



## Gender Discrimination and the Principle of Equality in International Human Rights Documents and Afghanistan's Legal System

Dr. Farid Ahmad Khoroush<sup>1</sup>; Dr. Juma Ali Haqqani<sup>2</sup>; Mohammad Arif Farasoo<sup>1</sup>

<sup>1</sup> Professor of University, Afghanistan

<sup>2</sup>A Scientific Member of Faiz Mohammad Kateb University, Afghanistan

<http://dx.doi.org/10.18415/ijmmu.v11i8.6093>

---

### **Abstract**

Gender equality and the prohibition of discrimination against women are fundamental topics in the human rights discourse in the modern era. Since these inequalities are applied to half of the people of human society, it is still a controversial and unresolved global issue. Gender discrimination and inequality against women is rooted in various factors including culture, traditions, patriarchal culture, and unfair laws of countries. Today, gender discrimination is considered against human dignity and values and the principle of human equality. For this reason, any inequality and discrimination in important international human rights documents and covenants, the basic laws of most countries have been negated and prohibited. However, gender inequality is a pervasive phenomenon seen not only in underdeveloped countries but also in the hidden social layers of developed societies. Afghanistan is one of the countries that suffers from the problem of gender inequality. Mechanisms to guarantee gender equality were included in the constitution of the Republic of Afghanistan and the civil laws of the same period. However, gender inequality is still considered a fundamental problem in the way of human development in Afghanistan.

**Keywords:** *Gender Discrimination; The Principle of Equality, Human Rights; Women, Fundamental Rights; The Constitution of Afghanistan; The Universal Declaration of Human Rights*

### **Introduction**

As half of the human society, women naturally deserve human rights and equal status with men. These rights and status are secured when there is no discrimination in society and all human beings are equal in the eyes of the law and legislator. Human history shows that inequalities against women have been common in the past. Although these inequalities and discrimination have different causes, origins, and contexts such as culture, traditions, customs, patriarchal cultural dominance, and non-implementation of fair laws, one of the roots of these inequalities lies in deficiency, inadequacy, or unfairness. There have been several rules. What laws guarantee rights, duties, and responsibilities, both deal with the law of rights and enforcement of rights.

Also, along with other factors, specific female characteristics such as patience as internal factors of women's society have played a role in the institutionalization of gender inequality (Alasvand, 2003: 13). In ancient times, from Egypt to ancient Greece, where the civilization of those countries was advanced, women did not enjoy the same citizenship rights and benefits as men.

Considering different countries' cultural and political differences, the fundamental question is how far is the concept of gender inequality. How has this issue been addressed in international conventions? And finally, is gender equality accepted in Afghanistan's legal system?

Due to the spread of the issue of gender inequality in the world, many works have been written about this issue, and international covenants have been arranged and agreed upon by the countries. However, there are no previous works regarding the approach of Afghanistan's legal system against gender discrimination and inequality and its comparison with international conventions prohibiting gender discrimination. This article explains the approach of the Afghan legal system regarding gender inequality or discrimination against women. An example of Afghanistan's legal system in this article is the constitution of the 20 years of the republic and the civil laws of this country.

### **1. The Concept of Equality**

Equality means equal rights and duties of human beings, and this equality is the opposite of discrimination. Equality is one of the fundamental values of modern human rights. In this view, equality means the equality of all people before the law and the equal protection of the law for everyone (Shaaban, Independent Human Rights Commission of Afghanistan, 2014).

In other words, equality means the equality of all people in using natural gifts blessings, and social advantages. The duty of the legislator in any society is to provide natural, social, economic, and political facilities to all people equally (Yazdi, 2013: 59).

Article 1 of the Universal Declaration of Human Rights recognizes all human beings as equal and considers them to be connected like links in a chain. According to this article, "All human beings are born free and are equal in terms of dignity and rights." This article further states that the reason for the inherent equality of human beings is that all human beings have reason and conscience. Because all human beings have reason and conscience, as a result, they are equal and should treat each other based on the same spirit of brotherhood (Nouri, 2014: 67).

Article 2 of the Universal Declaration of Human Rights refers to one of the most important principles of human rights that exists in all human rights documents and flow like a soul in the body of all of them: the principle of equality and prohibition of discrimination. This article declares in paragraph 1 that despite the existence of a distinction between people in terms of "race, sex, language, religion, political opinion or any other opinion, nationality, social status, wealth, birth or any other situation" that exists among people Yes, every person enjoys the rights and freedoms listed in the declaration equally. No discrimination can prevent people from enjoying the rights listed in the declaration.

According to this article, there should be no difference and discrimination in enjoying the rights mentioned in the declaration between countries and citizens of an independent nation and a non-independent or semi-independent country (Nouri, 2014: 68). These two articles show a great turn like the right and its benefit in the history of human life. The rights mentioned in this declaration were never considered the rights of all human beings in the past. For example, the right to education in many parts of the world was exclusive to a certain group and class. Freedom of speech and criticism of the ruler were not only not considered the right of everyone, but the perpetrators were dealt with severely.

According to the articles mentioned, the four main principles at the top of all basic rights and public freedoms are: 1. The principle of dignity or human dignity. 2. The principle of freedom. 3. The principle of equality. 4. The principle of brotherhood.

In domestic law, equality means everyone has the same rights and obligations. The main and fundamental basis of individual rights and freedoms should be found in human equality. It is impossible to achieve social justice, equality, and freedom in a society until complete equality is not established between people in every respect. Social differences in any form pave the way for oppression and violence and make impossible all the principles that are under the cover of human rights. (Danesh, 2010: 346 and Hashemi, 2004: 219).

A major part of the constitution of countries is the explanation and regulation of the nation's constitutional rights. This part, called the "Declaration of Rights" in the basic rights, is the manifestation or extract of "human rights" reflected in the Universal Declaration of Human Rights. At the national level, one of the constitution's chapters is dedicated to it in all countries. In the constitution of Afghanistan during the republic, this chapter was very carefully arranged, which consists of:

"Any discrimination and privilege between the citizens of the country is categorically prohibited and for all those who have the citizenship of Afghanistan, regardless of language, ethnicity, race, religion, place of residence, social status, and most importantly, regardless of gender. (Men and women) have equal rights and duties" (Danesh, 2003: 190). Based on this right, any citizen subjected to unfair discrimination and privileges can stand up against it and demand from the government and the courts to fulfill their rights.

