Legal Consequences of Depriving Women of Education in Afghanistan

Najiba Farahmand[1]

Abstract

The denial of women's right to education in Afghanistan, especially after the Taliban returned to power in 2021, is considered one of the most serious human rights violations. The right to education is recognized as a fundamental human right in international documents such as the Universal Declaration of Human Rights, the Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of All Forms of Discrimination against Women. Despite these commitments, the Taliban have deprived millions of Afghan women and girls of this fundamental right by banning girls' education beyond the sixth grade and closing universities.

This research aims to examine the legal consequences of women's lack of access to education in Afghanistan. The research method in this article is descriptive-analytical, and the information was collected through library resources, international law documents, and relevant reports of international organizations. The research findings show that, in addition to violating the right to education, women's deprivation of education leads to violations of human dignity, reduced political and social participation of women, limited job opportunities, and increased social injustice.

The research concludes that the international community and international institutions have an important responsibility to support the right to education of Afghan women and must provide access to education for Afghan women and girls through diplomatic pressure, human rights monitoring, and the creation of alternative educational opportunities.

Keywords: Women's Right to Education, Afghanistan, Human Rights

Abstract

Penolakan hak perempuan untuk memperoleh pendidikan di Afghanistan, khususnya setelah Taliban kembali berkuasa pada tahun 2021, dianggap sebagai salah satu pelanggaran hak asasi manusia yang paling serius. Hak atas pendidikan diakui sebagai hak asasi manusia yang mendasar dalam dokumen-dokumen internasional seperti Deklarasi Universal Hak Asasi Manusia, Kovenan Internasional tentang Hak-Hak Ekonomi, Sosial, dan Budaya, serta Konvensi tentang Penghapusan Segala Bentuk Diskriminasi terhadap Perempuan. Meskipun terdapat komitmen tersebut, Taliban telah merampas hak dasar jutaan perempuan dan anak perempuan Afghanistan dengan melarang pendidikan bagi anak perempuan di atas kelas enam serta menutup universitas.

Penelitian ini bertujuan untuk mengkaji konsekuensi hukum dari kurangnya akses perempuan terhadap pendidikan di Afghanistan. Metode penelitian yang digunakan dalam artikel ini adalah deskriptif-analitis, dan data dikumpulkan melalui sumber pustaka, dokumen hukum internasional, serta laporan-laporan organisasi internasional yang relevan. Hasil penelitian menunjukkan bahwa selain melanggar hak atas pendidikan, perampasan pendidikan terhadap perempuan juga menyebabkan pelanggaran terhadap martabat manusia, menurunnya partisipasi politik dan sosial perempuan, terbatasnya peluang kerja, serta meningkatnya ketidakadilan sosial.

Penelitian ini menyimpulkan bahwa masyarakat internasional dan lembaga-lembaga internasional memiliki tanggung jawab penting untuk mendukung hak pendidikan perempuan Afghanistan dan harus menyediakan akses pendidikan bagi perempuan dan anak perempuan Afghanistan melalui tekanan diplomatik, pemantauan hak asasi manusia, serta penciptaan peluang pendidikan alternatif.

Keywords: Moral Rights, Creator, Music Copyright, Musical Work.

Introduction

Education is considered a fundamental human right that plays an essential role in improving the status of women individually and socially. In addition to having a high level of understanding and awareness, educated women have great power and ability to confront life's challenges, improve society, promote justice, and reduce inequalities. Also,

[1]Najiba Farahmand, Faculty of Law, Universitas Islam Indonesia, E-mail: najibafarahmand351@gmail.com

educated women have better decision-making power.[2] Therefore, it can be said that Afghan women, like other women, need education to enhance their capacities and lead society towards sustainable development.

