

April 02, 2009

Persecution Index 19: Afghanistan



Sharia for Shias: 'Legalised rape'.

Tom Coghlan, reporting for The Times in Kabul, has been leaked the full text of new laws in Afghanistan, under which a woman from the minority Shia community will not be able to leave the house without her husband's permission and cannot refuse him his marital rights. 'The wife is bound to preen for her husband, as and when he desires,' the law says. Catherine Philp reported on the oppression women face in Afghanistan back in 2004 and it seems to be getting worse, not better. A few days ago, Human Rights Watch called on President Obama to make protecting human rights a priority in his revised policy towards Afghanistan. Any US pressure on this doesn't seem to be working. According to the United Nations Development Fund for Women, the new law legalises the rape of a woman by her husband.

See also Jeremy Page's report on what is happening with Sharia in Swat in northern Pakistan, where the government reached a truce with the Taleban in February. The video with the report shows a young girl crying in agony as she is beaten. She was accused of adultery but sources suggest her crime was to refuse to marry the military commander.

This is a breakdown of the law passed by parliament earlier this week and applicable to all Shias in the country, Tom Coghlan reports. The laws are clearly framed by the Karzai government with a view to appealing to Islamists in the shia community as part of his re-election bid. The Hazaras are the biggest bloc of potential swing voters but have been looking set to vote with Karzai since they have got more out of the post 2001 settlement than anyone else.

Article 47

(1) Guardianship of children is granted to father and paternal grandfather, both of which are of the same value, and do not cancel the effect of each other. In case of non agreement on the affair of guardianship by father and grandfather, the guardianship by grand father holds prime importance.

(2) Father and grand father, in the absence of each other, can authorize someone to be the guardian of the child, but in case of one of them being alive, other guardian can not be chosen. (The amendment brought by Lower House of the Parliament affected the question of WHEN the guardianship could be shifted from mother to father (9 for girls and 7 for boys), but it didnt affect the issue itself.)

Article 122

(1) When a minor is wed by his father, Mahar (dowry) is the responsibility of the minor. (This implies that a minor could be wed. The amendment that sets the age of marriage, 16 for girls and 18 for boys, as also given in the Afghan Civil Law, contradicts this article. If a minor is not to be wed at all, then there is no need for this article).

(2) In case the father pays the dowry, and if the minor boy, when matured, divorces his wife prior to intercourse, then the bride can ask for 50% of the dowry to be given to her.

Article 132

(3) The couple should not commit acts that creat hatred and bitterness in their relationship, The wife is bound to preen for her husband, as and when he desires.

(4) The husband, except when travelling or ill, is bound to have intercourse with his wife every night in four nights. The wife is bound to give a positive response to the sexual desires of her husband. (women have no sexual freedom in Afghanistan traditionally and from the Islamic point of view. this needs to be checked with an authority on Islam and Quran, but for as much as I know, it is implemented in society on Islamic basis)

(7) The wife is bound to perform household works only if it was put down as a condition in the marriage document, otherwise, wife is not bound to performing household chores.

Article 133

(1) Husband is responsible for the family maintenance (financially), unless this

right is given to the wife due to husband's mental disorder or a decision of the court.

(2) If the wife was a working woman before marriage, and the marriage document does not condition her to stop working, the husband cannot stop her from work, unless her work affects the interest of the family or the position of either wife or husband in a negative way.

(3) Husband can stop the wife from any unnecessary, unIslamic act. (and who defines unnecessary and unIslamic?)

(4) Wife cannot leave the house without the permission of the husband, unless due to any serious pressure or difficulty and to address that. (this paragraph basically stops women from leaving the house without their husbands' permission, the part after the "unless..." is not helpful as again the question comes as to who defines serious pressure and difficulty.)

Article 166

Divorce should be given in the presence of two fair/ just men. If later found that both or one of those men were not fair/ just, the divorce is cancelled. (being fair means having performed Shariat duties, abstaining from the wrong and having fear of God).

