

“An Islamic liberation of Afghan women?”

“A study of the legitimacy of different frameworks for the promotion of women’s rights in
Afghanistan.”

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Summary

This thesis addresses the question of what constitutes the basis rights of Afghan woman, in the area of matrimonial law. By covering the narratives of gender promotion in Afghanistan, with the aim to examine the effectiveness of employing a secular, western framework vs. an Islamic framework of rights. It examines the rhetoric of saving Afghan women as a component to justify military invasion, by mapping the context of women's rights advocacy in the post-Taliban era. It follows with an attempt to create a historical contextual frame, in which the normative debate on divergent approaches to women's rights advocacy is placed. The spectrum of approaches of the gender question in Afghanistan, is further linked to the wider debate in the Muslim world on which frameworks of rights hold legitimacy in the advocating egalitarian rights for Muslim women. The normative discussions are based on a qualitative study conducted in Afghanistan in May 2019, with the aim to identify Afghan women's views on the basis of their rights, the legitimacy of state law and obstacles to obtaining their rights. The study finds that Afghan women, from rural and urban areas, understand Islam as the basis for their inherent rights, whilst seeing no contradiction between Afghan law and Islamic law. Whilst revealing a low degree of knowledge on both legal frameworks, respondents exhibit a clear understanding on what constitutes their rights as women, also identifying education, culture and poverty/security as the obstacles to their rights. This thesis sheds light on Afghan women's own perceptions on their rights, contributing to link qualitative data to normative discussions on the advocacy of women's rights in Afghanistan. To preserve hard-earned gains since 2002, the study recommends a holistic approach to the advocacy of women's rights, moving beyond the simplistic contestations of the effectiveness of different frameworks to promote women's rights in Afghanistan.

Foreword

Firstly, I would like to thank my supervisor, Torunn Wimpelmann, for invaluable help and guidance in the process of writing this thesis. Also, I would like to thank my best friend Allan for his support and encouragement throughout this process, I wouldn't be able to do this without you.

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1. Introduction

1.1 Background

On May 24, 2019, Mullah Samiullah Reyhan was killed during a Friday sermon in a bombing at a mosque in Kabul, Afghanistan. Shortly after the explosion, the Afghan Ministry of Interior Affairs issued a statement on the Taliban being behind the attack. Reflecting Taliban's enduring strategy to mute those with religious influence who could question the legitimacy of its battle. The killing resulted in widespread anger and grief amongst Afghans, as Reyhan had been a prominent and well-respected scholar, as a host of a popular daily religious television show. His support for women's rights was referenced as a reason of why Reyhan, a father of four, was targeted (Abed and Gibbons-Neff, 2019). He often addressed women's rights, denouncing the oppression of women as un-Islamic, which led to his high-esteem especially amongst Afghan women. On social media, Afghan men and women posted tributes to the scholar, television debates depicted frustration over extremist forces being against the progress of the Afghan society, including rights for Afghan women. Since 2001, Afghan women have often been portrayed as gendered "slaves", prompting intervention from the West to be saved, a rhetoric widely used to legitimize the warfare in Afghanistan (Ayotte and Husain, 2019, 113). The reactions witnessed after the killing of Mullah Reyhan, questioned the validity of the narrative of rescuing Afghan women from their native culture, religion and Afghan men. Reyhan being a religious scholar, advocated for women's rights within an Islamic framework, appealing to a conservative society. Afghanistan is an ethnically and linguistically diverse country, inhabited by *Pashtuns, Tajiks, Uzbeks, Hazaras* and others ethnic groups, speaking a multitude of languages, with *Pashto* and *Dari* being the two official national languages. The population is merged beneath the umbrella of Islam, with religion consolidating an otherwise diverse tribal society, governed by tribal and kinship based groups (Abirafeh, 2003, 34). With the establishment of gender equality considered an essential part of democracy building, the ousting of the Taliban in 2001 prompted work for women's rights in Afghanistan. However, with women's rights being highly politicized, it has been argued "Western" notions of rights been associated with the advocacy of women's rights. Thus mirrors a broad spectrum of debates over the approaches to gender question in Afghanistan, and the broader Muslim world. From the standards of Western secular feminist assertions of universal rights, to be applied everywhere with immediate implementation, without a consideration of religion, culture and social norms of particular contexts. The other spectrum being found in grassroots women's movements, who call for

women's rights advocacy to be placed within an Islamic framework. With the aim of trying to change social and cultural notions of women's position in society, in alignment with women's religious convictions and the centrality of religion in Muslim countries (Long-Bas and Afkhami, 2000, 495) Previous debates over frameworks in Afghanistan, have been based on normative contestations, due to a lack of data on which frame of reference constitutes the basis of rights for Afghan women. However, previous fieldwork conducted in Afghanistan, have found that an Islamic framework of rights is viewed as more credible at community level (Hozyainova, 2014, 7) Additionally, research from other religious Muslim countries, such as Egypt, suggests that the centrality of Islam being an integral part of women's identities (Stang Dahl, 1997, 6)

1.2 Scope of the study

The role of women in the family structure and overall society, is generally recognized as a litmus test for determining whether a society can be considered "Islamic", as it reflects women's role as culture bearers. Most Muslim countries suffer from legal pluralism, as the national legal frameworks have implemented both modern secular and Islamic *Sharia* law. While civil and political rights of women have been expanded, personal status laws, also called matrimonial or family law, are heavily grounded on classical interpretations of Islamic jurisprudence. Matrimonial laws determine crucial aspects of a woman's life, including the right to marry, inherit divorce and retain custody of her children (Cesari, Jocelyn and Casanova, 2017, 28) On this basis, the study has limited its scope to matrimonial law, by examining what Afghan women consider to be the basis of their right to marry, divorce, inherit and retain custody of their kids. With the aim of comparing if women perceive a difference between their inherent rights (*haqq*), and the rights awarded to them through Afghan law (*qanon*), by examining what constitutes as the basis of these rights. In addition, the study will attempt to identify what they perceive to be obstacles to obtaining these rights. The aim of the study is to advance knowledge on the contemporary challenges of promoting women's rights in Afghanistan and in the Muslim world, by shedding light on what constitutes the basis of rights for Afghan women.

1.3 Research method

The research rests on a qualitative research strategy, as the data material is textual, retrieved from interviews conducted with respondents in Afghanistan. Within the qualitative research strategy,

the case study has been utilized as the design of the study. The method of semi-structured interviews has been employed in the fieldwork, by conducting interviews with a sample pool of fourteen women and two men in Afghanistan. The selection of a qualitative approach is grounded on the limited scope of the study, as retrieving rich, intricate information from respondents has taken precedence over statistical descriptions. (Ringdal, 2007, 24) Furthermore, “grounded theory” case method is applied, which allows for a bottom-up approach, where data gives meaning to theory. The aim of the study is to establish theoretical relevance and representativeness, by applying the data of the case unit to the theoretical perspectives presented in the theory section. (Andersen: 2013, 56).

1.4 Structure of the thesis

- *Chapter. 2: Theoretical focus*

The chapter commences with a short overview over the spectrum of different approaches to gender promotion in Afghanistan and in the Muslim world. It continues to give a presentation of the backdrop of the Afghan context, with the rhetoric of the liberation of Afghan woman as gendered slaves, describing the overall efforts of state building in Afghanistan, in which the women’s rights cause was localized. Moreover, the chapter provides an outline of the history of the Afghan legal system and the role of Islam within it. This acts as a prologue to the discussion over converging frameworks to advocate women’s rights, by depicting the general debate in the Muslim world and Afghanistan. Lastly, it will explore the various approaches to advocating women’s rights within an Islamic framework.

- *Chapter. 3: Method*

In the method chapter, the selection of a qualitative research strategy will be explained, as well as the choice to utilize a design of “grounded-theory” case study by implementing a method of semi-structured interviews for conducting the research.

