenced by statistics indicating their representation at various levels. Specifically, within the Meshrano Jirga, women accounted for 28%, while in the Wolesi Jirga, they constituted 25%. Furthermore, women held notable positions such as four ministerial roles and nine deputy ministerial positions within the cabinet. Additionally, women contributed significantly to the public sector, undertaking 20% of its tasks. Notably, Afghanistan boasted four female ambassadors and 240 female judges within its judicial system.

The focal point of this research revolves around delineating the role of women within the legislative apparatus. The study aims to scrutinize the extent and nature of women's involvement in the legislative process in Afghanistan spanning the years from 2001 to 2021, particularly within the country's legal framework. In accordance with Articles 95, 96, and 97 of the 2004 constitution, the process of drafting laws within the judicial domain involved collaboration among the government, ten parliament members, and the Supreme Court. Primarily, the government took the lead in proposing legislation. Initially, the relevant department would vet the proposed law, followed by scrutiny from the Ministry of Justice and assessment by the Laws Committee. Subsequently, upon approval by the Council of Ministers, the draft legislation would proceed to the Parliament for deliberation. Following the Parliament's endorsement as outlined in Article 94 of the 2004 Constitution, final approval rested with the president, after which the law was forwarded to the Ministry of Justice for publication in the official gazette, thus formalizing its enactment. This procedural trajectory underscores the sequential stages through which legislation attained legal efficacy.

Subsequent sections of this study endeavor to dissect the involvement of women within each phase of this legislative process.

5.1. The Initial Draft of the Law in the Relevant Department

In legal systems, the enactment of legislation typically undergoes distinct procedural phases. As delineated within pertinent legal documentation in

Afghanistan, the evolution of a proposed document into law entails six sequential stages: drafting, scrutiny of the draft proposal, verification, approval, ratification, and publication. These phases collectively represent a structured framework through which legislative measures are conceived, assessed, authenticated, endorsed, formalized, and ultimately disseminated within the legal framework of the jurisdiction. Such a systematic progression underscores the meticulous process by which laws are formulated and integrated into the legal fabric of a nation, reflecting the adherence to procedural rigor and the principles of legal legitimacy.

As per the provisions outlined in the 2004 constitution of Afghanistan, all three branches of government—the legislative, judiciary, and executive—were endowed with the authority to propose draft legislation. Nonetheless, the formalities surrounding the drafting process varied among these powers, each adhering to distinct procedural protocols. Legislative records indicate that the majority of draft proposals, commonly referred to as Bills, were predominantly prepared by the government.

In the process of drafting legislation, it was noted that the involvement of women pertained to several key considerations, as highlighted by a significant portion of interview respondents (comprising six individuals). Firstly, the extent to which a draft law pertained to women's rights was a determining factor in the participation of women in the drafting process. Secondly, the presence of women within the relevant department responsible for drafting the bill was a pivotal aspect. The level of representation and participation of women within this department was scrutinized to gauge the inclusivity of the drafting process. Lastly, the stance adopted by the leadership of the department regarding women's rights exerted influence on the involvement and engagement of women in the drafting phase. These criteria collectively underscored the nuanced dynamics surrounding the participation of women in the formulation of legislation, reflecting broader societal attitudes towards gender equality and women's empowerment within the legislative framework of Afghanistan.

The participants of the research answered the question of what role women in their office played in the bill drafting process:

Table 5. The Role of Women in the Drafting Process

Answers	Number	Percent
Involved in all stages of drafting	18	50%

Present passively and ceremonially	9	25%
I do not know	2	5.60%
No role at all	4	11.10%
No attention to the presence of women	3	8.30%

Role of women in the process of drafting the law in the relevant department is considered from the Congruence Model point of view, it can be seen that the role of women in this process was weak. The work (draft law) has been done by the people (mostly men) in an organization with the presence of the majority of men and with a patriarchal culture. Therefore, the role of women has been very weak. From the perspective of the Congruence Model, the involvement of women in the process of drafting legislation within the relevant department can be characterized as relatively weak. This model emphasizes the alignment between various elements within an organization, including its structure, culture, tasks, and individuals. In the context of legislative drafting, the observed imbalance in gender representation and influence underscores a misalignment between organizational components, particularly in terms of gender diversity and inclusivity.

Primarily, the drafting of laws predominantly undertaken by individuals, who are predominantly male, within an organizational environment where men constitute the majority, signifies a structural disparity. This disproportionate representation not only reflects a lack of gender diversity but also suggests potential barriers to the meaningful participation of women in decision-making processes.

