

LEGAL LOCK JOURNAL
2583-0384

VOLUME 3 || ISSUE 5

2024

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EXPLORING THE CONFLUENCE OF ISLAMIC PRINCIPLES AND LEGAL SYSTEMS: AN INSIGHT INTO SHARIA AND WOMEN IN AFGHANISTAN ONEYEAR AFTER THE TALIBAN TAKEOVER

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ABSTRACT

The Taliban takeover of Afghanistan in August 2021 raised questions about the legal system and its treatment of women. The Taliban's interpretation of Islamic law is inspired by the deobandi dhatu of Hanafi law, and the group's own experience of living as a predominantly rural tribal Taliban claimed that the country was an Islamic emirate whose laws and governance should be sharia complies. According to the Taliban, knowledge of Hanafi jurisprudence is the foundation of the legal system, and the country currently lacks a clear and unified legal system, judicial system, or executive mechanism Taliban leaders essentially nationalize their policies do not fulfill through guidelines or recommendations believe that prevailing cultural norms . The Taliban's religious orientation towards Afghanistan includes fleshing out the country's religious ideology, burning their "basic" religious certificates and steering Afghan nationalism towards religious nationalism Taliban policies have already begun targeting women's employment, education and freedom already limited. The Taliban's interpretation of Islamic law is based on their own understanding of local Islamic traditions, and the group is looking to establish an exclusively Muslim Islamic system. Amidst the Taliban's return to governance, their interpretation of Sharia law has significantly influenced legal structures and societal norms. This study examines the complexities surrounding the implementation of Sharia, juxtaposing traditional Islamic principles with contemporary legal frameworks. It seeks to elucidate how the Taliban's interpretation of Sharia law intersects with Afghan women's rights, shaping their access to education, employment, and personal autonomy. The research employs a multidimensional approach, encompassing legal analysis, sociocultural perspectives, and human rights frameworks. It delves into historical precedents, tracing the

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evolution of women's rights in Afghanistan and the interplay between Islamic jurisprudence and societal norms. It evaluates the challenges encountered in reconciling international human rights standards with local interpretations of Sharia, emphasizing the importance of cultural sensitivity and context-specific approaches in promoting gender equality. The study also highlights the resilience and agency of Afghan women amidst shifting legal paradigms, showcasing grassroots movements, educational initiatives, and women-led advocacy endeavors striving for societal transformation and gender-inclusive policies.

Keywords: Human rights, Islamic jurisprudence, Legal structures, Sharia law

INTRODUCTION

In most of the nearly fifty Muslim-majority countries of the world, Sharia law governs Muslims, who believe that God has given them many spiritual and worldly things. Some of these countries have laws that critics say require cruel criminal penalties or place unreasonable restrictions on the lives of women and minority groups. However, governments interpret and apply Sharia very differently, and people often misunderstand its role in legal systems and in the lives of individuals.

WHAT IS SHARIA?

Sharia means "right way" in Arabic. In Islam, it refers to divine advice that Muslims follow to live a moral life and become closer to God. Sharia is derived from two main sources: the Koran, which is considered the direct word of God, and the Hadith, the thousands of sayings and practices of the Prophet Muhammad that together form the sun.³ Some of the traditions and stories contained in these sources evolved from the traditions and stories of Judaism and Christianity, the other major Abrahamic religions. Shia Muslims include the words and deeds of some of the Prophet's families in the Sunnah. However, sharia largely comprises the interpretive tradition of Muslim scholars. The Prophet Mohammed is considered the most pious of all believers, and his actions became a model for all Muslims. The process of interpreting sharia, known as fiqh, developed over hundreds of years after he died in the seventh century and as the Islamic empire expanded outward from Mecca and Medina, where

³ *Afghanistan - united states department of state* (2023) *U.S. Department of State*. Available at: <https://www.state.gov/reports/2022-report-on-international-religious-freedom/afghanistan/> (Accessed: 31 October 2023).