This principle was also recognized in the periods when there was no constitution in Afghanistan. Because according to Islamic rules, all Muslims regardless of race, culture, language, country, and other social characteristics are considered an "Islamic nation" and have equal human status.

According to Article 6 of the Constitution of the Republic of Afghanistan: "The government is committed to creating a prosperous and progressive society based on social justice, preserving human dignity, protecting human rights, realizing democracy, ensuring national unity, equality between all ethnic groups and tribes, and balanced development in all Regions of the country are obliged".

But in contrast to the principle of equality, there is discrimination and inequality, and this concept has been considered both in domestic law and in international human rights documents.

## **2. Discrimination and Inequality**

Discrimination in the word means to categorize, separate some from others, accept some and reject others, to preferring some over others (Omid, 2016: 536). Discrimination in the term of sociological knowledge is a situation where people enjoy unequal social benefits against the same roles. Also, in the case that attributes and criteria are the basis for the distribution of power or wealth; It is called discrimination.

In the conditions of discrimination, there is no equal opportunity for social mobility for people, and people have unequal conditions in education or choosing a job. Racial discrimination, gender discrimination, and religious discrimination are common types of discrimination. Also, discrimination in political rights is a violation of the principle of equality in rights; Where there is no rational, legal, or customary permission for it (Yazdi, 2013: 59). So what we mean is unfair discrimination; Because some differences will be appropriate and equal to justice.

### 3. Gender Discrimination

#### Discrimination Against Women Is Defined in the Convention on the Elimination of Discrimination as Follows:

According to this convention, the term discrimination against women means any distinction, exception, or limitation based on gender, which is based on the recognition of women's human rights and their fundamental freedoms and the enjoyment and application of those rights. Equality with men, regardless of their marital status, has a destructive effect in all political, economic, social, cultural, civil and other fields, or aims to eliminate this situation" (Article 1).

About this article, it can be understood that according to this convention, any distinction between the human status of men and women is considered discrimination, and the aim is to create complete equality or, in other words, similarity in the human rights of men and women (Qurban Nia, 2014: 304). It is only in one case that dissimilarity is not considered discrimination, and that is "positive discrimination" in favor of women, which is mentioned in Article 4: "The adoption of temporary special measures by the member states, whose purpose is to speed up the realization of equality between women and men, should not be considered as "discrimination" according to the definition of this treaty."

The main goal of the convention is to eliminate all gender-based discrimination in legal, economic, political, cultural, and social fields. Therefore, the words "equality" and "equality" in this convention mean the achievement of the similarity between men and women in all fields, which is interpreted as a "similarity-oriented perspective" and "similarity of roles" and equality in this convention should not be interpreted as interpreted the meaning of proportionality or balance (Hashmi, 2012: 37).

Therefore, according to the aforementioned article 1, the term discrimination against women in this convention refers to any distinction, exception, or restriction based on gender.

### 4. Background of Gender Discrimination

During the time of brutality, the value of women was in the ranks of animals and work tools, and they used her only to satisfy their lusts and perform menial tasks, in contrast to all this exhausting work, she was deprived of the minimum family and social rights. He didn't have authority in the house and possession of wealth, nor did he have a role in raising children, nor did he benefit from the blessings of science and knowledge; Rather, she was a captive in the hands of men as a tool without will and they forced her to do things that were contrary to her nature (Mansoori Larijani, 1995: 385). The effect of this inequality is visible even in the Enlightenment era, which is based on the individuality of man and his wisdom. "Jean-Jacques Rousseau" believed that women are weak by nature and do not expand their ideas to a large extent. If women complain about the inequality of laws made by men, they are making a mistake. This inequality was not created by men, and it is not the result of mere prejudice, but rather the result of wisdom (Alasvand, 2003: 13). He believed that the study of single facts is beyond their scope and all their education should be practical because innovation is beyond their scope.

This oppression against women has sometimes manifested itself in the face of immense humiliation, sometimes in the imposition of arduous duties and tasks, and sometimes in the neglect of women's spiritual subtleties. The present is mentioned; such as organized rape in wars and armed conflicts (ibid., 14).

In European societies, women were recognized as human beings; But he was still deprived of social benefits. So that individual rights were not given to women. They also deprived her of the right to choose her husband, and whoever the parents of the girls liked, they had to accept as a husband, they did not even have possession of property and children, and they were used as tools in the hard work of the family environment and agricultural affairs. (Mansoori Larijani, 1995: 386).

Following the relative achievements of Western women in political rights over the past century, the overall issue of women's rights now has three aspects. The first aspect is simply that women are human. If humans have rights, then so do women. Therefore, all the rights humans have to apply to women and any other sub-group of humans. This statement is universal and single, yet insufficient, and requires a secondary and complementary claim: women have specific needs and capabilities, which arise from characteristics that are unique to them, which require support through It is a right, and without such support, their human essence is fundamentally trampled upon (Fariden, 2003: 142-143). The third aspect may make women deserve compensatory rights, related to the injustices against them in the past, whether from the point of view of the law or in actual social practice, and makes them vulnerable in many areas. This group of women's rights are temporary rights whose purpose is to repair a social deficiency and empower women to perform fully in the future (ibid., 143). Therefore, what was expressed was a brief look at the history of women's life and how women were treated in the past.

The issue of women's rights and gender equality is a completely different field in today's era. The issue of equality between men and women from various aspects and eliminating any discrimination between them in enjoying the blessings of life and social and political rights in all human rights documents of the United Nations, the Universal Declaration of Human Rights, international covenants of civil and political rights, etc. have been raised and emphasized. However, the proponents of the full equality of the rights of men and women did not consider these international documents to be sufficient to ensure equal rights for women and remove any discrimination against them. Despite all these documents and various instruments, widespread discrimination against women continues (Mehrpour, 1998: 109). Therefore, they thought that to guarantee the observance of women's rights and their equality, stronger instruments, clearer rules and regulations, and a stronger binding document are necessary. Therefore, on November 7, 1967, the United Nations General Assembly approved the Declaration on the Elimination of Discrimination against Women in a preamble and 11 articles. In the first article of the said declaration, it is stated that:

"Discrimination that is based on gender and as a result hinders the establishment of equal rights for women and men or limits this equality is unjust and an infringement that enters the privacy of the dignity and status of humanity."