Women in Afghanistan have been deprived of education since the Taliban came to power again on August 15, 2021. According to the Taliban government's decision, girls can only be educated up to the sixth grade. Above the sixth grade, the doors of schools, universities, and even health education centers are closed to girls. According to a UNESCO report, 1.4 million girls have been deprived of primary education since the Taliban regime. This deprivation has created an atmosphere of hopelessness, and a lack of motivated girls are not interested in going to school even at permitted levels, which is allowed for girls under the age of twelve. And statistics show that the number of primary school students in 2022 has decreased significantly compared to 2019.[3] Therefore, the Taliban's performance reflects an authoritarian government that has deprived women of their right to education.

While education is a fundamental human right according to international covenants and conventions, its deprivation is a clear violation of human rights, and especially if this deprivation is based on gender, it is a form of structural discrimination that, in addition to undermining the growth and empowerment of women, leads to human rights violations in Afghan society and the international community. Accordingly, this research seeks to examine the legal consequences of deprivation of education to provide solutions to eliminate this deprivation.

Problem Formulation

1) To what extent does the deprivation of girls of education constitute a violation of human rights?
2) What are the legal consequences of the deprivation of women of education?

Methodology

This research is a normative legal research with a descriptive-analytical approach. In this research, international legal documents related to women's right to education and the legal consequences of the deprivation of this right are examined.

The descriptive approach is used in this research to describe the situation of the deprivation of women and girls from education in Afghanistan after 2021. This section describes the current situation and the policies implemented by the Taliban in the field of education. In contrast, the analytical approach is used to examine and evaluate the legal consequences of this deprivation, especially within the framework of international human rights documents and the obligations of states regarding the right to education.

[2] Sowjanya S. Shetty and V. Basil Hans, "Role of Education in Women Empowerment and Development: Issues and Impact," paper presented at the National Seminar, St. Aloysius College, Mangaluru, September 22–23, 2015. , https://ssrn.com/abstract2665898

[3] UNESCO, Afghanistan: 1.4 Million Girls Still Banned from School by De Facto Authorities, last modified July 11, 2023, https://www.unesco.org/en/articles/afghanistan-14-million-girls-still-banned-school-de-facto-authorities

This research uses three complementary approaches: legal approach, conceptual approach, and case approach. The legal approach is used to analyze international documents such as the Universal Declaration of Human Rights, the Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of All Forms of Discrimination against Women. A conceptual approach has been used to explain concepts such as the right to education, human dignity, and the responsibility of states towards human rights. A case study approach has also been dedicated to examining the situation in Afghanistan as a concrete example of widespread violations of the right to education of women and girls.

The sources used in this study include primary sources (international human rights instruments and Afghan domestic laws), secondary sources (books, scientific articles, and reports of international organizations such as UNESCO and Human Rights Watch), and tertiary sources (encyclopedias and legal dictionaries).

The data collection method in this study is the library method. Data has been collected through the study and review of legal documents, reports of international organizations, and scientific sources related to the status of women's education in Afghanistan.

The data analysis method in this study is qualitative legal analysis. In this method, the collected data and resources are analyzed, and the degree of compliance of the current situation with international law obligations regarding the right to education and the legal consequences of its violation are assessed.

Discussion and Result

Legal Foundation of Women's Right to Education

The right to education is considered a human right in international documents, such as stated in Article 26 of the Universal Declaration of Human Rights: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available, and higher education shall be equally accessible to all based on merit."[4] This article considers education and the enjoyment of education as the right of every individual in society, and even considers primary education to be free and compulsory. This shows that education is a trans-gender and trans-regional right, and no one is deprived of this right based on gender. Furthermore, the fact that primary education is compulsory and free demonstrates the importance of education in human society and the responsibility of governments towards their citizens.

Moreover, the Convention on the Elimination of All Forms of Discrimination against Women obliges States Parties to take the necessary measures to eliminate discrimination in the field of education, to ensure women's access to free and quality education, and to remove obstacles to women's education.[5] This article explicitly refers to the elimination of

[4] United Nations General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), https://www.un.org/en/about-us/universal-declaration-of-human-rights

[5] United Nations, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 18 December 1979, https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx

discrimination in education, meaning that any type of discrimination that limits women's access to education or that prevents women from exercising their right to education must be removed by the State, whether the obstacles directly or indirectly prevent access to education. Furthermore, the obligation of States to ensure women's access to quality education reflects the importance of the right to education in the social, economic, cultural, and political lives of women.