Moreover, the presence of a traditional culture further compounds the marginalization of women in the drafting process. Patriarchal norms and attitudes tend to reinforce traditional gender roles and hierarchies, thereby inhibiting the full integration of women into decision-making roles and diminishing their influence within the organizational context.

Consequently, within the framework of the Congruence Model, the weak role of women in the drafting of legislation can be attributed to the incongruence between organizational elements, such as gender representation, cultural dynamics, and power structures. Addressing these disparities necessitates initiatives aimed at promoting gender equality, fostering a more inclusive organizational culture, and dismantling systemic barriers that impede the meaningful participation of women in legislative processes.

5.2. Scrutiny of the Draft Law in the Ministry of Justice

Upon completion of the initial drafting process within the pertinent department, the formulated draft law underwent meticulous examination by the Ministry of Justice through a procedure commonly referred to as "scrutiny." This scrutiny entailed a comprehensive evaluation of both the structural composition and substantive content of the legislative proposal. Such scrutiny was deemed imperative prior to the stage of ratification and approval, aimed at ensuring the resultant legislation's efficacy, operational functionality, and alignment with fundamental Islamic tenets, constitutional principles, and extant legal frameworks.

It is noteworthy to mention the existence of a specialized division within the Ministry of Justice known as "The General Directorate of the Institute of Legislative Affairs and Scientific-Legal Research," colloquially recognized as "The General Directorate of Legislation." Primarily entrusted with the dual mandate of drafting and scrutinizing legislative enactments, this department additionally served as a pivotal source of legal counsel and advisory services to various governmental ministries and entities. The participants in the research were queried regarding the role of women in the validation process of laws within the Ministry of Justice. Their responses are summarized as follows:

Table 6. Women's Participation in the Review Process

Answers	Number	Percent
Women's insights would be valued in the review process	9	25%
There were a limited number of women in the legislative dept.	8	22.2%
I do not know	12	33.3%
No role would be recognized for females	4	11.10%
Women's presence would be disrespected	3	8.30%

According to the research findings, the involvement of women in the Ministry of Justice regarding the revision of draft laws appears to be limited. The majority of interviewees, comprising seven individuals, highlighted challenges encountered by women in contributing to the law validation process within the Ministry of Justice. This limitation stems from the predominant presence of male personnel engaged in reviewing the draft law procedures. Consequently, the Department of Legislation within the Ministry of Justice predominantly comprises individuals, predominantly male, characterized by a

culture that emphasizes a people-centric approach and operates within a centralized structure, thereby marginalizing the participation of women in this domain.

5.3. Ratification of the draft law by Cabinet

Upon completion of the Justice Ministry's review, the draft law underwent evaluation by the Cabinet's Laws, Justice, and Judiciary Committees. Subsequently, upon deliberation by these committees, the draft law proceeded to the cabinet for potential approval. Should the draft law be deemed incomplete, the cabinet possessed the prerogative to return it to the law committee for further refinement. Conversely, upon cabinet approval, the draft law would be forwarded to the Wolesi Jirga via the Ministry of Parliamentary Affairs.

In elucidating the decision-making dynamics within the cabinet, interviewees, numbering eight, underscored that despite the presence of at least three women in the cabinet during the republic era, ultimate decision-making authority resided with the president, as prescribed by the constitution. However, it is imperative to acknowledge the significant influence wielded by the international community in advancing women's rights and participation. Donor countries supported various programs and legal initiatives aimed at bolstering women's rights, thus contributing to shaping the discourse surrounding gender equality within the political sphere.

Insights gleaned from questionnaire respondents shed light on the involvement of women in the Cabinet's Laws, Justice, and Judiciary Committees, as well as their participation in cabinet meetings.

Table 7. Role of Women in the Cabinet's Committees

Answers	Number	Percent
Women played a key role in the cabinet committees	9	25%
There were a limited number of women in the cabinet committees	16	44.4%
I do not know	6	16.7%
No role would be recognized for women	1	2.8%
Women's presence would be ignored	4	11.1%

Table 8. Role of Women in the Cabinet

Answers	Number	Percent
Women played a key role in the cabinet	12	33.3%
The role of women in cabinet debates was ceremonial	15	41.7%
I do not know	5	13.9%
No role would be recognized for women	2	5.6%
Women's presence would be ignored	2	5.6%

Analysis of the data presented in Tables 7 and 8 illuminates the limited involvement of women in the deliberations of both the Cabinet Laws Committee and the Cabinet throughout the Republic period. However, it is important to note that this does not imply a complete absence of women's participation; rather, their engagement was notably subdued. The findings underscore a relative role played by women within these forums.