- *Chapter. 4: Results*

In the results section, the findings will be presented according to a “thematic” model, in sections organized according to the research questions of the study. The presentation of the results on the basis of rights within matrimonial law, will draw lines to theoretical focus of

chp.2 to create a holistic understanding of the results. A similar approach will be applied to the research questions on state law, the basis of these laws and obstacles to obtaining rights.

- *Chapter. 4: Discussion*

Drawing upon the results, the discussion will further the debate and analyze the findings of the study. Drawing upon the overall debate over which framework of rights will be most effective for sustainable advocacy of women's rights in Afghanistan. This discussion will link normative approaches discussed in chp.2, accompanied with the background of the Afghan context, with the results to identify weaknesses and possibilities in various strands of converging of approaches.

- *Chapter. 5: Conclusion*

Lastly, the conclusion will sum the discussion in the previous chapter, by making recommendations for strategizing for long-term, sustainable impact in women's advocacy in Afghanistan.

2. Theoretical framework

With the aim of examining Afghan women and the recognition of what constitutes, legitimizes and creates access to their fundamental rights as women in the contentious area of matrimonial law, a multi-tiered epistemological framework will be applied by explaining normative discourses related to promotion of women's rights in the Muslim world. The burqa-clad Afghan woman played a leading role in the rhetoric of justifying the US-led military intervention of Afghanistan following 9/11. The focus on gender oppression under the Taliban regime, underpinned the massive attention and resources allocated to promoting women's rights through the formal justice system (Ayotte and Hussain: 2005, 123). An understanding of the context in which women's rights advocacy in Afghanistan is located, is an theoretical entry point to the broader debate over which frameworks of rights are effective in promoting women's rights in the Muslim world. Developments in the past decade have renewed involvement in the future of women's rights in the region. Incidents such as sexual assaults in Egypt during the Arab Spring, the resurgence of Taliban in Pakistan and Afghanistan, the rise of Islamic extremism in Syria and Iraq, have morphed the women's rights issue

into a wider discourse on the presumed conflict between Western secular ideals and Islamic values. Following this vein, commentators have argued that a disassociation of women's rights and Islam have materialized in Afghanistan (Berry, 2003,137) With commentators coining the foreign engagement in Afghanistan as a neoimperialist intervention, being perceived as a direct assault on religion (Mir-Hosseini, 2017, 631) This reflects a normative dissonance between advocates of women's rights in Afghanistan, who argue for women's rights activism with an Islamic framework, conducive to historical and sociocultural context of Afghanistan. Reversely, another fraction of advocates postulate for an universal framework of rights, that transcend culture and religion, on the basis that equality cannot be achieved through a religion which do not deem women to be equal to men (Choudhry, 2007,158)

2.1. The gendered invasion of Afghanistan

Following the momentous events of September 11th, Afghanistan became the focus of an entire world audience. The Taliban regime allowed the state's territories to function as an enclave for Al-Qaida terrorist activities, which laid the groundwork for the military campaign in Afghanistan. Although not mandated by the United Nations, it was widely regarded as a legitimate act of self-defense under the UN charter. (Smith and Thorp, 2010, 2) In the wake of the war on terror, the narrative of Afghan women as gendered slaves in need of external saving, served as an integral component in the moral justification of military operations in Afghanistan after 9/11. The rhetorical objectification of Afghan women constructed a milieu not only legitimizing, but also necessitating a military intervention, under the guise of liberation (Ayotte and Husain, 2019, 113). By including the harrowing plight of Afghan women in the architecture of the war, the justification and moral superiority of war was strengthened. Furthermore, the establishment of moral superiority of the military intervention, allowed the discourse of liberating Afghan women to propagate an extensive military campaign. beyond the hastened removal of the terrorist networks from Afghan soil. *"The fight against terrorism is also a fight for the rights and dignity of women"*. This statement was made by then-First Lady Laura Bush, in a radio address to the American public on November, 2001. This was the first time the entire Weekly Radio address had been given by the First Lady, implying a strategic choice of selecting a woman to speak out of concern for other women, rather than President Bush himself. However, the role of the First Lady was a single component in an elaborate campaign, consisting of both the US government apparatus and the media landscape, to create a sense of urgency of the entrapment of passive Afghan women waiting to be rescued from Taliban oppression (Ayotte and Husain, 2019, 113). The radio speech was preceded by the State Department issuing a report on the conditions of women living under Taliban rule, while a myriad of articles and features

on Afghan women followed, such as Time Magazine's report on the harsh realities of women in Afghanistan titled, "Lifting the Veil" (Berry: 2003, 137).

2.1.1 State building and reform of the justice sector

At the end of 2001, following the Bonn agreement, the newly designated Karzai administration consisted of what even the agreement itself identified as an unrepresentative faction of people, faced with the tantamount task of establishing a legitimate locus of power. In his address to donors at the Tokyo Conference in January 2002, President Karzai expressed the preeminent focus of the new administration to "*revive and build the State apparatus, a system of democratic governance with active participation of the citizenry*", a statement also remade in his address to the Afghan nation (Ghani and Lockhart, 2008, 206). Afghanistan being coined a failed state, the intervenors applied the concept of "state-building", which since the 1990s has been the dominant paradigm for tackling state failure/fragility. With the attempt to stabilize a feeble, tribal society, salient issues connected to legitimacy of power arose in Afghanistan. The government consisted of a cadre of strongmen, associated with human rights abuses and foreign intervenors, which undermined state authority. For many Afghans, the peace agreement was perceived as unjust, and the centralized state authority competed with other forms of tribal structures in society (Edwards, 2010, 24). Prior to 2001, for over two decades Afghanistan had suffered from the negative consequences of loss of state monopoly on collective legitimate force, territorial control and state legitimacy, rendering it possible for terrorist networks to operate within the national borders. A development made possible by contesting regimes and militia groups, who struggled to attain the role of national rulers in a fragmented national landscape (Ghani and Lockhart, 2008, 130). The Bonn agreement initiated a state-building process where overarching strategy was to build state capacity, strengthen national institutions, and to establish Afghanistan as state with three branches of government: executive, legislative and judicial. The judiciary, as one of the core functions of the state, was enveloped in the comprehensive process of state building, which prompted the reform of the formal legal framework. Under the Interim Administration, a constitutional drafting committee was set down to prepare for a Constitutional *Loya Jirga* (National Assembly). Independent Judicial Commissions began a process of rebuilding the justice system, which included the drafting of a new constitution, in accordance with the rule of law, international standards and Islamic principles. Reform of the justice sector was a particularly prioritized area, considering that Afghanistan's legal system had been ruined by decades of conflict and misrule, leaving no physical infrastructure or an exhaustive overview of over the country's laws (International Crisis Group, 2003,i) The reform of the legal sector were carried out to lay the

groundwork for process of democratization and to build state capacity (Larsson: 2009, 1). As expressed by the current President of Afghanistan, Ashraf Ghani; “*The functioning of a viable state requires the performance of a complex range of tasks, with the rule of law acting as a “glue” that connects all the aspects of the state, economy and civil society*” (Ghani and Lockhart: 2008, 125).