Similarly, the Afghan constitution recognizes the right to education as one of the rights of citizens and states in article 43, "The state shall provide education for all citizens at all levels, including primary, secondary, and higher education. Primary education shall be free, and both girls and boys shall have equal and non-discriminatory access to education." [6] The constitution of Afghanistan, as well in line with international standards, obliges the government to provide education to all in a fair manner and free from any forms of discrimination.

Finally, the right to education is recognized as a fundamental right in international instruments and domestic law, but despite its obligations, many obstacles have deprived women of access to this right, which requires policies from governments and human rights institutions.

The status of women's educational deprivation in Afghanistan

Historical Development in Women's Education in Afghanistan

The beginning of women's education in Afghanistan dates back to the reign of Amanullah Khan. The first girls' school was established in 1921 by King Amanullah Khan, but despite religious opposition, women had the right to education, and even several women were sent to Turkey to continue their education. However, with the coming to power of Habibullah Kalakany in 1929, girls' schools were closed again, and the girls who had been sent abroad were returned. Then, during the time of Nader Khan, girls' schools were reopened until the beginning of the Taliban government, and women had right to education, but with the coming to power of the Taliban from 1996-2001, girls' education was completely stopped, except for the Faculty of Medicine, which was open to women, due to the need for female patients to have female doctors.[7]

After the fall of the Taliban and the beginning of the Karzai government in 2001, women entered a stage of growth and prosperity. According to the Ministry of Education report, 10.5 million students were registered in educational centers, 38 percent of whom were women. There were also 77,000 adults registered for literacy, 62 percent of whom were women.[8]

Educational Challenges for Women under Taliban Rule (post-2021)

In the Constitution of Afghanistan, the right to education is recognized as one of the most fundamental rights of citizens in the chapter "Fundamental Rights of Citizens".

[6] Constitution of Afghanistan, Article 43. Available at https://www.constituteproject.org/constitution/Afghanistan_2004.pdf

[7] Hazrat Usman Mashwani, "Female Education in Afghanistan: Opportunities and Challenges," International Journal for Innovative Research in Multidisciplinary Field 3, no. 11 (November 2017), pp 43, 44

[8] Ibid. https://philpapers.org/archive/MASFEI.pdf

According to Article 43, education is considered the right of every citizen of Afghanistan, and the government is obliged to design and implement effective and appropriate programs to develop and expand education throughout the country. In this article, education is considered the right of its citizens, and the government is obliged and responsible for designing and implementing effective educational programs. In addition, Article 44 of this law obliges the government to provide the necessary conditions for equal and balanced access of women to education and to pave the way for the realization of educational equality in practice by adopting special policies and programs.[9] But after the Taliban came to power in August 2021, women have been completely deprived of the right to education. The Taliban closed schools for girls above the sixth grade in March 2022 and, in September of that year, closed the universities. In 2023, girls were not allowed to participate in the Kankor exam. With these discriminatory decisions by the Taliban, about 80 percent of girls and youth in Afghanistan have been deprived of education by April 2023.[10] According to the theory of Philip Nonet and Philip Selznick, a law that responds to the basic needs of society and works towards ensuring social justice is called "responsive law." From this perspective, the Afghan constitution, which obligates the government to provide education to all members of society, is an example of responsive law. In contrast, the Taliban's policies that ignore the right to education and deprive people, especially women and girls, of this right are an example of "repressive law" that not only does not respond to the needs of society but also restricts people's basic rights and freedoms.[11]

Legal Consequences of Depriving Women of Education

Deprivation of Education: Deprivation of Human Rights

The right to education is considered a fundamental human right, and governments are obligated under international law to provide free primary education to their citizens. This obligation on the part of governments shows that education is the most fundamental human right. In addition to being obligated to provide the right to education, the government must ensure access to it for all and its acceptable quality.[12] Therefore, providing the right to education with such a feature proves the human nature of this right, and depriving women of the right to education is considered a deprivation of the most fundamental human right.