Article 177

(1) The husband is bound to provide maintenance to his wife.

(2) The wife does not have the right to the provision of maintenance by the husband unless she agrees to have intercourse with him and he gets an opportunity for doing so.

(4) Obedience, readiness for intercourse and not leaving the house without the permission of the husband are the duties of the wife, violation of every one of them will mean disobedience to the husband. (further emphasis on paragraph 4 of Article 133)

Article 226

(7) Husband inherits both moveable and immovable property from a deceased wife, but wife can inherit only moveable property. She will also inherit from the construction/ buildings built on the land owned by the husband, the trees or other immovable property. Husband's family can pay the price of the inherited property to the wife. She also inherits from the water of the wells and canals.

In addition:

Article 27 for instance sets the age of maturity to be 15 for boys; for girls it is when they have their first period, which could be at an early age of 9 or 10.

The Afghan Constitution says that no law in Afghanistan can be against Islam/ Sharia. When it comes to using Sharia as basis for legislation, the interpretation of Sharia/ Islam and Koran is used, which could be different in different places. Most of the discriminatory laws have their roots in interpretations of Islam and the Koran. Shia Family Law, with or without the amendments, is discriminatory towards women.

Technorati Tags: Afghanistan, beatings, Catherine Philp, Islam, Pakistan, rape, Sharia, Shia, Swat, Tom Coghlan

Posted by Ruth Gledhill on April 02, 2009 at 07:02 PM in Islam, Persecution |

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A very deplorable situation to say the least.

Even certain sects of self proclaimed "Christians" treat their Woman with disrespect as well. Such as The Fundamental Church of Jesus Christ of The Latter Day Saints. This is the

Polygamist group. Mormons do not associate with these people even though they partly carry their name.

Posted by: Bro Ronald | 3 Apr 2009 13:14:28

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Posted by: Bro Ronald | 3 Apr 2009 13:14:27

If this is the official view of the Afghanistan government, we should leave them to the mercy of the Taliban rather than waste precious lives attempting to prop up such a barbarous regime.

Posted by: JHN | 3 Apr 2009 10:41:24

As the harrowing situation for women in Afghanistan continues I hope that the new American policy for the country will improve the situation. The heinous laws must be countered. I would argue that many of these laws come from a misinterpretation of Islamic texts.

Article 132 lays down that 'women have no sexual freedom in Afghanistan traditionally'. That and the ordinances that mean 'a woman from the minority Shia community will not be able to leave the house without her husband's permission' along other such laws have no basis from an Islamic viewpoint.

The Koran does not allow rape in any situation (there are unfortunately a number of contemptible individuals who believe that it does in certain cases) and does not allow unprovoked and offensive attacks against innocents. Nothing in Islam justifies forced sex. This is well-elaborated on in 'Sunan Abu Dawud', 'Divorce' ('Kitab Al-Talaq').

Ustad Mohammad Akbari, an MP and the leader of a Hazara political party, has said that the law actually protects women's rights claiming that it gave a woman the right to refuse sexual intercourse with her husband if she was unwell or had another reasonable "excuse". Unfortunately few people can have any confidence in his words.

Forced marriage and rape are sadly horrific problems in the country today. Such practices belong to the mentality of narrow-minded, traditional communities and individuals that hold out-dated and manipulative practices. It is a sad reality that such injustice happens especially when women are in such a helpless situation. My hopes lie with President Obama's revised Afghanistan strategy and the empowerment of human rights groups there. Hopefully that will then improve state of affairs for Afghan women.

Posted by: Iftikhar Ali | 3 Apr 2009 08:58:15

Our soldiers are fighting and dying in Afghanistan to preserve this sort of inhumanity? Have we, as a nation, degenerated so much in the last 60 years?

Posted by: Geoffrey Smith | 2 Apr 2009 20:34:33