After many efforts, the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women on December 18, 1979.

Therefore, as it is clear from the history of gender discrimination, the inequality of the rights of men and women is rooted in the customs habits, customs, and beliefs of every society and human beings throughout history, and the first step towards the equality of women's rights is to prepare public opinion. The eradication of custom, habits, and customs humiliates women (Abadi, 1381: 168). This case is mentioned in the third article of the Universal Declaration on the Elimination of Discrimination against Women.

## **5. Examples of Gender Discrimination**

In some of the articles of the Convention on the Prohibition of Discrimination against Women, examples and cases of discrimination that governments are required to eliminate and establish equality between women and men in those areas are listed, which include:

### **5.1. Equality in Political and Public Life at the National and International Level**

Everyone has the right to exercise their will and be present in jobs and political positions equally and without discrimination in terms of race, religion, language, gender, social class, and the like. That is, first of all, anyone who has the citizenship of a country should be able to participate in processes such as elections that give legitimacy to the political system and exercise their will in shaping and sustaining the

political system. Secondly, everyone has the right to participate in jobs and affairs related to public and political life, such as running for election, assuming government positions, and representing their country in other countries and international organizations, without discrimination by the people. be elected or appointed (Nouri, 2014: 239).

Everyone has the right to exercise their will and be present in jobs and political positions equally and without discrimination in terms of race, religion, language, gender, social class, and the like. That is, first of all, anyone who has the citizenship of a country should be able to participate in processes such as elections that give legitimacy to the political system and exercise their will in shaping and sustaining the political system. Secondly, everyone has the right to participate in jobs and affairs related to public and political life, such as running for election, assuming government positions, and representing their country in other countries and international organizations, without discrimination by the people. be elected or appointed (Nouri, 2014: 239).

One gender inequality in the past that was related to rights and duties was women's right to vote. For many years, after establishing the election method, the right to vote was exclusive to men according to patriarchal culture. That is, political affairs were exclusively under the jurisdiction of the male gender. The basic motivation for women's exclusion from intervention in society's affairs was the vision that arose in most world societies about the role of women and was deposited in cultures. The difference between the roles of men and women, which was ingrained in their minds, did not allow them to be recognized as equals in all matters. Therefore, women should only deal with domestic activities and men should take responsibility for other issues, including political actions. The first place where the right to vote was granted to women according to the law was the state of Wyoming in 1890, which was followed by several American states (Qazi Shariat Panahi, 2011: 300). Anyway, in most of the societies of the world, gender restrictions have been removed and the monopoly of the right to vote and other rights and obligations to only one gender has been considered against the principle of universality and as a result against the spirit of democracy.

In the Convention on the Elimination of All Forms of Discrimination against Women, the rights of political equality for women have been recognized as such that women have "the right to vote, the right to participate in the determination of government policies and their implementation, and to assume government positions and perform public duties in All government levels have the right to participate in non-governmental organizations and associations" (Article 7). This is also noted in the Declaration of Human Rights: everyone has the right to participate in the administration of public affairs of their country, either directly or through freely chosen representatives (paragraph 1 of article 21).

The Convention on the Political Rights of Women adopted by the United Nations General Assembly on December 20, 1952 states in Article 1: "Women shall have the right to vote in all elections on an equal basis with men, without any discrimination." Women shall have the right to be elected and to hold public positions and to perform all public duties established by national laws, in equal conditions with men, without any discrimination (Articles 2 and 3).

Every citizen should benefit from the opportunities and possibilities and have the right without unreasonable restrictions to participate in the management of public affairs, directly or through the free choice of representatives, and have (the right to) vote and be elected (Article 25 of the Convention) civil and political rights). "States party to this covenant undertake to ensure the equal rights of women and men in the exercise of the civil and political rights provided for in this covenant" (Article 3 of the Convention on Civil and Political Rights).

As it was pointed out at the national level, at the international level, women can play the same role as men in public policies, and this issue is specified in Article 8 of the Convention on the Elimination of All Forms of Discrimination against Women:

"Member states must take appropriate measures to ensure that women can represent their government at the international level and participate in the work of international organizations on an equal basis with men, without any discrimination."

Political activities of citizens are also recognized in domestic law, and all citizens of the country can participate in political affairs, and this includes women as well. The right to vote and participate in elections is the best and most important tool for implementing democratic government. The constitution has recognized this right in the best way and has empowered the nation to make decisions in all important matters related to political governance (Danesh, 2009: 253).

In the Constitution of the Republic of Afghanistan era, it is stated about the participation of women in political affairs: "National sovereignty in Afghanistan belongs to the nation, which exercises it directly or through its representatives. The nation of Afghanistan consists of all people who have the citizenship of Afghanistan" (Article 4 of the former Constitution of Afghanistan). And "Citizens of Afghanistan have the right to elect and be elected..." (Article 32). Also, other articles of the constitution of the republican period, such as articles 60, 83, 138, etc., which respectively refer to the presidency, the members of the Wolesi Jirga, and the members of the provincial council, show the recognition of the political activities of citizens.

Therefore, in all the fields where men can interfere, women can also interfere, and political and government issues are at the top of the pyramid of social problems, and women, like men, should interfere and play a role in it (Hakimi, 2003: 43).

## 5.2. Equality Before the Law and Courts

Gender equality before the law and courts is also debatable in the sense that judges and judicial employees should not act in a discriminatory manner while applying the law. Judges and courts should try to protect the rights of everyone, including men and women, equally. This does not necessarily mean that everyone is treated equally. Rather, they should avoid discrimination that is not based on logical and objective criteria. Article 22 of the Constitution of the Republic of Afghanistan states that gender criteria cannot justify different treatment in the court process (Hilal Gower, 2005: 7). Therefore, men and women should be given equal opportunities to earn their rights effectively. From here, the loss of women's right to access the court has no legal basis, and this issue should be emphasized especially due to the problems that women are still facing.