The observed outcome regarding women's participation in the decision-making processes of the cabinet and its committees indicates that predominantly male assemblies, operating within a relatively patriarchal milieu and centralized structure, pose significant barriers to women's substantive engagement in legislative proceedings.

5.4. Approval of the law in the National Assembly

Upon ratification by the cabinet, the draft law proceeded to the parliamentary sphere for deliberation and endorsement. As stipulated within the explicit provisions of the 2004 Constitution, the Parliament held the apex authority in legislative matters, serving as the quintessence of the Afghan populace's collective will. Within its purview lay the prerogative to sanction, amend, or nullify laws and decrees. The legislative journey of a draft law within the parliament unfolded across two distinct stages. Firstly, it necessitated approval by the Wolesi Jirga, followed by subsequent endorsement by the Meshrano Jirga in the second stage.

The process of deliberation commenced with the presentation of the draft law in the plenary session, subsequently transitioning to the scrutiny of the pertinent committee. Following comprehensive review within the committee, incorporating requisite amendments, the draft law resurfaced for further discourse and balloting during the public assembly. This procedural framework remained consistent across both the Wolesi Jirga and Meshrano Jirga chambers.

Insights gleaned from respondents to inquiries regarding the role of women within the *Wolesi Jirga*, *Meshrano Jirga*, and their respective committees revealed the following perspectives:

Table 9. Women's Role in *Wolesi Jirga*

Answers	Number	Percent
Women played an essential role in the plenary session of the <i>Wolesi Jirga</i>	21	58.3%
Women's role would be considered ceremonial in the plenary session of the <i>Wolesi Jirga</i>	12	33.3%
I do not know	0	0%
No role would be recognized for women in the plenary session	1	2.8%
Women's role would be ignored within the plenary session	2	5.6%

Table 10. Women's Role in *Meshrano Jirga*

Answers	Number	Percent
Women played an essential role in the plenary session of the <i>Meshrano Jirga</i>	12	33.3 %
Women's role would be considered as ceremonial in the plenary session of the <i>Meshrano Jirga</i>	13	36.1 %
I do not know	5	13.9 %
No role would be recognized for women	2	5.6 %
Women's presence would be ignored	4	11.1%

In comparing the participation of women in the *Wolesi Jirga* and the *Meshrano Jirga*, it becomes evident that their involvement was relatively more pronounced in the former than in the latter. Several factors contributed to women's limited engagement. Primarily, the representation of women within the commissions of both chambers was markedly lower compared to men.³¹ For instance, the decision made by the *Wolesi Jirga* in 2013 to nullify a provision in the election law, which had guaranteed a 25% quota for women in provincial councils, raised significant apprehensions regarding the political prospects of Afghan women.³² One female lawyer in the *Wolesi Jirga* of Afghanistan expressed unawareness regarding the decision made by the

31. Tariq et al, "Political participation of women," 816.

32. "Women lawyers in *Wolesi Jirga* opposed a decision of this *Jirga*," Azadi Radio, accessed August 20, 2022, <https://da.azadiradio.com/a/25020049.html>.

pertinent commission of the Wolesi Jirga. The approval of this article within the election law was attributed to the absence of conservative lawmakers, yet the revelation of this decision occurred significantly later, prompting the transmission of the draft to the Meshrano Jirga. Subsequently, this matter underwent amendment within the election law in subsequent years.

Lack of unity and solidarity prevailed among the 68 women serving as members of the Wolesi Jirga. Various factors contributed to the absence of coordination among women within the Wolesi Jirga, leading to instances where women found themselves in opposition to one another.³³ For instance, as highlighted by a former Member of Parliament in an interview, internal conflicts persistently arose among female MPs, presenting considerable challenges in rallying them towards a unified front for the advancement of women's rights. Additionally, another interviewee articulated that deeply entrenched extremist interpretations of religious and patriarchal ideologies within society often deter women from advocating for their rights and engaging in discussions about pertinent laws, owing to a pervasive sense of paranoia and apprehension.