he lived and died, in modern-day Saudi Arabia.⁴

Sharia isn't the same as Islamic law. Muslims believe sharia refers to the perfect, immutable values understood only by God, while Islamic laws are those based on interpretations of sharia. Interpreting Sharia requires a deep knowledge of the Qur'an and Sunnah, fluency in Arabic, and knowledge of legal theory.⁵ However, modern Islamic seminaries have not standardized the level of qualifications or length of study required to qualify as a lawyer, says Khaled Abou El Fadl, an Islamic lawyer and law professor at Los Angeles University. Interpretations of Sharia can also conflict depending on who is interpreting them. "There are ten different opinions on every legal issue," says Abou El Fadl. Islamic law varies from country to country, is influenced by local customs and evolves over time. Sharia is also the basis for legal opinions called fatwas, which are issued by Islamic scholars in response to requests from individual Muslims or governments seeking guidance on a particular issue. In Sunni Islam, fatwas are strictly advisory; in Shiite Islam, practitioners are obligated to follow the fatwas of the religious leader of their choosing.

WHY IS IT SO CONTROVERSIAL?

Sharia is a source of debate among Muslims and non-Muslims alike. Among the many reasons that lead to conflict over Sharia is that it often conflicts with modern legal systems in predominantly secular countries.⁶ "If you compare sharia to pre-modern legal systems, there is almost nothing controversial about it," says Abou El Fadl. Sharia can also be seen as problematic depending on who interprets it. Sharia is seen by many observers as a rigid legal system that cannot evolve to reflect modern Western values. Shari'ah debates usually focus on specific issues: Corporal punishment. For certain crimes, such as theft, blasphemy and adultery, traditional interpretations of Islamic law prescribe punishments that are considered severe compared to most modern legal systems. These include Hudud punishments which include stoning, beating and amputation. (The Koran never mentions stoning, a punishment

⁴ *Whither Islam in Afghanistan's political system after the Taliban talks?* (2020) United States Institute of Peace. Available at: <https://www.usip.org/publications/2020/10/whither-islam-afghanistans-political-system-after-taliban-talks> (Accessed: 31 October 2023).

⁵ *ISAS.NUS.EDU.SG*. Available at: <https://www.isas.nus.edu.sg/papers/remaking-of-afghanistan-how-the-taliban-are-changing-afghanistans-laws-and-legal-institutions/> (Accessed: 31 October 2023).

⁶ United States Institute of Peace. (n.d.). *Two Years of the Taliban's 'Gender Apartheid' in Afghanistan*. [online] Available at: <https://www.usip.org/publications/2023/09/two-years-talibans-gender-apartheid-afghanistan>.

derived from Genesis in both the Hebrew and Christian Bibles.) But such punishments require a high threshold of proof, so scholars say they are mostly intended as a deterrent. If they have a punitive effect by application. Today, most Muslim-majority countries do not use corporal punishment, although about a dozen states authorize it by state law. Local and international backlash often forces authorities to abandon such beliefs.⁷

However, Indonesia, Iran, Maldives and Qatar are the countries where flogging is still practiced; and Iran, Mauritania, Nigeria, Saudi Arabia and Sudan have punished convicted thieves with amputations in recent decades. In addition, the Taliban carried out public executions and amputations when they ruled Afghanistan in the 1990s, and said these punishments would return under the new government. Jihad. Many non-Muslims assume that this word, which means "to strive," refers only to the armed struggle of Muslim extremists against non-Muslims. However, as a Shari'ah principle, it refers to the pursuit of a moral goal, which can be, for example, an armed struggle against injustice, the desire to improve oneself morally, or the search for knowledge. Religious tolerance. Some critics say that Muslim-ruled countries that follow Sharia law are particularly intolerant of non-believers or members of other religions. Scholars argue that this intolerance stems in large part from pre-modern restrictions imposed on non-Muslim minorities in Muslim countries, supported by certain hadiths later incorporated into the Islamic canon that recommend the death penalty for apostate Muslims. Nigeria and Pakistan have carried out the death penalty for blasphemy and apostasy, as has Sudan for years. In addition, in some Muslim countries, religious minorities have fewer rights under modern laws and are discriminated against in other ways.⁸ For example, in Saudi Arabia, only Muslims can establish places of worship and pray in public. And other countries that claim to allow religious freedom—especially authoritarian ones—do not in practice (and routinely deny the rights of their citizens, regardless of their faith).