Article 22 of the Afghan Constitution, which was in force until 3 and a half years ago, states: "Any kind of discrimination and privilege between Afghan nationals is prohibited. Afghan nationals, both men and women, have equal rights and obligations before the law." are". This article explicitly refers to gender equality.

Also, every person, whether male or female, Afghan or foreign, should have equal access to the court. This equal opportunity to go to court to handle a person's complaint should be ensured by all employees and employees of the judicial sector (Hilal Gower, 2005: 55).

The rights of the suspect or the accused must be guaranteed regardless of the nature of the crime. In addition, the suspect or accused has the right to be treated equally with other accused. The different ways and behaviors before, during, or after the trial must be justified based on objective facts. Among the facts that cannot explain a different procedure and behavior are gender, religion, political opinions, and ethnicity (Nuri, 2014: 144). This is related to the treatment of the police, police, and the judge towards the suspect before, during, and after the trial.

Article 6 of the Law on the Formation and Jurisdiction of the Afghan Judiciary, which was in force until three years ago, states: "Every person can present his claim to the courts without any kind of

hindrance. Submitting a petition to the courts is optional. Considering the provisions of the Afghan laws, equality before the law and courts was accepted in the Afghan legal system.

International documents also emphasize this issue: "All persons are equal before the law and have the right to protection under the law without any discrimination." In this sense, the law must prohibit any kind of discrimination and provide effective and equal protection for all persons, against any kind of discrimination, especially in terms of race, color, gender, language, religion, political opinion, etc., or any other situation. guarantee" (Article 26 of the Convention on Civil and Political Rights). And "all people have equal (rights) before the courts and tribunals..." (Article 14, paragraph 1).

Article 7 of the Universal Declaration of Human Rights: "Everyone is equal before the law and has the right to enjoy the protection of the law without discrimination and equality...". In addition, "everyone has the right to have his case heard by an independent and impartial court, fairly and publicly, and such a court to decide on his rights and requirements or any criminal charges against him" (Article 10).

Article 2 and paragraph 1 of Article 15 of the Convention on the Elimination of All Forms of Discrimination against Women is about the necessity of equality between men and women before the law and its various aspects. Based on these articles, member states must accept the principle of equality between men and women before the law and include it in their constitution and other internal laws, and implement it in practice. These governments must prevent discrimination against women by any person or organization and support the equal rights of women and men by legal measures and guaranteeing proper executions and through national courts and other public institutions (Nuri, 2014: 96). Governments should repeal or change all criminal and civil laws, customs and [administrative] practices that discriminate against women.

### 5.3 Equality in Education

The right to education is one of the most important and basic human rights that all human beings should enjoy regardless of gender or ethnicity. This right is recognized both in the Constitution of the Republic of Afghanistan and in the International Charter of Human Rights, and it is emphasized that no one should be deprived of it.

In the republican system, the legal system of Afghanistan was based on the principle of Islam in combination with modern principles. One of the important points in Islamic thought is education. Several hadiths have been narrated from the Prophet of Islam, in which he emphasized the importance of knowledge and education (Mushtaghi, 1388: 76).

Therefore, a government that derives its legitimacy from Islam must make education available to all people and provide education for all children, both male and female (Mushtaghi, 2008: 76). As a result, the government's commitment to expanding knowledge and education for all citizens, male and female, is one of the common characteristics of all Islamic republics, which can be seen in their constitutions.

Article 43 of the Constitution of the Republic of Afghanistan states: "Education is the right of all Afghan citizens, which is provided free of charge by the government up to the bachelor's degree in public educational institutions..." and also "the government is obliged to balance and the development of education for women and... design and implement effective programs" (Article 44). According to this article, in addition to the fact that women's right to education was recognized, the government had the obligation to implement and implement effective programs so that women can benefit from literacy and education.



According to Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women, member states shall take all measures to eliminate discrimination against women to ensure that women enjoy equal rights in education with men, and in particular equality between men and women, as follows: will guarantee:

- A) Equal and equal conditions in the field of choosing a profession and technique, access to education, and obtaining degrees from educational institutions at different levels in rural and urban areas. This equality must be guaranteed in preschool education, general, technical, specialized, and higher technical education, as well as in all vocational education courses.
- B) Access to the same curriculum, the same exams, teachers with the same skills and qualifications, and places and educational facilities with the same quality.
- C) Eliminating any stereotypical concept of the role of men and women at all levels and in all forms.
- D) Equal opportunities to use scholarships and other educational benefits.
- E) Equal opportunities to access programs related to continuing education, including adult literacy and practical literacy programs, especially programs aimed at reducing the educational gap between women and men as quickly as possible.
- F) Reducing the dropout rate of girls and setting up programs for girls and women who left school early.

Also, the issue of education is emphasized in the Declaration of Human Rights: "Everyone has the right to benefit from education." Education should be free, at least to the extent that it is related to elementary education. Primary education is compulsory. Vocational education should become general and higher education should be open to everyone with full equality so that everyone can benefit from it according to their talent. Education should be directed in such a way that the human character of each person reaches its full development and strengthens the respect for human rights and freedoms... (paragraphs 1 and 2 of Article 26).

According to Article 13 of the Covenant on Economic, Social, and Cultural Rights, all people have the right to have access to education without discrimination, both men and women, and the member states are obliged to recognize this right for everyone.

#### **5.4 Equality in Employment and Labor Rights**

Another manifestation of women's social presence is the issue of their employment, which nowadays is favored for women more than it has an economic aspect, because of the dignity of the social position it brings to them. The best measure for measuring economic views is labor laws and the way and extent of protection that the law gives to the working class and employees. Because the value of a person regardless of race, gender, etc. is manifested in his work and the benefit that society gets from his activity. Obviously, in the systems where the most value is given to capital (Abadi, 2011: 56). In regimes that are more or less in favor of racial or sexual discrimination, a certain class benefits more from this support. In the past, women were used as cheap labor and in some cases were employed in part-time jobs that were more profitable for the employer and cost significantly less. Now, according to international human rights documents, it is against the principle of equality.