In 2017, the head of the Human Rights, Civil Society, and Women's Affairs Commission of the Wolesi Jirga issued a critique, highlighting the undervaluation of women's contributions within the political sphere. She urged the government to undertake measures aimed at bolstering women's involvement in both political and social realms, emphasizing that such initiatives were crucial for fortifying peace and stability within the nation.³⁴

Consequently, it can be observed that women contributed to the approval of legislation within both chambers of the National Assembly of Afghanistan, albeit their role was characterized as relatively positive rather than fundamental and constructive. This limitation stemmed from various factors, including the predominant presence of men espousing extreme and anti-feminist ideologies, which hindered women from assuming a more pivotal role in legislative processes, among other contributing factors.

33. Anna Larson, "Women and Power: Mobilizing around Afghanistan's Elimination of Violence Against Women Law," ODI, accessed August 20, 2022, <https://odi.org/en/publications/women-and-power-mobilising-around-afghanistans-elimination-of-violence-against-women-law>.

34. Nahid Bashirdost, "Wolesi Jirga Women's Commission demanded to increase the political participation of women," Pajhwok Afghan News, accessed August 26, 2022, <https://pajhwok.com/fa/2017/07/29/%DA%A9%D9%85%DB%8C%D8%B3%DB%8C%D9%88%D9%86-%D8%B2%D9%86%D8%A7%D9%86-%D9%88%D9%84%D8%B3%DB%8C-%D8%AC%D8%B1%DA%AF%D9%87-%D8%AE%D9%88%D8%A7%D8%B3%D8%AA%D8%A7%D8%B1-%D8%A7%D9%81%D8%B2%D8%A7%DB%8C%D8%B4>

5.5. Promulgation and publication of the law

In accordance with Article 94 of the 2004 Constitution, subsequent to the parliamentary endorsement of a draft law, it underwent transmission to the President for formal ratification. Following the President's approval, the law proceeded to the Ministry of Justice for dissemination via publication in the official gazette, culminating in its legal enactment. Notably, insights gleaned from interviews with three participants underscore the collaborative efforts of women's rights organizations, the Afghanistan Independent Human Rights Commission, and, on occasion, the Ministry of Women's Affairs, alongside the instrumental involvement of the international community, in influencing the legislative approval process. These stakeholders exerted influence through direct engagement with the President, leveraging advocacy to potentially avert the enactment of laws deemed detrimental to women's rights. It is pertinent to recognize Afghanistan's societal landscape, characterized by Islamic tradition and entrenched patriarchal norms, which informed the President's discretionary vetoing of certain legislations, factoring in contextual considerations. However, during the administrative phase of publishing the law in the official gazette, the discourse surrounding women's roles remained notably absent, indicative of a systemic oversight in addressing gender-related considerations within bureaucratic procedures.

The phase of publishing the law in the official gazette was an administrative process in which the issue of the role of women could not be discussed.

6. Conclusion and recommendation

Over the past two decades leading up to 2021, spanning from the pre-2001 era to the contemporary context, there has been a discernible trajectory of progress concerning the status and involvement of women within Afghan society, notably within the legislative domain. However, this narrative of advancement is juxtaposed against a backdrop of entrenched cultural paradigms, systemic governance deficiencies, a lack of robust legal frameworks, procedural impediments within the legislative process, and historical dynamics within the Afghan parliament. These factors collectively serve as barriers hindering the substantive participation of women in public affairs.

Empirical evidence underscores the presence of women across various strata of government during the republic era, characterized by legal provisions ostensibly affirming gender equality before the law and affording women commensurate political rights vis-à-vis their male counterparts. However, the

extent of their involvement in the legislative process remains contingent upon prevailing patriarchal norms, the ideological orientations of administrative leadership, and intra-gender dynamics. Despite persistent challenges, women have managed to exert a discernible albeit constrained influence within the political landscape.

Addressing these challenges and facilitating the comprehensive revitalization of Afghan society, with due emphasis on the inclusion and empowerment of women, necessitates concerted and multifaceted interventions.

The ensuing recommendations bear potential significance:

1. This study represents a foundational exploration within this particular domain. Subsequent comprehensive research endeavors are imperative to discern and address underlying deficiencies, thereby enabling informed strategizing for future interventions.
2. The forthcoming constitution of Afghanistan ought to incorporate a mechanism explicitly designed to ensure the substantive and meaningful engagement of women within the legislative apparatus. Such provisions are indispensable for fostering inclusive governance and advancing gender equity within the political sphere.

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