DEMOCRACY

Although scholars argue that Sharia does not advocate a fixed system of government, several groups use it to argue both against and in favor of democracy. Some Muslims say that democracy is a purely Western concept that was imposed on Muslim countries. Others say

⁷ *Taliban government in Afghanistan: Background and issues for Congress*. Available at: <https://crsreports.congress.gov/product/pdf/R/R46955> (Accessed: 31 October 2023).

⁸ Ibrahim, A. (2021) *Explainer: The Taliban and Islamic law in Afghanistan*, *Al Jazeera*. Available at: <https://www.aljazeera.com/news/2021/8/23/hold-the-taliban-and-sharia-law-in-afghanistan> (Accessed: 31 October 2023).

that the basis of democracy is in the Koran because it praises the "mutual consultation" of people (42:38 Koran). For example, the Egyptian Al-Azhar University made a statement during the so-called Arab Spring that Sharia will facilitate the transition to democracy. Moderate Islamist groups such as the Tunisian party Ennahda Movement also support democracy as the most popular form of government. Meanwhile, the leaders of Iran and Saudi Arabia argue that sharia requires undemocratic rule.

WOMEN'S RIGHTS

The Qur'an says that women are morally and spiritually equal to men, but it also shows that women and mothers have a special role in the family and society. Certain Sharia guidelines apply specifically to women, and some governments use Islamic law to significantly limit women's rights by dictating their dress and banning them from certain areas or segregating them in certain places. For example, Iran and Saudi Arabia have Islamic rules that require women to wear veils and male guards in public.⁹ Some Afghans and Western observers fear that Afghan women face similar restrictions under the Taliban. Critics say these modest rules create inequality, including limiting women's educational and employment opportunities. Other laws prevent women from initiating divorce and marriage on their own, promote child marriage and gender-based violence. Even in some places where sexist laws have been repealed, attitudes and practices are slow or resistant to change.¹⁰

LGBTQ+ RIGHTS

All major schools of Islam state that the practice of homosexuality is a sin, and the laws of most Muslim-majority countries discriminate against LGBTQ+ people. In extreme cases, same-sex behavior is punishable by death under Islamic law in ten countries. In other countries, it is often severely punished, such as in some of the more conservative Christian-majority countries.

HOW DO GOVERNMENTS IN THE MUSLIM WORLD INTERPRET AND

⁹ *Taliban restrictions on women's rights deepen Afghanistan's crisis* (2023) Crisis Group. Available at: <https://www.crisisgroup.org/asia/south-asia/afghanistan/329-taliban-restrictions-womens-rights-deepen-afghanistans-crisis> (Accessed: 31 October 2023).

¹⁰ Hazim, M. (2022) *Going back to zero: How the Afghan Legal and judicial system is collapsing under the Taliban regime*, *Jurist*. Available at: <https://www.jurist.org/commentary/2022/03/mahir-hazim-afghan-legal-judicial-system-collapsing-taliban-regime/> (Accessed: 31 October 2023).

ENFORCE SHARIA?

How do governments in the Muslim world interpret and enforce Sharia? About half of the world's Muslim-majority countries have some form of Sharia law, which usually deals with marriage and divorce, inheritance and child custody. Only about a dozen Muslim countries partially or fully implement Sharia in criminal law. Governments tend to favor one major school of Islamic law, or madhhab, although individual Muslims do not follow one school in their personal lives. Each school is named after its founder, and the methods of interpreting Islamic law differ from each other:

- **The Hanafi school** is regarded as the most liberal and the most focused on reason and analogy. It's favored by Sunnis in the Balkans, the Caucasus, Central Asia, China, Egypt, India, Pakistan, Turkey, and large parts of the Arab world.
- **The Hanbali school**, Islam's most conservative and focused on select texts, spawned the Wahhabi and Salafi branches. Saudi Arabia and the Taliban embrace this school.
- **The Ja'fari school**, the main Shiite madhhab, is preferred by Shia-majority Iran, Iraq, parts of Lebanon and South Asia, and eastern Saudi Arabia. It places great significance on the fatwas of early jurists and emphasizes reason over analogy.
- **The Maliki school** dominates in North and sub-Saharan Africa, as well as in parts of the Arab Gulf. It is the only school that considers the consensus of the people of seventh-century Medina as a source of law, out of the belief that the people of Medina best preserved the traditions of the Prophet Mohammed, who lived there.
- **The Shafi'i school** prevails in Brunei, Indonesia, Malaysia, Yemen, and some areas in the Middle East. This was the first school to systematize the sources of Islamic law in order of authority, with the Quran as superior, followed by the Sunna, the consensus of Muslim scholars, and analogy.¹¹