Violation of the Right to Education, Violation of Dignity

Access to education is one of the foundations of preserving human dignity. When a government is obliged to provide the right to education based on international documents and constitutional laws, it is recognizing human dignity in its citizens, because humans

[9] . Islamic Republic of Afghanistan. Constitution of Afghanistan. Kabul: Ministry of Justice, 2004. Accessed May 12, 2025. https://moj.gov.af/dr/

[10] ^1 UN Women, "FAQs: Afghan Women Three Years after the Taliban Takeover," UN Women, 12 August 2024, https://www.unwomen.org/en/articles/faqs/faqs-afghan-women-three-years-after-the-taliban-takeover.

[11] Philippe Nonet and Philip Selznick, Law and Society in Transition: Toward Responsive Law (New York: Harper & Row, 1978), 73. 74

[12] Andrew Clapham, Human Rights: A Very Short Introduction (Oxford: Oxford University. Press. Pp 122-127 https://libgen.is

need education to grow and build their human personality. As mentioned earlier, the Afghan Constitution also considers the right to education as one of the most fundamental rights of its citizens, and according to Article 43, the government is obliged to provide educational opportunities for Afghan citizens. So the government's refusal to provide education to citizens is not only a violation of human rights but also a violation of human dignity.[13] International documents that Afghanistan has ratified and signed and is obliged to abide by explicitly recognize the right to education. For example, the International Covenant on Economic, Social and Cultural Rights, which Afghanistan ratified in 1983, in Article 13, considers education to be a fundamental right of citizens and obliges governments to provide the right to education to their citizens.[14] Therefore, deprivation of education, in addition to violating domestic laws, also violates international documents and is considered a violation of human rights and a violation of human dignity.

When education is recognized as a right, humans are seen as free, independent beings with rights, not as tools and means. Therefore, whenever the right to education is violated by the government or a group, the human dignity of citizens is in fact ignored.[15]

Employment, Political Participation, and Access to Justice

In addition to violating human rights and human dignity, deprivation of education leads to the loss of equal job opportunities, reduced political participation, and limited access to justice. According to Amartya Sen's theory, education, especially women's education, plays a fundamental role in ensuring social justice.[16] Educated women can fight against the inequalities of society with the tools of science because they have reached the stage of perfection by learning science, which is aware of both their rights and freedoms and the rights and freedoms of others. Educated women can understand inequalities well and defend themselves; they can still be the initiators of social justice.[17] Therefore, the deprivation of women from education due to a lack of awareness and understanding of their rights leads to injustice in society.

Education is the basis of women's empowerment. Women who are educated, have political understanding, and are aware of their rights and freedoms participate in political activities. However, if a woman is deprived of the right to education, she will not participate in the political arena because, first, she is not aware of her rights and does not know that, as a member of society, she has the same right to political participation as a man. Second, a woman who is deprived of education cannot participate in political

[13] . Islamic Republic of Afghanistan. Constitution of Afghanistan. Kabul: Ministry of Justice, 2004. Accessed May 12, 2025. https://moj.gov.af/dr/

[14] United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights.

[15] Jost Delbruck, "The Right to Education as an International Human Right," Maurer School of Law: Indiana University, 1992, pp 98-100https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=3824&context=facpub

[16] Amartya Kumar Sen, Development as Freedom (New York: Alfred A. Knopf, 1999), p.