2.1.2 Justice sector and women’s rights

A principal achievement within the justice sector, was the ratification of a new constitution by the Afghan government in 2004. Based on the Afghan constitution of 1964, it granted equal rights to all of its citizens, including women, as article 22 of the Constitution of the Islamic Republic of Afghanistan declares, “*Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law*” (The Constitution of Afghanistan, 2004). The 2004 constitution did not necessarily represent a milestone in that regard, as it was based on the 1964 Afghan constitution which had afforded women which stipulated a similar rights to both sexes. However, keeping the Taliban era in hindsight, granting women equality de jure was an encouraging achievement in the context of post-2001 Afghanistan. The promotion of equal rights for women, also occurred within the formal legal framework, as part of the overall strategy of building state capacity. Access to justice strategies were concentrated on building formal justice mechanisms, expanding legal aid to women, creating legal awareness campaigns and advancing progressive laws and policies. A notable achievement included the establishment of a Ministry of Women’s Affairs (MOWA), which preceded to ratify the National Action Plan for Women (Luccaro and Gaston: 2014, 5). Also, the «Law on the Elimination of Violence towards Women» (Qanon-e-maneh khoshonat alie zan), normally referred to as EVAW law in English, was introduced by presidential decree in July 2009. The EVAW law constituted an unprecedented accomplishment for women’s rights in Afghan law, as it recorded twenty-two acts as violence against women, conjointly mandating punishments for them (Wimpelmann:2017, 51). Furthermore, the Afghan Civil Code (1977) awarded women right to inheritance, set a minimum age for marriage, and codified women’s right to freely choose their own spouses. The rights in the Civil Code stemmed from prior attempts to reform matrimonial law in Afghanistan. Furthermore, multiple national programs and policies were launched, with ministerial strategies placing gender equality as a cross-cutting theme amongst Afghan state agencies and international actors involved in gender promotion (Hozyainova: 2014, 2). However, as observed in many developing countries undergoing the process of the democratization, the national legal system established under the provision of a constitution, does not translate into the de facto law governing the mass population. On paper, Afghan women enjoyed significant rights, however in reality, the results on paper did not transfer to

practice. The courts and society as a whole, have to navigate within structures of conservative social norms and customs. Concurrently, Afghanistan's justice sector also failed to attract local ownership of the legal framework, as reforms and the drafting of new laws since 2001, have been externally driven by the priorities of international actors(Lau: 2002, p.7).

2.2 The framework of Islamic law

Islamic law has enjoyed an enduring authority and legitimacy throughout Afghanistan's tumultuous history of state building (Khan, 2012). Islamic law is a corpus of legal rulings, based on adjudications and interpretations of the holy book of Islam, the *Quran* and the prophetic tradition of *Sunnah*. The *Sharia*, often misrepresented as uniform set of rulings to govern within a vast amount of Muslim nations, is in fact an abstract concept based on a diverse set of norms. It is derived from the *Quran* and *Sunnah*, with an overarching purpose of bringing humanity closer to God. The process of interpretation of the *Sharia* is referred to as *fiqh* within Islam, termed as the capacity of religious scholars to interpret the original sources of Islam. Consecutive to the following analogy, *fiqh* can be described as Islamic jurisprudence. The hermeneutics of *fiqh* is based on these principles; drawing analogy to establish rulings(*kiyas*), the consensus of the believers (*idjma*) and the individual personal understanding (*itjihad*). *Fiqh* is followed by the four principal schools of thoughts within *Sunni* Islam, *Malik*, *Hanbali* and *Shafi*, *Hanafi*. In Afghanistan, the majority follows the *Hanafi* school of law. Meanwhile, *Jafari*, the main school of thought within *Shia* Islam, has a disparate method for exegesis of *fiqh*, which followed by the *Shia* minority in Afghanistan. Islamic jurisprudence or *fiqh*, envelops not only practical issues of religious practice, it extends itself to all areas of religious, social and political life (Vogt, 2018). It is worth noting that the distinct schools of jurisprudence, are derived from the historical work of influential Islamic scholars, which created the breeding ground for different interpretations and rulings within Islamic law. Hence deciphering that Islamic law is not a homogenous and consonant area of law, however, it is a body of legal rulings, readings and interpretations based on religious texts by scholars (Souaiaia, 2008, xiii).

2.2.1 Afghanistan's legal framework

In the Constitution of the Islamic Republic of Afghanistan, the first article solidifies the stature of Islam in the architecture of Afghan law, reflecting its influence and position in Afghan society; "*Afghanistan shall be an Islamic Republic, independent, unitary and indivisible state*" (The Constitution of Afghanistan, 2004, 5). Afghanistan's Islamic roots can be traced back to the Muslim Arab invasion in 7th century AD, yet it wasn't until the 10th century, that Islam was securely established in the country, while the last traces of pre-Islamic communities didn't disappear until the

end of the 19th century (Adamec, 2011, 1). Islam has played a unifying role in state-building in Afghanistan, traced to the emergence of Abdur Rahman Khan's rule in 1880, with unprecedented impact on solidifying Afghanistan as a modern nation state. With the attempt to solidify absolute rule and centralize power, Abdur Rahman identified ethnic heterogeneity and tribal rivalry as significant challenges to consolidating his rule. He sought refuge in the authoritative realm of Islam, which is perceived as the common chord of Afghan society. Being the first Afghan ruler invoking Islam as a part of a centralization program, he also prompted for an legal reform which laid the groundwork for Islamic legal system in Afghanistan (Saikal, 2004, 35). Additionally, courts of appeals were established under Abdur Rahman, *Hanafi* law (*majalla*) was codified into Dari¹ (*Siraj al-ahkam*), while his successor King Amanullah Khan, further strengthened state law by drafting the first Constitution, and initiating judicial reforms (*nizam namah*), with the aim of reducing the influence of traditional clergy (*ulama*). Even though, Amanullah's reforms were considered too drastic and suffered backlash from conservatives and a powerful clergy, the incorporation of Islam in the Afghan legal framework continued. Beneficiaries of the throne continued the gradual process, as Nadir Shah introduced a new Constitution in 1931, more conservative in nature than its predecessor. Also, the Constitution of 1964 established an independent judiciary, introducing the Supreme Court as the highest official organ. A new Civil Code was enacted in 1977, which was considered one of Afghanistan's efforts to reform matrimonial law (Ludwig W. Adamec, 2011, 119). Afghanistan's present 2004 Constitution is based on its predecessor from 1964. While the 1964 Constitution required adherence "*to the basic principles of Islam*", the present Constitution of 2004 stipulates that "*no law shall contravene the basic tenets and provisions of the holy religion of Islam*", which reflects a bolstering of Islam's position in the formal legal framework. In addition to mirroring a society which has undergone disrupting transitions, resulting in a profoundly religiously conservative society (Azin Tadjdini, 2011, 358) The current legal landscape is characterized by a fragmented nature, resulting in a patchwork formal legal framework consisting of secular laws, codified laws stemming from *sharia* and uncodified laws also emanating from Islamic jurisprudence. This legal pluralism not only represents Afghanistan's turbulent history of state building; however, it also reflects developments during the Karzai presidency (2001-2014). In latter period, extreme legal pluralism was exacerbated by the drafting of single laws to ameliorate challenges in the legal framework, while neglecting the pressing task of conducting a comprehensive legal reform (Torunn Wimpelmann, 2017, 27).

¹ Dari is one of the two official languages of Afghanistan. Pashto is the other official language of Afghanistan. (Rfrl: 2017).