European-style law also influences legal systems in Islamic countries, even Iran and Saudi Arabia, which claim to follow only Islamic law.¹² This is partly due to the effects of colonialism, the demands of economic modernization, and the fact that many of the elites who built the legal systems of Muslim-majority countries had a Western education. Opinions

¹¹ *Afghanistan* (no date) 9 facts on women's rights in Afghanistan. Available at: <https://medicamondiale.org/en/where-we-empower-women/afghanistan> (Accessed: 31 October 2023).

¹² *Security Council emphasizes that punitive restrictions on women's rights, escalating hunger, insecurity taking devastating toll in Afghanistan | UN press* (no date) United Nations. Available at: <https://press.un.org/en/2023/sc15222.doc.htm> (Accessed: 31 October 2023).

differ on the best balance between Islamic law and secular law, but political systems tend to incorporate Sharia law in three ways:

Dual legal system:

In some countries with large Muslim populations, such as Malaysia and Nigeria, the government has a secular legal system, but Muslims may choose to go to Islamic courts for certain cases. The exact jurisdiction of these courts varies from state to state, but generally includes marriage, divorce, inheritance, and guardianship.

Government under God:

In countries where Islam is the official religion, the constitution defines Sharia as the "source" or sometimes the "source". Afghanistan and Saudi Arabia are examples of the first, while Bahrain, Kuwait and the United Arab Emirates are those that apply Islamic law in personal but not civil or criminal matters. For example, in Pakistan, Iran and Iraq, it is forbidden to pass anti-Islamic laws. Non-Muslims are not expected to follow Sharia and in most countries are subject to the jurisdiction of special government commissions and supplementary courts.¹³

Secularism:

Muslim countries with officially secular governments include Azerbaijan, Chad, Senegal, Somalia, Tajikistan and Turkey. However, Islamist parties run for office in these countries and sometimes take power. Turkey's ruling Justice and Development Party (AKP) is one such example.¹⁴

HOW DO EXTREMIST GROUPS INTERPRET SHARIA?

Islamist extremists are known for their puritanical interpretations of Sharia. Al-Qaeda, Al-Shabab and the self-proclaimed Islamic State, among others, want to establish fundamentalist regimes. Such organizations rely on violence and terrorism to impose their extreme versions of Islamic law, consolidate and expand their influence, and persecute their opponents. They can impose cruel punishments rarely used by governments in Islamic history, such as stoning, and others that traditional Islamic law expressly forbids, such as

¹³ United Nations (2023). *Afghanistan: UN experts say 20 years of progress for women and girls' rights erased since Taliban takeover*. [online] OHCHR. Available at: <https://www.ohchr.org/en/press-releases/2023/03/afghanistan-un-experts-say-20-years-progress-women-and-girls-rights-erased>.

¹⁴ Brookings. (n.d.). *The fate of women's rights in Afghanistan*. [online] Available at: <https://www.brookings.edu/articles/the-fate-of-womens-rights-in-afghanistan/>.

crucifixion. Leaders of such groups often have little or no training in Sharia interpretation. Many rebel groups see the introduction of an extreme version of Islamic law as a way to rebuke Western influence and listen to powerful Muslim-ruled empires. "They focus on power, not on interpretation or law as an advanced discipline or field," says Rabb. "With these organizations, you have all the aspects and advantages of demanding religious precepts, but not the substance or procedure that came with a complex system of Islamic law through deliberate and changing interpretations over time."

"There will be no democratic system at all," Taliban commander Waheedullah Hashimi said in an interview with Reuters. "We will not discuss what type of political system should we apply in Afghanistan because it is clear. It is sharia law and that is it."