Therefore, people's lives, progress achievement of social unity and integration, and active social participation depend on their work. Work is both an economic and social right and has an effective and vital role in providing security, stability, and social justice (Danesh, 2009: 366). The government has several duties in this regard:

1. Avoiding any kind of interference in the right to work.
2. Preventing the intervention of third parties and groups in this right.

3. Establishing and approving the necessary laws to regulate matters related to protecting and implementing this right and preventing the application of discriminatory policies by companies, unions, and public and private employers.
4. Creating facilities in working conditions improving job levels and reducing unemployment.

The issue of equal rights of men and women in matters related to employment has been addressed in various documents, including the regulations of the International Labor Organization (I.L.O.).

The Convention on the Elimination of All Forms of Discrimination against Women provides as follows:

1. Member States must take appropriate measures to eliminate discrimination against women in the field of employment and ensure that, based on equality between men and women, the same rights are respected, especially for women in the following cases:
  - A) The right to work (employment) is an integral right of human rights.
  - b) The right to equal job opportunities, including the implementation of the same rules regarding job selection.
  - c) The right to freely choose a profession and job, the right to promotion, the enjoyment of job security and all privileges and service conditions, and the right to use professional training and retraining courses, including internships and participation in advanced professional training courses and stage training.
  - d) The right to receive equal wages, use benefits, and enjoy equal treatment in jobs and works of equal value; Also, equal treatment in evaluating the quality of work.
  - e) The right to social security, especially in cases of retirement, unemployment, etc.
2. To prevent discrimination against women due to marriage or pregnancy and to guarantee their indisputable right to work, the member states will take the following appropriate measures:
  - A) Prohibition of dismissal due to pregnancy or maternity leave and discrimination in dismissal based on marital status or establishing a guarantee of execution for violation of this matter.
  - b) Giving maternity leave with pay or appropriate social benefits without loss of job, position, or consensus benefits.
  - c) Encouraging and supporting the provision of social services.
  - d) Special support for women during pregnancy in jobs that are proven to be harmful to them" (Article 11).

According to paragraphs 1 and 2 of Article 23 of the Universal Declaration of Human Rights:

- "1. Everyone has the right to work, to choose their work freely, to demand fair and satisfactory conditions for work, and to be protected against unemployment.

Everyone has the right to receive equal pay for equal work without any discrimination.

According to paragraph 2 of article 21 of the declaration, everyone has the right to get public jobs in their country with equal conditions.

In the International Covenant on Economic, Social, and Cultural Rights, in articles 6 and 7 of the right to work, the right to fair and suitable working conditions is also recognized. Article 7 states that: "... fair wages and equal wages for work, with equal value and without any kind of discrimination. Especially that women have a guarantee that their working conditions are not inferior to those used by men and that they receive equal wages with men for equal work.

In the domestic law of Afghanistan, the right to employment was recognized for everyone regardless of gender: "Work is the right of every Afghan." Determining working hours, paid leave, labor and worker's rights, and other related matters are regulated by law. Choosing a job and profession; is free within the limits of the law" (Article 48 of the Constitution of Afghanistan in the republican system). "... Afghan nationals are accepted to serve the government based on their qualifications and without any discrimination and according to the provisions of the law" (Article 50 of the Constitution of Afghanistan in the republican system). according to Article 49, the imposition of forced labor was prohibited.

Now the question that is raised is that according to the International Charter of Human Rights, which recognizes the equality of men and women in all fields, including employment and holding public positions, could women hold all public positions according to the Afghan constitution? including judging or holding the presidency? Because according to Article 3 of the Constitution, no law in Afghanistan could be contrary to the beliefs of the holy religion of Islam. According to this issue, what was the solution in the constitution for women to engage in work that is prohibited by Sharia law?

In response to the above questions, it can be said that if the provisions of a law correspond to one of the Islamic schools of thought, there is no obstacle to its approval and implementation in terms of the third article. Because in this case, it is not against the beliefs and rules of Islam; Although it may be against the rulings of one or more jurisprudential religions (Danesh, 2009: 240).

Therefore, since a specific religion was not intended by Article 3 of the Constitution, if the view of one jurisprudential religion was against the Constitution and other jurisprudential religions allowed it, there would be no conflict and opposition to Article 3 of the Constitution (Ekhlasi, 2016: 242). Therefore, regarding the assumption of public positions by women, the Constitution had a clear and explicit view in this field and did not make any difference between men and women. According to the explicit provisions of the constitution, women could hold the highest government positions such as the presidency, ministry, parliament representative, etc. (Ekhlasi, 2016: 243).

As a result, women in Afghanistan could become the president, vice president, ministerial official, member of the Wolesi Jirga and Meshrano Jirga, member of the Supreme Court, member of provincial and district councils, etc., just like men. In this way, according to articles 60, 62, 72, 83, 84, 118, 138, and 140 of the constitution of the republican system, where all the conditions for obtaining and holding the above positions were mentioned, no article prohibits the membership of women in those positions. prohibited, it did not exist and women could reach all government offices.

The labor law of the Afghan government also stated as follows in paragraph 1 of article 8: "(1) Employees in the Islamic Republic of Afghanistan have equal rights to work with equal wages." Article 9 of this law states non-discrimination in employment: "(1) Any type of discrimination is prohibited in employment, payment of wages and privileges, choice of job, profession, skill, and expertise, right to education and social security. (2) Women in the field of work are entitled to specific privileges during pregnancy and childbirth and other cases established in this law and related legal documents. (3) ...."

To protect and protect women, the labor law of Afghanistan, from articles 120-122, respectively, mentions the non-employment of women for heavy physical work, harmful to health and underground, the non-employment of women for night work by the administration, and the non-employment of women for overtime work.

As a result, if we want to meet the needs of both sexes equally, we need men and women who work together at every level and job hierarchy and in every type of job. We need more women doctors if women's health needs are to be addressed. We need gynecologists if we are not to see a woman's uterus as a "box" for child development, which can be easily removed as soon as the woman reaches the end of her reproductive life. If women are to have equal access to justice, we need judges and defense attorneys, legal advisors, and female police officers to interpret and enforce the law in the best way for the benefit of women as well as men (Figgs, 2015: 66).