2.2.2 Matrimonial law in Afghanistan

Matrimonial law is recognized as a contentious area in Muslim countries as it is an area of law prone to local customs and practices, as it directly impacts the daily lives of men, women and children. In this field, *Sharia* law has exerted a strong influence both in the personal realm and in the legislative spheres in Muslim countries. This can be explained as the *Quran* dedicates great attention to topics such as marriage, divorce and inheritance, than to other areas of law. Therefore, despite modern reforms of the judiciary in Muslim countries, *Sharia* law remains as the basis of matrimonial in Muslim countries (Kamali, 1985, 81). In Afghanistan, when inquiring on the sources of Afghan family law, members of the high court and members of the local councils, pointed to customary law (often referred to as *oft* or *anana*). One example is the customary law of *Pashtunwali*, being a code for conduct and regulation of society in *Pashtun* areas. Also, uncodified *hanafi fiqh* was referred to as the primary source of law in Afghanistan. Matrimonial law in Afghanistan is governed by the Civil Code of 1977, which is considered as modernist legislation in the area of matrimonial law, with its regulations and tenets similarly based on *hanafi* jurisprudence. However, there is a difference between classical *hanafi* jurisprudence and the statutory laws of the Civil Code which is based on the *hanafi* school. Firstly, statutory laws have undergone reforms and improvements, to install stronger protections for women in law. Also, the Civil Code has utilized the common practice of implementing elements from other Islamic schools of law. An example of this practice is the ruling on divorce in the Civil Code, which borrows from the *Maliki* school of thought. The reasoning behind applying *Maliki* law is its resourcefulness which enhances women's rights to divorce by expanding opportunities to obtain divorce, while *hanafi fiqh* is extremely narrow in circumstances and bounds that allows for a divorce. As expressed by head of one provincial court in Kunduz: "There is no such thing as a "divorce" for women (there is not even a proper expression for it). Women only have the right to "separation". Men have the right to divorce even if they don't have any reason." (Max Planck Institute, 2005, 8) Illustrating an ignorance of statutory law amongst legal practitioners, as they are unfamiliar with codified Islamic law, with the majority graduates of religious schools (*madrasas*) which teach uncodified *hanafi* jurisprudence. However, even though the Civil Code has enhanced women's position to a certain degree by enabling a wife to challenge the husband's abuse of his powers and seek judicial relief, it still maintains a husband's right to unilateral repudiation (*talaq*). There is no attempt to introduce complete equality between spouses in divorce, however, the introduction of *Maliki* law still represents a milestone of reform for family law in a country with a history shaped by restrictive *Hanafi* law, with a backdrop of a conservative male dominated tribal society (Kamali, 1985, 197). Overall, the Civil Code of 1977 does not constitute

any radical change from classical *Sharia*, with the example of polygamy remaining permissible under certain conditions (Kamali, 1985, 152). Nonetheless, the Civil Code does award both sexes the authority to choose marital partners, outlawing forced marriage which is in accordance with Islamic legal tradition. Also, its provisions banned child marriage for girls with a set minimum age of 15 and attempted to set restrictions on polygamy (Torunn Wimpelmann, 2017, 35)

2.3 Islamic framework for women's rights

Even amongst skeptics wary of the paternalistic narrative of saving women in the Third World, there was a certain level of sympathy with the undertaking of rescuing Afghan women from the brutalities of the Taliban. The remarkable consensus on the issue, was linked to the aforementioned discourse of the plight of Afghan women becoming a normative component of justifying the US military intervention (Hirschkind & Mahmood, 2002, 340). This resulted in an highly contradictory epoch for the advocacy of women's rights in Afghanistan, enclosed by misogynistic Islamist movements on one front, and an imperialistic foreign invasion on the other end (Schweickart, Carroll, & Afary, 2006, viii). With women's rights being integrated in the blanket rhetoric of justifying a military invasion linked with geopolitical interests, led to discussions over which framework of rights would be most effective in progressing the rights of women in Afghanistan. Especially, as results since 2001, have proven disappointing despite the extensive amount of invested resources within the area of women's rights. This has led women's rights advocates and organizations to argue that equitable rights for women must be grounded in an Islamic framework, to avoid backlash from a conservative society. This discussion reflects a broader debate on how to promote women's rights in the Muslim World. The two dominant theoretical and activist strains consist of a secular approach with universal rights, aspires to create a society that contain all the hallmarks of equality between the genders. In contrast, the reverse approach urges the necessity of women's rights advocacy to happen within an Islamic framework, conducive to the native culture and social norms of Muslim countries.

2.3.1 Converging frames of reference

From the genesis, in Muslim societies, the family as a unit, has held great significance in how the society is organized, encompassing legal, social and religious aspects. Thereby, the woman's position within the family unit, is notably significant. Today, over thirty-five countries can be characterized as Muslim, with over 830 million people following a philosophy based on Islam, which consequently impacts people's daily lives and struggles (Stang Dahl, 1997, 2) Also, having implications for non-Muslims who are concerned with women's rights advocacy and policy development in the Muslim world, as women's rights are often appropriated in justifications for

waging wars. For instance, Jean Bethke Elshtain, who is an ethicist with the University of Chicago, supports the invasion of Afghanistan, classifying it as a “just war” by linking it to the women’s rights cause (Ahmed-Ghosh, 2016, 233). Furthermore, it should be noted that Islamic legal, social and religious codes can only function in relation to external factors, as for example, the legal framework and system of law in a nation. Clustering multifold countries and millions of women, to examine the debates on different frameworks to promote women’s rights, by defining them as “Muslim”, invites a myriad of challenges, considering the distinct history, culture and socio-economic context of each Muslim country. However, as Islam contains a legal system which covers all aspects of life, including private and public law, and is deemed uniform and universal, the issue of women’s rights and the sources of law to utilize, is a matter that is highly relevant to all Muslim societies (Stang Dahl, 1997, 11). With the issue of women’s rights being considered a phenomenon of the modern age, the response has remained unchanged in Islamic scholarship, based on the notion that God has taken account of people’s true rights. Nonetheless, with the growing acceptance of human rights and equality of the sexes in Muslim communities, there has been two general strands of responses. One course is to reduce the prominence of religious precepts that conflict with universal human rights, by formulating justification for their presence. The other is to highlight tenets in Islamic texts that confirms human rights, thereby eliminating human rights criticism (Kadivar, 2009, 49). The principle of equality between men and women remains a subject of debate and theoretical shifts. It places different references of law at the center of the debate, as Islam is a principal source of matrimonial law in Muslim countries. For example, in Morocco, where controversy and debate have arisen between advocates of universal human rights as stipulated in international treaties and conventions, and those in favor of cultural particularism. The clash was witnessed in the process leading up to the ratification, of the adoption of the new Family Code in 2004, where divergent views on the frames of reference reflected the dichotomy found in the Moroccan legal system. Public space is dominated with modern law taking inspiration from the West, while matrimonial law is entirely enveloped by Islamic law. This legal ambivalence is observed in all Muslim countries, where an attraction to modernity and an attachment to Islamic precepts, creates a duality in the legal framework. This results in laws proving incapable of addressing contemporary realities, and legitimate aspirations for equality for Muslim women. The issue is heightened by the fact that both frames of reference, are ingrained in the legal system in the majority of Muslim countries (Hajjami El, 2009,102). As identified by Sharafeldin (2013. 57) in her field work in Egypt, women’s rights non-governmental organizations (NGOs) selectively employed elements from both Islamic law and international human rights laws, to advocate for a reform of the personal status law (PSL), which governs all family relations in Egypt. As the PSL is based on Islamic law, it is controversial to call for reform, as it

would be perceived as an attack on Islam itself. Since 2007, a network of consisting of eleven NGOs, have therefore defined their mandate as the priority to work for the reform of the PSL, guided by three reference points. Starting with, the lived realities of women who suffer under the law, an enlightened legal discourse within an Islamic framework and lastly, international human rights law. At the outset of the network's discussions on which frame of reference to promote their work, including a religious reference was necessitated, as a human rights reference would prove detrimental to their work. Based on the realization of the Western/Colonialist stigma, that universal human rights hold in Egyptian society (Sharafeldin, 2013, 60). Similarly, an equivalent debate can be observed in many Muslim countries, such as Egypt, Iran, Pakistan, Indonesia and Malaysia, where women's rights advocates have attempted to reconcile the supposedly antinomic legal orders, of women's rights and Islam. Especially since the 1970s, the struggle for equality and justice has evoked a resurgent Islam, attempting to place the struggle for egalitarian rights for women, within an Islamic framework. Within Muslim communities, there are undoubtedly activists who reject the notion of a religious framework, arguing that all religions are inherently patriarchal and unjust. They note that traditionalists in the ulama² will challenge equitable interpretations of Islamic texts. However, in countries such as Indonesia, Iran and Malaysia, which are rapidly modernizing, women form the majority in universities and an increasing number of women participate in the labor force. This has resulted in Muslim women challenging patriarchal structures, by attempting to reclaim, redefine and participate in the interpretation and codification of Islamic law. They contend that rejecting religion is not an option, either due to personal conviction or as a strategic choice in Muslim contexts. Therefore, the quest for women's rights has lead women's rights activists and progressive scholars, to attempt to reconcile equality and justice for Muslim women within Islamic jurisprudence. As part of this pursuit, women's groups such as Sisters in Islam in Malaysia, have begun to study Islamic sources of law, attempting to create new methodology and conceptual frameworks to struggle for equal rights for Muslim women (Anwar, 2009, 176)