One year ago, on August 15, 2021, the Taliban entered Kabul, the capital of Afghanistan, and took control of the country. Over the past 12 months, human rights violations against women and girls have steadily increased. Despite initial promises to allow women to exercise their Sharia rights, including the right to work and study, the Taliban have systematically excluded women and girls from public life. Women do not hold cabinet positions in the de facto administration, which also abolished the Ministry of Women's Affairs, effectively eliminating women's right to political participation. The Taliban also banned girls from attending school beyond the sixth grade and women from most jobs outside the home. Restrictions on women's movement and body continue to increase. In May, the Taliban ordered women to cover their faces in public and told them to stay in their homes except in essential cases. Women are prohibited from traveling long distances without a male escort, and unaccompanied women are increasingly denied essential services. Afghan women and girls continue to live in ruthlessness and their rights are threatened by constant violence. For some, this means forming new civil society groups to respond to community needs. For others, it means reopening their businesses and getting back to work. For everyone, this is invisible, unheard of courage. One year after the coup, we share stories written in their own words about today's women in Afghanistan. These largely anonymous first-hand accounts reflect the fear, anger and deep sense of loss that pervade the daily lives of Afghan women - and the tenacity with which they carry on.

Decades of progress on gender equality and women's rights have been wiped out in mere months. We must continue to act together, united in our insistence on guarantees of respect for the full spectrum of women's rights."

-----UN Women Executive Director Sima Bahous

TALIBAN POLICIES VIOLATING WOMEN'S RIGHTS

A report by Gender in Humanitarian Action (GiHA) found that women's civil society organizations suffered under the Taliban. Civil society is integral in holding the authorities accountable for adopting laws that address the needs of vulnerable groups, especially women. After the US-led invasion toppled the Taliban regime in 2001, foreign funding played an important role in supporting women's organizations and other NGOs focused on transparency and anti-corruption, election monitoring and human rights. About 77 percent of women's organizations do not have projects in 2022 due to lack of funds, and some of the organization's leaders and civil society members have left the country. Since the Taliban took over, foreign donors have sharply cut aid to Afghanistan, which is facing a major economic and humanitarian crisis. Western countries have also imposed sanctions against members of the Taliban government. The number of women and girls in need of humanitarian assistance increased from 8.8 million in 2021 to 11.8 million in 2022. After almost 20 years of insurgency, the Taliban returned to power in Afghanistan on August 15, 2021, after the retreat of the United States. states troops from the country. More than 120,000 people fled their homeland because of the Taliban coup.¹⁵

Although there are internal divisions within the militant Islamist group, some experts believe that the Taliban regime is likely to remain in power for the foreseeable future. The Taliban and the West have been at odds on several issues, such as terrorism and human rights, especially women's rights. German Foreign Minister Annalena Baerbock said that women in Afghanistan experience and quote; the biggest violation of women's rights on earth.and quote; The loss of women and rights concerned the international community. From banning girls' education to imposing dress codes for women, the Taliban has led advances in women's rights for two decades. The Afghan constitution drafted in 2004 gave women the right to work and education.

¹⁵ United Nations (2023b). *Security Council Emphasizes That Punitive Restrictions on Women's Rights, Escalating Hunger; Insecurity Taking Devastating Toll in Afghanistan* | UN Press. [online] press.un.org. Available at: <https://press.un.org/en/2023/sc15222.doc.htm>

Girls Banned From School

One of the international community's key demands for increasing aid to Afghanistan has been the return of girls to schools. In September 2021, the Taliban banned girls from secondary education. In March, shortly after announcing the reopening of schools for girls, the Taliban closed them again. This was followed by a wave of protests in Kabul that led to the detention of several protest leaders. On September 10, just a few days after four secondary schools reopened for girls in eastern Afghanistan, the Taliban shut them again. There are currently about 3 million girls in Afghanistan who will not complete their secondary education. RFE/RL's Radio Azadi recently shared a compilation of drawings, photographs, and letters by Afghan girls showing the psychological toll of the ban on schoolgirls. Even if girls are allowed to return to secondary school, the exodus of qualified female professionals is likely to have a negative impact on their education. Weeda Mehran, co-director of the Center for Advanced International Studies (CAIS) at the University of Exeter, told RFE/RL that male teachers are not allowed to teach girls, so even if girls in secondary school go back to class, there will be a shortage of female teachers.