### **5-5. Equality in Access to Health Facilities**

The right to health is another fundamental right without which a person cannot enjoy his other rights. Therefore, the governments are obliged to provide this right fairly and in the best way for the general public, especially vulnerable people and sections of society such as children, mothers, homeless women, etc. (Danesh, 2009: 369).

Women's access to health facilities is of particular importance. Women have the right to have equal access to health facilities in family and reproductive matters, the health of the work environment, and working conditions, especially in paid work, conditions at all levels of health. The Convention on the Elimination of All Forms of Discrimination against Women stipulates in this regard: "Member States shall take all necessary measures to eliminate discrimination against women in the field of health care and their access to health services, including services related to the regulation guarantee the family based on the equality of men and women" (paragraph 1 of article 12).

The Universal Declaration of Human Rights also states: "Everyone has the right to ensure his standard of living, health, and well-being for himself and his family in terms of food, housing, medical care and necessary social services" (paragraph 1, article 25). Paragraph (b) of Article 7 of the Convention on Economic, Social, and Cultural Rights of the member countries, recognizes the right of everyone to enjoy fair and favorable working conditions, especially work safety and health. Also, the government's party to this convention recognizes the right of everyone to the enjoyment of the best possible state of physical and mental health, which includes everyone including men and women. Based on this, everyone has the right to live in favorable health conditions, and that bad health conditions do not endanger his physical and mental health (Article 12 paragraph 1 of the mentioned convention).

In this regard, it was stated in Article 52 of the Constitution of the Republic of Afghanistan: "The government provides free means of prevention and treatment of diseases and health facilities for all citizens by the provisions of the law..." and Article 54 of the same Constitution on the importance of health He paid attention to the family, especially the child and the mother, and said: "The family forms the basic pillar of the society and is supported by the government. To ensure the physical and mental health of the family, especially the child and the mother, the government takes the necessary measures.

### **5.6 Equality in Economic and Social Security**

Women have the right to participate in the fields of work and effort in economic and social issues, and they have the same rights as men in all fields. In Europe, the Industrial Revolution caused women to become industrialists as well. Women were cheaper workers and employers preferred them to rebellious men with high wages. The first step for women's freedom in this field was the law of 1882. According to this law, British women enjoyed an unprecedented privilege, and that was that they had the right to keep the money they earned (Hakimi, 2012: 56). This law was enacted by the factory owners of the House of Commons so that they could force English women into the factories.

Men and women are equal in all economic activities and acquiring property and enjoying it. Men own what they get and also women do (Yazdi, 2004: 105).

Therefore, for the equality and equality of all people in the use of natural gifts and social benefits, the duty of the law and legislators is to serve everyone and provide social and economic facilities equally to all people (Mansouri Larijani, 1995: 377). According to paragraph 1 of Article 25 of the Declaration of Human Rights, everyone has the right to enjoy the necessary social services in life. He also has the right to enjoy dignified living conditions in times of unemployment, illness, widowhood, etc.

Governments party to this covenant recognize every person to social security, including social insurance (Article 9 of the Convention on Economic, Social and Cultural Rights).

The member states of the Convention on the Elimination of All Forms of Discrimination against Women must take appropriate measures to eliminate discrimination against women in other areas of economic and social life and provide equal rights for them based on equality between men and women, especially in the following cases:

- a. the right to use family benefits;
- b. The right to use bank loans, mortgages, and other bank credits;
- c. The right to participate in recreational activities, sports, and all aspects of cultural life (Article 13).

Article 17 of the Declaration of Human Rights recognizes the right to own property.

In domestic law, Article 40 of the Constitution of the Republic of Afghanistan states: "Property is immune from encroachment." No person is prohibited from acquiring property and occupying it, except within the limits of the law..." according to articles 52, 53, and 54 of the same constitution, the government provides all social, health, and facility services free of charge according to the law for It provided for all nationals including women. Article 53: "... the government guarantees the rights of the convicted, and provides necessary assistance to the elderly, homeless women, the handicapped and the disabled, and destitute orphans by the provisions of the law."

According to Article 134 of the Labor Law, various types of social security are mentioned, such as allowance, use of health services and assistance during pregnancy, etc.

### **5.7 Equality in Family Rights**

Most women's lives depend on the family population. Its sensitive role in family affairs is unique, very productive, and at the same time very difficult. The presence of women causes the security of the mind and its absence usually causes the scattering of the mind and the disintegration of the moral, emotional, and even economic bond in the family (Hashmi, 2013: 226-227). Due to this sensitive role, their material and spiritual rights have been more or less unequal and at a lower level compared to the position of men in the family.

As a result of marriage, a marital relationship is established between husband and wife, and duties and rights arise for each of them about the other. Also, to advance the goals of marriage and manage the family institution, the parties are obliged to do things that are referred to as joint duties of husband and wife (Rezaei, 2013: 20). Therefore, couples in the institution of the family and as a result of the marriage contract have the following common duties: cohabitation, good companionship of the spouses, cooperation, and cooperation of the spouses in raising children and consolidating the family and loyalty. Therefore, the relationship between rights and obligations is reciprocal; That is, it is always a right on the one hand and a duty on the other hand. When a man and a woman acquire any right in front of each other, they also find a duty (Rezaei, 2013: 119).

The Universal Declaration of Human Rights states: "Every adult man and woman have the right to marry and form a family without any restrictions in terms of race, nationality, citizenship or religion."

During the entire period of marriage and its dissolution, husband and wife have equal rights in all matters related to marriage. Marriage must take place with the complete and free consent of both men and women" (paragraphs 1 and 2 of article 16).

Article 23 of the Convention on Civil and Political Rights: "1- The family is a group unit and a fundamental and natural element of society and deserves to be protected by society and the government. 2- The right to marry and start a family is recognized for men and women who have reached this age. 3- No marriage can be concluded without the free and full consent of the spouses. 4- The member states of this covenant must take appropriate measures to ensure equal rights and responsibilities of spouses during the conclusion and termination of marriage.