[17] Shetty, Sowjanya S., and V. Basil Hans, "Role of Education in Women Empowerment and Development: Issues and Impact," paper presented at SAMPRATHI 2015 National Seminar, St. Aloysius College, Mangaluru, September 22–23, 2015, https://ssrn.com/abstract=2665898

meetings due to low self-confidence. As American sociologists such as Burns, Schlozman, and Veria say, education is a very powerful predictor of political participation."[18]

The right to education plays an important role in creating job opportunities because, through education, women acquire skills that are absorbed into various sectors. Similarly, where women are educated, gender inequality is eliminated because women acquire skills that are accepted in the labor market.[19]

As mentioned before, according to the theory of Nonet and Selznick, a society in which all individuals cannot access their rights or if their basic needs are not met, the law in the society is not responsive but oppressive.

Support and Monitoring of International Institutions in the Implementation of Women's Rights

Given that Afghanistan currently lacks a legitimate and internationally recognized government, it is impossible to speak of effective government support and oversight of Afghan women's rights. In this situation, the responsibility for protecting the rights of Afghan women and overseeing the implementation of these rights falls on international institutions.[20]

International conferences and meetings can be an opportunity to highlight the importance of women's rights, especially in the fields of education, health, political participation, and combating violence against women. These conferences can raise awareness about the challenges and violations of women's rights, and thereby exert social and political pressure on countries that violate women's rights. In addition, in these conferences, experiences of different countries in the field of progress in women's rights are shared, which creates solutions for governments.[21]

Human rights institutions and international organizations play a vital role in monitoring and evaluating human rights conditions. Through this role, they can identify violations and assist governments in preventing them. In cases involving women's rights, such organizations help protect and improve women's conditions. Bodies like the Committee on the Elimination of Discrimination against Women and the Commission on

[18] Tapan Kumar Sahu and Kusum Yadav, "Women's Education and Political Participation," International Journal of Advanced Education and Research 3, no. 6 (November 2018): 65–71, https://doi.org/10.22271/educatin.2018.v3.i6.15

[19] UN Women, Progress of the World's Women 2015–2016: Transforming Economies, Realizing Rights (New York: United Nations Entity for Gender Equality and the Empowerment of Women, 2015), https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2015/POWW-2015-2016-en.pdf

[20] United Nations General Assembly. (2005). 2005 World Summit Outcome. A/RES/60/1, paras. 138–139. Retrieved from https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf

[21] Sinan Salah Al-Salihi, The Role of International Human Rights Laws in Protecting Women's Rights, PJAEE 18, no. 4 (2021): 5356–5357, accessed April22 , 2025, https://www.researchgate.net/publication/358885860

the Status of Women are key examples. Thus, monitoring is essential for safeguarding and advancing women's rights.[22]

International conferences and meetings emphasize the importance of women's rights in areas such as education, health, political participation, and combating violence. They help raise awareness of violations, apply social and political pressure on offending countries, and allow the sharing of experiences and solutions. Additionally, the adoption and ratification of international conventions obligate governments to uphold women's rights, making them responsible for preventing violations as part of their international commitments.[23]

Moreover, international organizations can use diplomatic policies to put pressure on countries that violate women's rights. This pressure can take the form of sending recommendations, critical reports, or even threatening to impose political and economic sanctions. Sending recommendations to governments to improve women's rights helps governments do more to prevent violations of women's rights. These recommendations can help countries to change laws if they violate the law, implement the laws, adopt a consistent procedure, and have a clear legal framework.[24]

Conclusion

The right to education is one of the most fundamental human rights that provides the basis for individual, economic, and social development. Deprivation of the right to education is not only a clear violation of human rights but also undermines human dignity, denying them equal employment opportunities, access to justice, and the right to political participation. Women in Afghanistan have also gone through a difficult educational path. Since 2001, most women have had access to education, but with the rise of the Taliban, women have been deprived of the right to education. In these circumstances, the role of international organizations in ensuring the right to education for Afghan women is more crucial, and ensuring this right is considered not only a legal responsibility but also a moral responsibility.