2.3.2 The Afghan context

Advocates of women's rights in Afghanistan have pointed to the government's close ties to the Western forces and reliance on foreign funding, arguing that it results in the lack of legitimacy of the state apparatus. Consequentially, it is contended that the promotion of women's rights through the

² Body of scholars and legal practitioners of Islam (Oxford Islamic Studies Online, 2008)

formal legal framework tied to a foreign intervention, will alienate conservative sections of society (Afsah and Guhr, 2005, 84). This leads to suggestions that women's rights in Afghanistan, should be promulgated through a framework not burdened by the association with actors lacking local legitimacy. It has been argued, that with the United States having spent more than \$ 1.5 billion on the area of women's rights since 2001, not taking into account the vast amounts also invested by other international donors, the results have been varied at best (Nawa, 2019). Especially in the area of women's access to justice, progress have been slow and limited at best. Consensual marriages, freedom to choose a spouse and to obtain divorce, are still basic rights that the majority of Afghan women do not have access to, as legal protections are underenforced and women face a myriad of barriers to obtain their rights. In a report titled, *Women's Access to Justice in Afghanistan*, one woman from Jozjan expressed, «*Our condition is largely the same now as under the Taliban regime, although now we have a little more freedom of movement*» (Luccaro, Tim and Gaston, 2014, 76). The lack of substantial progress for women's rights, have created ground for Afghan legal aid and women's rights organizations to search for alternative frameworks. Drawing on the historical and cultural background of Afghanistan, advocates have pointed to the role of Islamic law, as a unifying force in a diverse ethno-linguistic tribal society, adhering to a pluralistic set of norms (Ghani: 1978, 283). Thereby arguing that Islamic law offers an alternative entrance to the endeavor of promoting women's rights, stressing that conservative Muslim societies are conducive to empowerment strategies based on Islamic discourse and praxis. Additionally, advocates of an Islamic framework of rights have argued that with the curtailing international engagement in recent years, achievements that have been made, will continue to regress due to an increasing and widespread lack of trust and suspicion towards Western-backed women's rights programs. It has been contended that the advocacy of women's rights is viewed as a foreign construct, due to the growing disillusionment of Western assistance and the government's lack of legitimacy (Hozyaivova: 2014, 2). Choudhry argues that the demands for equality through the rights that Islam affords women, is based on a sincere moral and ethical conviction of Afghan women, while strategic concerns are similarly central for framing demands as Islamic. Choudhry also argues that Muslim women engaged in women's rights advocacy, believe that Islam affords them rights that are more progressive than most customary norms and practices. This notion is supported by the former Country Director for Women-for-Women-International, Lina Abirafah, by announcing; «*Afghan women feel strongly that Islam more than any other religion, guarantees equal rights to men and women*» (Choudhry, 2007, 165) However, in field research conducted by the Max Planck Institute it is reported that seventy percent of men and eighty to eighty-five percent of women interviewed, had no knowledge of the rights

afforded to women in Islam (Max Planck Institute, 2005, 11). Also, the former director of the Afghan Red Crescent, Fatima Galiani, who is a trained Islamic lawyer, suggests that Afghan women themselves are unaware of the rights afforded to women in Islamic law “*Most Muslim women do not know what Islam is and the rights of women within it. That has created the best opportunity for men to abuse this situation and enforce male-oriented traditions, or whatever suits them to oppress women*” (Widiadana, 2006). Thereby, making the case for greater Islamic literacy, scholarship and dialogue, as the key to the acceptance of women’s rights and their sustainability in conservative societies, as advocates argue that an Islamic legal framework to promote women’s rights enjoys considerable legitimacy at grassroots levels (Hozyainova, 2014, 1)

2.3.3 Artificial demarcation

Drawing on the challenges linked to the legitimacy of the formal legal framework, and the mistrusted Afghan government, as illustrated above, advocates such as Galiani, call for greater Islamic literacy to create awareness and empower women. Similarly, Hozyainova calls for greater Islamic legal literacy to protect and promote the rights of women, while recommending the utilization of an Islamic framework due to an intolerance to “Western” secular notions of rights, associated with the Afghan formal legal framework (2014, 1). However, this confirms a common misconception, on the formal legal framework of Afghanistan being at odds with Islamic law. Afghanistan’s existing legal framework is at present, a conglomeration of codified laws derived from sharia and uncoded Islamic jurisprudence (Wimpelmann: 2017, 27). Even with the formal Afghan legal framework suffering from legal pluralism, as it contains elements of codified *Sharia* laws, uncoded *hanafi* jurisprudence and secular laws, it is however, heavily dominated by Islamic jurisprudence. This is especially true in the area of matrimonial law, as the Civil Code of 1977, draws entirely on codified Islamic jurisprudence. It is estimated by the Ministry of Health in 2010, that 21 % percent of all women in Afghanistan are married by the age of 15 years, while the number is believed to be higher than is reported. Also, forced marriage, which tends to occur when a girl is very young is a common practice in Afghanistan. Considering that both child marriage under the age of 15 and forced marriage is banned by the adoption of the Civil Code, it is evident that the formal legal system offers stronger protections for women than the rights afforded to them in a conservative societal structure (Luccaro, Tim and Gaston, 2014, 14). Similarly, Hozyainova (2014,1) argues that the rights awarded to Afghan women in through the 2004 Constitution and the Civil Code of 1977, are far more progressive than customary norms and practices witnessed on community level. However, it merits critique that an artificial demarcation is made between the Afghan formal legal framework and

Sharia law, as the Afghan legal framework has a firm standing in Islamic jurisprudence. Although, sections of Afghan state law have undergone modern reforms, it succinctly represents moderate Islamic law, in accordance with traditional *hanafi* jurisprudence and conventional *Sunni* schools of law.