According to the legal system of Islamic countries, including Afghanistan, the management and headship of the family is with the man. Muslim jurists and jurists believe that the source of handing over the head of the family is God's order (Rezaei, 2013: 126). Clause 1, Article 123 of the Personal Status Law stipulates: "The guardianship of the family is the right of the husband unless this right is handed over to the wife due to mental incapacity of the husband, according to the court order."

However, in the Convention on the Elimination of All Forms of Discrimination against Women, it is stipulated as follows: "1. The member states must take the necessary measures to eliminate discrimination against women and in all matters related to marriage and family relations, especially based on equal rights of men and women, guarantee the following:

- a) Equal right to marry;
- b) The equal right to freely choose a spouse and marry based on the free and full consent of the parties;
- c) The same rights and responsibilities during marriage and its dissolution;
- d) Equal rights and responsibilities as parents, regardless of their marital status, in matters related to children. In all cases, the interests of children are a priority;
- e) Equal rights to make free and responsible decisions regarding the number of children and pregnancy intervals and access to information, education, and tools that enable them to exercise these rights;
- f) Rights and responsibilities related to guardianship, custody, guardianship of children, and adoption or any similar titles and concepts that exist in domestic laws;
- g) The same personal rights as husband and wife, including the right to choose a surname, profession, and job;
- h) Equal rights for each of the spouses about ownership, acquisition, management, guardianship, exploitation and possession of property; whether for free or with a fee" (paragraph 1 of article 16).

Is this article, which assigns the same rights and responsibilities during marriage and as parents, guardianship, guardianship, and guardianship to men and women, in conflict with the guardianship and headship of the man with the family, which is mentioned in the jurisprudence and law of Afghanistan? Isn't it supposed to be?

It seems that the rule of man's management and guardianship in the family, which is shared by all Muslims, is compatible with clauses (C-D-F) of Article 16 of the Convention. In these clauses, the issue of equal responsibility distribution within the family is asked for each man and woman.

## 5.8 Equality in Civil Affairs and Legal Capacity

Article 15 of the Convention on the Elimination of All Forms of Discrimination against Women stipulates in this context: "1- Member States accept women's equality with men before the law. 2- In civil affairs, the member states give women the same legal capacity as men and provide them with equal opportunities to exercise this capacity. In particular, member states give women equal rights with men in concluding contracts and managing property, and they will be treated equally in all stages of proceedings in courts and tribunals. 3- The member states agree that any contract or other private documents of any kind, that are drawn up to limit the legal capacity of women, are considered null and void. 4- The member states agree that men and women have equal rights about the law on the movement of persons and the choice of housing and residence.

In the aforementioned article 15, at least 4 cases where men and women have equal status are mentioned, which are worthy of discussion and reflection:

- 1- Equality before the law and the court: This is mentioned in Article 22 of the Constitution of the Republic of Afghanistan, which was discussed earlier.
- 2- Legal capacity and equal opportunities, especially in concluding contracts and property management: according to Article 9 of the Law on Commercial Contracts and Sale of Property, the capacity to enter into contracts is stated regardless of gender: "(1) A person who has completed the age of 18 can enter into a contract. unless his eligibility has been revoked or limited by the law or by a court order..." In civil law: "The age of growth is eighteen years of solar age. Rashid's person is recognized as having full legal capacity in the state of sanity in the execution of transactions" (Article 39). And "(1) The condition for concluding a contract is the existence of the parties, the words specific to the contract, and the subject on which the contract is entered into. (2) The condition of the validity of the contract is the capacity of the parties, the capacity of the parties to the contract, and the usefulness and non-contradiction with the system and public customs" (Article 502 of the Civil Code).

From the sum of the above-mentioned articles, it is understood that Afghan women, like men, have equal legal capacity, and the ability to conclude contracts and manage property.

- 3- Equality in commuting: Equality in commuting is also recognized in the constitution of the Republic of Afghanistan: "Every Afghan has the right to travel to any part of the country and acquire housing, except in areas that are prohibited by law. Every Afghan has the right to travel outside of Afghanistan and return to it according to the provisions of the law" (Article 39).
- 4- Equality in choosing housing and place of residence: Articles 117 and 122 of the Civil Code and Article 164 of the Personal Status Law oblige the woman to live in a house that her husband has determined for her. Also, Article 115 of the Civil Code and 161 of the Personal Status Law of Shiites consider the place of residence as part of alimony and oblige the husband to provide the place of common life. It seems that these articles of civil law and personal status are one of the cases that existed in the legal system of Afghanistan and it is against Article 16 of the Universal Declaration and Article 23 of the Convention on Civil and Political Rights (Nouri, 2014: 186). Based on the above articles, the joint residence must be chosen with the consent of the couple.

Article 15 of the Convention on the Elimination of Discrimination against Women, which was mentioned, also seems to conflict with the articles of civil law and personal status regarding the place of residence.

### **5-9. Equality in Citizenship Rights**

According to Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women, "Member States shall grant women equal rights with men in acquiring, changing or maintaining citizenship. In particular, governments should ensure and guarantee that neither the marriage of a woman to a foreign man nor the change of her husband's citizenship during the marriage period will automatically change the woman's citizenship, make her stateless, or impose her husband's citizenship on her. The contracting states grant women equal rights with men about the citizenship of children.

In domestic law, Afghan citizenship is equal and the same for all citizens (Paragraph 1, Article 2 of the Citizenship Law). The acquisition of Afghan citizenship by one of the spouses cannot affect the citizenship of the other spouse and their children who have reached the age of 18 (Article 16). No member of the nation shall be deprived of Afghan citizenship (Article 4 of the Republic Constitution).

As a result, according to the above articles, no Afghan citizen will be deprived of citizenship. Secondly, the citizenship of Afghanistan is equal and the same for everyone without any distinction, and thirdly, the acquisition of citizenship by one of the spouses does not affect the citizenship of the other spouse.

### **Conclusion**

The dominance of patriarchal culture had created grounds for discrimination and gender inequality for women, according to which women around the world did not have the same rights as men. The level of inequality and discrimination against women has been different in different countries. But regardless of these differences, the phenomenon of inequality and discrimination is a pervasive phenomenon that exists at different levels in all countries.