A 'Domino Effect':

The Taliban redefined what work is considered appropriate for women based on their interpretation of Islamic law. Most women are only allowed to work in the health and education sectors, although some have been too scared to return to work. Some female doctors and nurses also fled the country after the Taliban took over, causing a shortage of health workers. The gender segregation policies of the Taliban have also created barriers to women and girls accessing health care. In many facilities, patients are treated only by a doctor of the same sex. This was strongly felt in a country with a high birth rate. The devastating earthquake in southeastern Afghanistan, which killed more than 1,000 people in June, also exposed the cost of reducing women's jobs. According to local reports, women affected by the earthquake could not receive treatment because there were no female doctors in the area. The Taliban recognize the need for more women in the health sector and are requesting external financial assistance to increase women's educational and employment opportunities. As the Taliban increasingly violates women's rights, the international community has refused to commit to long-term funding without guarantees that women's rights will be restored. The Taliban's restrictions on women's employment had a clear

"domestic effect", bringing Afghanistan's health system to the brink of collapse.¹⁶

Women Out Of Decision-Making Environments

Human rights campaigners have accused the Taliban of trying to erase women from all public life. In June, several thousand Taliban clerics and tribal leaders gathered to discuss issues of national importance. But Taliban leaders did not allow women to participate. Women were already underrepresented in the workforce in Afghanistan, varying between around 14 and 15 percent from 1990 to 2012. It reached its peak in 2019 when 21.57 percent of the labor force was made up of women.

Women And The Economy:

The Taliban's restrictions on women working outside the home had a major impact on the Afghan economy. According to the United Nations Development Program (UNDP), the country's GDP could drop by at least 5 percent, which equates to up to a billion dollars, depending on the severity of the restrictions on female work.¹⁷ According to UNICEF, the sharp decline in women's employment has already cost the Afghan economy at least \$500 million over the past 12 months, a loss of 2.5 percent of Afghanistan's annual GDP. After the Taliban backtracked on its decision to reopen girls' high schools in March, Washington called off talks with Taliban representatives in Qatar over the release of about \$7 billion in US-held Afghan government assets. The White House also froze \$600 million for education, agriculture and health projects in Afghanistan.

CONCLUSION

The Taliban's rule under Sharia law and its impact on women's rights has been a topic of global concern and debate. In conclusion, the Taliban's interpretation and implementation of Sharia law have led to severe restrictions on women's rights, resulting in a significant regression in gender equality and women's empowerment in Afghanistan. Under Taliban

¹⁶ International Crisis Group (2023). *Taliban Restrictions on Women's Rights Deepen Afghanistan's Crisis*. [online] [www.crisisgroup.org](https://www.crisisgroup.org/asia/south-asia/afghanistan/329-taliban-restrictions-womens-rights-deepen-afghanistans-crisis). Available at: <https://www.crisisgroup.org/asia/south-asia/afghanistan/329-taliban-restrictions-womens-rights-deepen-afghanistans-crisis>.

¹⁷ United Nations (2023a). *Afghanistan: UN experts say 20 years of progress for women and girls' rights erased since Taliban takeover*. [online] OHCHR. Available at: <https://www.ohchr.org/en/press-releases/2023/03/afghanistan-un-experts-say-20-years-progress-women-and-girls-rights-erased>.

rule, women have faced numerous challenges. They have been excluded from education, employment, and public life, severely limiting their opportunities for personal and economic development. Women's access to healthcare has also been compromised, as they have been denied the right to work as healthcare professionals, and restrictions on their mobility have made it difficult to seek medical care. These limitations on women's autonomy and well-being have had a detrimental impact on their overall quality of life. Furthermore, the Taliban's strict interpretation of Sharia law has led to a legal system that discriminates against women. Their testimony in court is often given less weight than that of men, and women are at a significant disadvantage when it comes to issues like marriage, divorce, and inheritance. This systemic discrimination perpetuates gender-based violence and inequality. The international community has expressed deep concern over the erosion of women's rights under Taliban rule, and there have been calls for the protection of women's rights and gender equality in Afghanistan. It is essential to support initiatives that aim to safeguard and promote women's rights, education, and healthcare in Afghanistan. Sustainable peace and stability in the region depend on the inclusion and empowerment of women in all aspects of society. The Taliban's rule under Sharia law has had a profoundly negative impact on women's rights in Afghanistan, leading to restrictions that undermine their well-being, autonomy, and legal status. Efforts to address these challenges are crucial for the long-term development and prosperity of the Afghan people and the realization of gender equality in the country.