2.4 Islamic framework of rights

The debate over utilizing an Islamic framework to promote women's rights in Afghanistan, needs to be underlined by an understanding of what is referred to as an Islamic tradition, does not consist upon a universal, agreed-upon set of norms (Hassan, 1999, 248) In Afghanistan, the vagueness of the formal legal framework and under-enforcement of the rights awarded through formal laws, have created room for women's rights activists, policy makers and NGOs arguing for progressive maneuvering in the field of Islamic law. However, within an Islamic framework there are several strands of approaches, with two key approaches defined as reform-driven Islamic feminism, and the traditionalist Islamist approach. The former, Islamic feminism is an ambiguous term containing different meaning for various actors and locations. By utilizing Ziba-Mir Hosseini's definition, it will be interpreted as an awareness of injustice inflicted upon women on the basis of gender, with the intend to employ new knowledge, activism or advocacy to address the issues. It is coined as "Islamic", due to the advocacy and scholarship being grounded on inspiration and justification from Islamic sources, guided by the Quranic principles of equality, justice and preservation of human dignity (Sharafeldin, 2013, 62). The methodology of Islamic feminism is based on the notion of *ijtihad*, which is the right of individual reasoning with Islamic law. *Itjihad* is therefore perceived as gateway to construct reformist interpretations of the *Quran*. In Afghanistan, is argued that an Afghan feminist *ijtihad* can help to break down patriarchal and discriminatory interpretations of religious texts (Jacinto, 2006, 12). It is argued by Muslim feminists that the undertaking is neither novel nor revolutionary, as the interpretation of the *Quran* and prophetic tradition has occurred since the revelation began. However, primary Islamic scholarship have been dominated by the discourse of the body of male scholars, therefore a chasm exists in the lack of attention given to the rereading and reinterpretation of Islamic texts by female figures in the nascent of Islamic polity (Yamani, 1996, 2). Islamic feminists have argued that the privatization of religion, which is often seen as necessary for the advancement of women's rights, is not straightforward when examining the social aspect of separating religion from the legal landscape. Joan W. Scott has drawn parallels to secularization of state-religion in France, where women rights were favored in the private sphere, but impacted negatively in their social political rights. However, the reverse was witnessed in Muslim nations undergoing postcolonial secularization process. When state actors gained control of religious

institutions, simultaneously, Islamic legitimacy was undermined by unveiling of women and granting of rights. A vital distinction was identified, while women were granted economic, political and social rights, matrimonial law still was constrained under Islamic precepts. Thus, creating a social imbalance, as matrimonial laws did not change in accordance with the other social advancement of women in society. A case of point can be drawn to the Islamic Republic of Iran, with the discrepancy between different types of rights awarded to women. Rights to education, employment and political participation have gradually been granted to women, while curtailing rights of the self. This is due to sociopolitical rights not necessitating a reinterpretation of Islamic jurisprudence, neither does it clash with traditional religious authority. Following this vein, Islamic feminism stresses the importance of framing the entire legal corpus within Islamic tradition, to ensure that women are granted full rights, especially in the contentious area of matrimonial, by progressive reinterpretation of Islamic sources. It is argued that key rights of the self, such as family law, are often the areas in dire need of reform in Muslim nations, where even secular governments have proven resistant to grant equality between the genders due to social and cultural models of family (Cesari and Casanova, 2017, 27).

The adverse approach within an Islamic framework, is that based on an Islamist, traditionalist approach, based on the centrality of the family. This strand of Islamist women's groups shares similar concerns to those of women's rights activists elsewhere. However, they emphasize the "*complementarity of roles*" between the sexes. Unlike Islamic feminists, they are not preoccupied with reinterpreting Islam texts, but argue that Islamic history contend that women have always had a role in the public sphere. Rejecting feminism as an individualistic approach, they push for egalitarian rights within the community, stressing the intrinsic difference between men and women, reflected by the different roles they play in society (Abdellatif & Ottaway, 2007, 9) In Muslim countries such as Egypt and Lebanon, women rights groups in Islamist organizations are resurging. For example, the Hezbollah associated women's organization, Al-Hayaat Al-Nisaayia, are organizing programs to teach women about their rights, as they recognize the violation of women's rights, but contend Islam is not the cause. Furthermore, women in the Egyptian Muslim Brotherhood, are pushing for better political representation for women and the integration of the women's organization into the main core of the movement (Abdellatif & Ottaway, 2007, 10) However, the Islamist women's rights groups face criticism from secular feminists, in addition to Islamic feminism, who dispute the compatibility of traditional *Sharia* jurisprudence with gender equality (Moghadam, 2008) Katha Pollitt raised the same concern on parallel provisions of gender equality and Islamic law in the Iraqi Constitution of 2005, asking in *The Nation*; "*How can women be equal before Islamic law, according to which they are unequal?*" Pollitt continues to answer her own question, by numerating

Islamic law “horrors” which currently afflicts women in Iran, extending the promise that similar circumstances will follow in Iraq (Choudhry, 2007, 158). As the strand of Islamist women’s rights advocates, do not propose complete equality between the sexes, they emphasize that women should strike balance between with their roles as mothers and wives. Mirroring classical interpretation of *Sharia* law, asserting male privileges tied to men’s responsibilities in traditional societies, a strain of thought reflected in matrimonial law in Muslim countries. Even though, the notion of “complementarity” goes against feminist ideas about equality, there is however, a shift from the “formal” models of equality of rights, to a “substantive” model in feminist literature. Feminist legal theorist, Catherine MacKinnon, explains that the formal model of equality rests on a false premise, as legal inequality and discrimination is not experienced similarly by women. Pointing to the Convention on the Elimination of All Discrimination Against Women (CEDAW), which doesn’t define equality, rather it adopts an abolitionist language, which might prove non-conducive to conservative and religious societies (Mir-Hosseini, Vogt, Larsen and Moe, 2013, 27)

2.5 Research questions

The overarching objective of this study is based on the study of Afghan woman and the perceived basis of their rights, pertaining to matrimonial law, with the aim to explore which frame of reference hold legitimacy and potential to promote women’s rights in post-2001 Afghanistan. Afghanistan stands at a critical point in history on the issue of women’s rights and women’s position in society, with decreasing international support and the ongoing peace talks with the Taliban. Women’s rights groups and advocates calling attention to possible threats to achievements that have been made, as conservative forces are gaining stronger foothold, both geographically and within the government. The study is based on field research conducted in Afghanistan, with an endeavor to identify what constitutes the basis of matrimonial rights for Afghan women. Similarly, to examine knowledge on rights awarded through state law, the legitimacy of these rights, and the obstacles to obtaining their rights.

Title of the thesis;

“An Islamic liberation of Afghan women?”

A study of the legitimacy of different frameworks for the promotion of women’s rights in Afghanistan.”

The thesis will attempt to address the focus of the study, through the following set of research questions:

1. Which matrimonial laws do Afghan women believe is a fundamental right (haqq) right? What do they see as the basis of these rights?
2. What knowledge do Afghan women have about the rights granted to them in state law (qanon) ? Do they agree with these rights? Do they see these laws as secular /western or Islamic?
3. What do they see as obstacles to realizing their rights?

3. Methodology

3.1 Research design

When determining which research design to implement in this study, it was essential to deliberate on which strategy and design would allow for a framework in which to most efficiently gather data, make “sense” of the data and to place it within a conceptual theoretical framework. In social research, there are various dynamics deemed vital to consider, as content, context and structure of phenomena in the social world, tends to be multilayered and multi-contextual (May, 2001, 29). In this study, with the overarching goal of examining women’s perception of basis of rights in Afghanistan, on the elemental stage, the selection of a qualitative research strategy is selected. Foremost, as this research is on examining women’s understanding of their rights, a qualitative research design is selected to best capture dynamics, content, context and structure of the social relations being examined. Furthermore, the selection of a qualitative research design in this study, allows for a smaller sample of units or informants, while a quantitative research strategy necessitates larger samples. It is a pragmatic choice based on the limited scope of the study, and an epistemological rationale grounded on the nature of the study (Ringdal, 2007, 24). Within the qualitative research strategy, a case study has been utilized as the design of the study. A case study is defined as an intensive qualitative study of one or several units, which, in this study being the single unit of the nation state of Afghanistan. A case study design is selected, as it allows for flexibility in selecting various theoretical strategies to suit the theoretical design of the study. Furthermore, “grounded theory” case method is applied, which allows for a bottom-up approach, where data gives meaning to theory and not reverse. The purpose of the study is to allow for generalization by collecting data in the case unit of Afghanistan, which is conducted through field research in Afghanistan. This will be done by interviewing respondents, with the aim of determining what they identify as their fundamental rights, state law and the basis for these, while also inquiring into

perceived obstacles in obtaining these rights. The aim is to establish theoretical relevance and representativeness, by applying the data of the case unit to the theoretical perspectives presented in the theory section (Andersen, 2013, 56).