To eliminate discrimination and inequality of women, several conventions have been signed by countries. These covenants have officially guaranteed that discrimination against women and the implementation of unequal policies against them will disappear all over the world. But due to the cultural and religious differences that exist in different countries, its implementation is not the same in all countries, and as a result, the elimination of discrimination and inequality against women has been implemented at different levels in different countries.

Afghanistan has been one of the signatories of the Convention on the Elimination of Discrimination and Inequality against Women. During the twenty years of rule of the republican system in Afghanistan, the equal rights of women and men in almost all fields were foreseen in the constitution. In the civil laws of Afghanistan, such as the labor law, many articles included in the Universal Declaration of Human Rights and the International Covenant on the Elimination of Discrimination against Women were mentioned. However, due to the rule of Sharia law in Afghanistan, in some cases, there were contradictions and differences between the articles of the constitution and other laws of Afghanistan with the international conventions on eliminating discrimination against women.

### **References**

Alasvand, Fariba (2003), *Criticism of the Convention on the Elimination of Discrimination against Women and the Beijing Document*, Tehran: Public Relations of the Cultural-Social Council of Women, first edition.



- Ashuri, Dr. Mohammad and others (2003), *Human rights and the concepts of equality, fairness, and justice*, Tehran: University of Tehran, Criminal Sciences and Criminology Research Institute, first edition.
- Ben Saadoun, Nai (2016), *Women's Rights from the Beginning to Today*, Translator: Giti Khorsand, Tehran: Kavir Publications, fourth edition.
- Citizenship Law of the Islamic Emirate of Afghanistan, Ministry of Justice, serial number (792), year (2000).
- Civil Code of Afghanistan, (1976).
- Danesh, Sarwar (2003), *An introduction to the formulation and approval of the new constitution of Afghanistan*, Kabul: Seraj Cultural and Social Center, first edition.
- Danesh, Sarwar (2010), *Constitutional Rights of Afghanistan*, Kabul: Publications of Ibn Sina Institute of Higher Education, first edition.
- Ebadi, Shirin (2002), *Women's Rights in Iranian Laws*, Tehran: Ganj Danesh, first edition.
- Ekhlesi, Mohammad Ali (2016), *Afghanistan's Constitution and Women's Employment*, Andishe Masazer Foundation Quarterly, Kabul: Andishe Masazer Foundation, 2nd year, 7th issue.
- Feridon, Michael (2012), *Fundamentals of Human Rights*, translated by Feridun Majlesi; [for] the specialized library of the Ministry of Foreign Affairs, Tehran: Printing and Publishing Center of the Ministry of Foreign Affairs.
- Figgs, Kate (2016), *Women and Discrimination, Gender Discrimination and the Myth of Equal Opportunities*, translated by Esfandiar Zandpour, Tehran: Gol Azin, second edition.
- Ghorbania, Nasser et al. (2014), *Re-examination of women's rights, review of laws related to women in the Islamic Republic of Iran*, [for] Center for Women's Participation Affairs, Tehran: Rosen Publications, vol.1, first edition.
- Hakimi, Mohammad (2003), *Defending Women's Rights*, Mashhad: Islamic Research Foundation, third edition.
- Hashemi, Fatemeh, Et al (2003), *Convention on the Elimination of All Forms of Discrimination Against Women (Collection of Articles and Discussions)*, Qom: Office of Women's Studies and Research, first edition.
- Hilal Gower, Alexandra and others (2005), *Max Planck Institute Guidelines on Fair Trial Standards*, translated by Bashir Tanin, Heidelberg; Germany: Max Planck Institute of Public Comparative Law and International Law, second edition.
- International Convention on Civil and Political Rights, approved by the United Nations General Assembly, (1966).
- International Convention on Economic, Social and Cultural Rights approved by the United Nations General Assembly, (1966).
- Judge Shariat Panahi, Dr. Abolfazl (2011), *Essentials of Basic Rights*, Tehran: Mezan Publishing House, twenty-third edition.
- Labor Law of the Islamic Republic of Afghanistan, Ministry of Justice, Serial No. (966), year 2007.

- Law on Commercial Contracts and Sale of Property, Ministry of Justice, Serial No. (1150), year (2013).
- Mansouri Larijani, Ismail (1995), the evolution of human rights and its comparative analysis with human rights in Islam, Taban Publishing House, first edition.
- Mehrpour, Dr. Hossein (1998), International Human Rights System, Tehran: Information, first edition.
- Mushtaqi, Ramin (2008), Max Planck Institute's Guidelines for Afghanistan's Constitutional Rights, translated by Dr. Hossein Gholami, Kabul: Vol.1, Vol.3.
- Nouri, Abdul Aziz (2014), Human Rights, Kabul: Katb University Publications, first edition.
- Omid, Hassan (2007), Farhang Farsi Omid, including Persian words and Arabic and European words in Persian language and scientific and literary terms, Tehran: Amir Kabir Publications, twenty-eighth edition.
- Rezaei, Dr. Ibrahim (2012), Family Law, Kabul: Katb University Publications, first edition.
- Shaaban, Mohammad Zaheer (2014), the position of equality and its components in international documents and domestic laws of Afghanistan, published by the Independent Human Rights Commission of Afghanistan.
- Shia Personal Status Law, Ministry of Justice, serial number (988) of (2009).
- The Constitution of the Islamic Republic of Afghanistan, Ministry of Justice, serial number (818), (2003).
- The Convention on the Political Rights of Women, was approved on December 20, (1952) by the United Nations General Assembly.
- The International Convention on the Elimination of All Forms of Discrimination against Women, approved by the United Nations General Assembly in (1979).
- The Law on the Formation and Jurisdiction of the Judiciary of the Islamic Republic of Afghanistan, Ministry of Justice, Serial Number (1109), (2013).
- The United Nations General Assembly adopted the Universal Declaration on Eliminating Discrimination against Women on November 7, (1967).
- Universal Declaration of Human Rights, approved by the United Nations General Assembly, (1948).

## Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).