At the end, it is recommended that the international community provide education for Afghan girls by putting pressure on the Taliban government. It is also recommended to provide education for women and girls through informal institutions and online education systems.

References

———. "Role of Education in Women Empowerment and Development: Issues and Impact." SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, September 26, 2015. https://doi.org/10.2139/ssrn.2665898

[22] Del Prado, Geraldine A. "The United Nations and the Promotion and Protection of the Rights of Women: How Well Has the Organization Fulfilled its Responsibility?" William & Mary Journal of Women and the Law 2, no. 1 (1995): 51, 52. https://scholarship.law.wm.edu/wmjowl/vol2/iss1/4

[23] Sinan Salah Al-Salihi, The Role of International Human Rights Laws in Protecting Women's Rights, PJAEE 18, no. 4 (2021): 5358–5359, accessed April22 , 2025, https://www.researchgate.net/publication/358885860

[24] Ibid,

"Afghanistan: 1.4 Million Girls Still Banned from School by de Facto Authorities | UNESCO." Accessed May 12, 2025. https://www.unesco.org/en/articles/afghanistan-14-million-girls-still-banned-school-de-facto-authorities

Andrew Clapham. Human Rights: A Very Short Introduction. Second. 164. Oxford: Oxford University Press, 2015.

Delbruck, Jost. "The Right to Education as an International Human Right," n.d.

Mashwani, Hazrat Usman. "Female Education in Afghanistan: Opportunities and Challenges," 2017.

Nations, United. "Universal Declaration of Human Rights." United Nations. United Nations. Accessed May 12, 2025. https://www.un.org/en/about-us/universal-declaration-of-human-rights

Nonet, Philippe, and Philip Selznick. Law and Society in Transition: Toward Responsive Law. First edition. New York, NY: Harper & Row, 1978.

OHCHR. "Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979." Accessed May 12, 2025. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women

OHCHR. "International Covenant on Economic, Social and Cultural Rights." Accessed May 12, 2025. https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

Prado, Geraldine del. "The United Nations and the Promotion and Protection of the Rights of Women: How Well Has the Organization Fulfilled Its Responsibility?" William & Mary Journal of Race, Gender, and Social Justice 2, no. 1 (October 1, 1995): 51.

ResearchGate. "(PDF) THE ROLE OF INTERNATIONAL HUMAN RIGHTS LAWS IN PROTECTING WOMEN'S RIGHTS." Accessed May 12, 2025. https://www.researchgate.net/publication/358885860_THE_ROLE_OF_INTERNATIONAL_HUMAN_RIGHTS_LAWS_IN_PROTECTING_WOMEN'S_RIGHTS

ResearchGate. "(PDF) THE ROLE OF INTERNATIONAL HUMAN RIGHTS LAWS IN PROTECTING WOMEN'S RIGHTS." Accessed May 12, 2025. https://www.researchgate.net/publication/358885860_THE_ROLE_OF_INTERNATIONAL_HUMAN_RIGHTS_LAWS_IN_PROTECTING_WOMEN'S_RIGHTS

Sahu, Dr Tapan Kumar, and Kusum Yadav. "Women's Education and Political Participation." International Journal of Advanced Education and Research 3, no. 6 (null): 65–71.

Sen, Amartya. Development as Freedom. First Edition. Oxford: Oxford University Press, 1999.

Shetty, Sowjanya, and V. Basil Hans. "Role of Education in Women Empowerment and Development: Issues and Impact." SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, September 26, 2015. https://doi.org/10.2139/ssrn.2665898

UN Women – Headquarters. "FAQs: Afghan Women Three Years after the Taliban Takeover," August 12, 2024. https://www.unwomen.org/en/articles/faqs/faqs-afghan-women-three-years-after-the-taliban-takeover

UN Women, United Nations Entity for Gender Equality and the Empowerment of Women, ed. Transforming Economies, Realizing Rights. Progress of the World's Women 2015–2016. New York, NY: UN Women, 2015.