3.2 Data collection and method

The study has employed semi-structured interviews as method for interviewing the informants. The purpose was to gather information and knowledge that the informant possesses, rather than to measure theoretical variables. The backdrop for the employment of semi-structured interviews, is due to the fact that this method allows for utilization of techniques from both structured and unstructured interviews. Semi-structured interviews allow for data to be generalized beyond the sample group, whilst enabling an in-depth understanding of the perceptions, feelings and motivations of the informants. A set of questions were prepared, however, the researcher had the opportunity to probe beyond the set questions, to follow-up on questions to collect information which might be of relevance to the study. As both clarification and elaboration on the answers, enables the researcher to gather qualitative information. Informants were also asked about their age, place of residence, educational level and marital status in a standardized format, with the aim of which creating structure for comparability in terms of possible trends within the sample pool. However, as the semi-structured method provides greater latitude to the researcher, it concurrently requires an elevated understanding of the context in which the interview is taking place. Therefore, the theoretical framework was prepared prior to the fieldwork, to highlight that the researcher was familiar with the cultural and social context in which the interviews took place (May, 2001, 123) Also, the interviewees will be conducted in *pashto*, one of Afghanistan's official languages, as the researcher possess fluency in the language and is of Afghan origin.

3.3 Sample size

The study's sample size consists of sixteen informants, selecting eight informants from rural areas and eighth informants from urban centers. Fourteen of the respondents are female, while there are two male respondents. The selection to include male respondents in a study of women's perception of the basis of rights, is grounded on a decision to provide a contextual framework reflecting the sociocultural context of women's realities. Furthermore, a delineation on geography rests upon on a theoretical method for selection deriving from "Grounded theory" to create a composition of a suitable selection, which represents a maximal variation of the issue being studied. Drawing on informants from both rural and urban areas, mirrors the different experiences and narratives of a

wider range of Afghan women. The aim is to create a holistic sample of informants, reflecting the wide-ranging edges of a sample selection. A randomized selection of informants to create representability is highly challenging in the case study of Afghanistan, due to challenges related to security and sociocultural obstacles to conducting a random selection. On that basis, the researcher made a theoretical selection through quota sampling based on geography, age and educational background. However, considering the context of a highly conservative society, in which both the researcher's and respondent's safety must be taken into consideration, the selection of informants was made within the researcher's network in Afghanistan. This can be seen as a bias in the study, as the researcher's network consists of individuals belonging to higher socioeconomic segment of the Afghan society. This impacts the validity and representativeness of the study, as it doesn't include poorer segments of the society in the sample. As the basis of rights in matrimonial law is contentious area in Muslim societies, a random selection to establish representativeness of the sample was avoided, thus creating a biased sample. This is a weakness of the study, however, as the establishment of trust is crucial in this study, it took priority in the selection. As the study is based on a small sample consisting of sixteen respondents, the establishment of trust to gather rich, qualitative data was considered essential (Ringdal, 2007, 231).

3.4 Data processing

In terms of the presenting the results from the interview rounds, there are various methods that can be used. The results of qualitative investigations have been referred to as a "*model of understanding*", which indicates the continuous interaction between the overarching theoretical framework and the collected data material. When selecting a method, the research questions of the study must be connected to the presentation of the results, to determine which model will create the most suitable "*model of understanding*". In this study, a thematic model is selected, on the basis that it enables a presentation of results in alignment with the interview structure and the themes explored through the questions. The results are presented under each respective research question, where subthemes are identified and organized in separate sections. This is done to determine the weight of the material, by identifying pressing issues within each theme. The selection of the thematic model complements the method of semi-structured interviews, which allows for categorization, while also creating room for flexibility within the structure of the interview. As the objective is to identify components pertaining to the overall aim of the study, of examining the legitimacy and effectiveness of diverging theoretical frameworks to promote women's rights in Afghanistan (Dalen, 2013, 68).

3.4 Ethics

Conducting research in the context of Afghanistan, which is a country suffering from lack of security, political instability and restrictive social and religious norms, there are several issues which were considered, in terms of conducting research in an ethical manner. Firstly, the need for the informant to be fully informed on the purpose of the research, the field of research and the role of the researcher. In connection to this concern, the respondent was given an introduction of the researcher and her university and country affiliation. Also, they were informed that they had a free choice in giving consent to participate in the study. The respondents were informed they had the choice to refuse to answer any questions, or abort the interview at any point, which is vital in an environment, where especially women are vulnerable and lack self-autonomy. Also, the researcher was aware that a conscientious approach was necessary to conduct interviews with vulnerable groups in society, requiring extra attention to avoid creating unsafe situations. Also, assuring the respondents that diligent attention would be awarded to keeping their confidentiality and the processing of sensitive data acquired through the interview (Dalen: 2013, 102). The respondents were awarded pseudonyms from the start of interviews, also, when transcribing the interviews on computer, sensitive information was not included, such as names of family and locations, to ensure complete anonymity. Furthermore, the data was stored on a password protected computer which only the researcher has access to. The material was shared with the supervisor of the study after it was edited, to maintain full anonymity of the respondents. The original notes made during the interviews were destroyed immediately after transcribing them on the same day as the interview.

4. Research results

4.1 Which matrimonial laws do Afghan women believe is a fundamental right (haqq) right? What do they see as the basis of these rights?

4.1.1 Marriage

Forced marriages are common in Afghanistan, as it is a conservative society where husbands are chosen for young girls and women. Both Afghan statutory law and Islamic norms, guarantee women and men authority in selecting a spouse. The norm on the issue in the *Sharia* is the marriage of the majority, which is contracted by the consent of a man and women, with competence (sanity) and majority being necessary requirements. A specific age of majority is not prescribed in the *Sharia*, but

it is considered a general principle that majority comes with physical puberty. Nonetheless, the Sharia does allow for child marriage, by which a guardian (male agnatic relatives) can contract a minor without their consent, on the premise of keeping the wards best interest as a priority in the marriage guardianship (Kamali, 1985, 107) The statutory laws in Afghanistan have attempted to abolish child marriage by setting a minimum age of sixteen years for girls and eighteen years for boys, simultaneously also banning *nikah* (marriage contract) for girls under the age of 15 under any circumstances. The Civil Law of 1977 also enacted the right of women to freely choose their spouse without the approval of guardians, *“An adult and competent woman may thus enter a contract of marriage without the permission of the guardian”* (Art.80) (Civil Code, 1977, 24) As the interviewees unanimously agreed on upon their right to choose their own spouse, none of respondents pointed to family or guardian approval to be a necessary requisite for them to be able to enter a contract of marriage. A discrepancy was noted amongst the male respondents, as they agreed with a woman’s right to make the decision, however, stressing that they need parent’s approval, *“Islam has given them the right, but the family needs to agree, if not her afterlife will be ruined”*, referring to a woman committing a sin by entering a marriage without parental consent. This reflect unawareness of both Islamic and Afghan law on the issue of marriage. Additionally, all fourteen female respondents started initially with stating that an Afghan woman has the right to choose her own spouse, while later nuancing the statement by drawing on societal and familial structures which limit the right. As expressed by Nazia³, a young woman residing in Kabul; *“I know I have the right Islamically, but I live in a society that does not award me this right.”* She is an educated woman who had completed secondary school, who shares that she is happily married with one son. Her marriage was arranged, but she was asked to give consent. However, she does point out that things have improved in these last years, while also stressing that there is now a higher occurrence of conflict in families due to these issues: *“Before it was not common for a girl and boy to meet, but now it happens and it causes problems. I don’t think it is a problem, but people in the community does, as parents still wish to arrange marriages”*. This view is also conveyed by Ziba, an uneducated woman from rural Laghman, *“Islam has given the right to women, but they cannot claim it, as it is in the parents hands. Parents decide everything.* Ziba, refers to the authority of parents, while majority of respondents draw on society and community as a whole. This can be seen in relation to her personal story, of being an “unmarried spinster” (translation of the Pashto term: ghata peggla), as she was not allowed to get married, as she had to take on the role of caregiver for elderly parents. Additionally,

³ All names are pseudonyms to protect the identity of the respondents

women from urban areas also stressed the importance of interacting with their future spouse before entering a marriage, while also labeling marriages that haven't taken place without the consent of the girl, as unislamic and haram (unlawful). Notably, the women drew on Islam as a frame of reference for their right, seemingly unaware over the instances where Islam allows for guardians to contract a girl into marriage under certain circumstances. Suraya, an older woman with five kids from Kabul said: *"I heard a mullah speaking about it on TV, that a guy and girl should speak before getting married. Even when I was young, I knew that is my right, but no one asked me. It is a bad feeling"*. She expressed a lot of anger and frustration on this issue, as she had experienced domestic violence in a turbulent marriage. A reference to statutory law was not made by any of the women, even though, state legislation aligned with their conception of their rights. The recommendation of some urban women of interacting and getting acquainted before entering a marriage contract (*nikah*), represents an unawareness of *Sharia* law outlawing contact between a woman and non-*mahrams*. *Mahram* is defined as unmarriageable kin in *Sharia* law, non-*mahrams* are thereby defined as men with whom sexual intercourse and marriage would be possible (Islam Web, 2013)

4.1.2 Divorce

Before the introduction of the Civil law of 1977, divorce was solely governed by *Hanafi* law in Afghanistan, which held a restrictive stance on divorce for women. According to Islamic law, men can divorce at will, but women can only obtain judicial divorce premised on certain grounds. According to *Hanafi* jurisprudence, judicial divorce is only awarded to women if one of the following conditions are fulfilled: the husband being entirely incapable of consummating a marriage or he has been a missing person for over ninety years since his date of birth. Introducing Maliki law in Afghanistan in divorce legislation, represented a milestone of reform in a conservative society, as Maliki law recognizes judicial divorce on a wider scale and is more resourceful on the issue. The Civil Law therefore provides women with four alternative types of dissolution, beyond the existing right to divorce by mutual agreement, which is recognized by all schools of *Sharia*, but is challenging to obtain in patriarchal societies where women are denied divorce rights (Kamali, 1985, 184). Respondents gave a unified response, by stating that they had the right to divorce, notably under specific cited conditions. Uneducated women, regardless of if they were located in the urban center of Kabul or the rural province of Laghman, displayed a liberal attitude towards their views of divorce as an uncontested and fundamental right, citing an Islamic right as the basis. Thus, illustrating an unawareness of *Sharia* jurisprudence, which extends constrained rights to judicial divorce to women, relying on certain conditions being upheld. An example is Noor, an illiterate woman past mid-age, who shares her story of being married at young age to a much older man, but

maintains she is happy in her marriage. She expressed the following view, when asked if women have a right to divorce, *“Yes, why not, if they are not happy. I know of many women who have left their husbands”*. She tells the story of her niece, who was abandoned after contracting a *nikaah*⁴ with a man living abroad. The husband refused to take his wife with him, expecting her to be the caregiver of his elderly mother in the village. After two years, the girl’s family contacted a *qadi*⁵ to obtain a divorce for the girl. Younger, educated women exhibited a pragmatic attitude towards the right to divorce, citing conditions under which the right is triggered, as Maria, a graduate of Islamic Studies expresses, *“In Islam, if she does not have any problems, she cannot. If she is abused or does not get her right (ref. maintenance such as food, shelter and clothes), she can get her right through the courts. Not only on the basis that she does not like him or is not happy.”* The same segment women also specify that even though they can get a divorce under certain circumstances, it is very challenging to obtain. Roya, a married woman from Kabul declares: *“In Afghanistan, in Islam we do not have the right to get divorced, but through modern reforms and state law, we are given the right to get divorced. But a divorce is very difficult for a woman. Afghans have the view that a bride should enter the house in white and leave in white (ref. wedding dress and Islamic tradition of wrapping a corpse in white).”* A similar conception of the right to divorce can be seen among male interviewees, who purport a woman’s right to divorce only under specific conditions, *“If the husband cannot fulfill his obligations towards the wife, such as providing her with food and clothes, she can get a divorce. She cannot get a divorce just because she isn’t happy in the marriage”*, says Mahmood, a young man from Kabul. The male respondents and the female educated respondents signal an understanding of the conditions that allow divorce for women according to Maliki law, on which Afghan divorce law is grounded. Indicating that a higher literacy enables both men and women to have an awareness of actual rights awarded through Islamic and Afghan law, which are more progressive than customary norms found in Afghanistan.

4.1.3 Inheritance

Afghan law and *Sharia* law entitles a woman to inheritance rights following the death of a husband or father. *Sharia* law decrees a woman’s the right to inherit the half of a male heir (of the same degree), similar to the enactment of the Afghan Civil Code on inheritance. On the subject of inheritance, the respondents gave a unified reply to the right to inheritance, as conveyed by the

⁴ *Nikaah* signifies an Islamic marriage contract entered by the conjunction of the man and woman (Engineer, 2008, 134).

⁵ *Qadi* is an Arabic word for judge, specifically referring to a judge of the *Sharia* jurisprudence of Islam (Marlow, 1954, 29)

young teacher, Hana from Laghman, *“Yes, a woman does get inheritance. In Islam, you get a half of the portion your brothers get. Also, you get a portion from your husband”*. The respondents displayed basic knowledge on right to inheritance, while several women shared anecdotes of women in their families that had claimed inheritance rights. Seena, a middle-aged woman from Kabul, made the following statement: *“Yes, I do have a right to inheritance.” Both from my father and my husband (if he passes). But women do not claim it, because people say it’s shameful. I know a woman in my family who claimed her right, and the brothers cut her off. A son and daughter are born from the same father and mother, why should there be a difference?”* The latter statement reflects the customary rite of Afghan women ceding their right to inheritance, as part of a social contract where brothers are expected to look after their sisters for the duration of their lives (*Women and Property Rights*, 2009). Frustrations over these social norms were expressed in the interviews, as women referenced “brave” women that had claimed inheritance, despite facing negative social consequences. Suraya, from Kabul expressed this sentiment, *“Even fifty years ago, Afghan women knew this, but women don’t want to create conflict by claiming their right. In my immediate family, no woman has received this right, even though everyone is aware. If she asked, maybe she would get it, but they want to keep the peace. My aunt created a conflict by claiming her land, and for forty years the family wouldn’t speak to her”*. Also, the men in the study confirm that women have the right to inheritance, arguing that progressive, educated families are more likely to award the women inheritance rights, *“Educated families give women their right”*, is a statement made by Ahmad, a graduate of Agriculture studies, who lives in Laghman province. A former study conducted by the Woman and Children’s Legal Research Foundation, in ten provinces in Afghanistan, on popular attitudes on women’s inheritance rights, found that only 37 percent women had received an inheritance. The study pointed to unawareness for the right to ask for inheritance, being a possible explanation for women not claiming inheritance rights in some cases (Luccaro and Gaston, 2014, 20). However, in this study, it is found that women have an awareness of their rights to claim inheritance, but choose to cede the right to avoid conflict within the family, indicating normative and consequential barriers to the claiming inheritance rights.

4.1.4 Custody after divorce

The laws governing custody of children after divorce in Afghanistan, is dictated by the Civil Code of 1977, being grounded on *Sharia* legislation on fundamental rules on the custody and care of children after divorce. Islamic law designates, following the dissolution of a marriage, the custody of young children to the mother, with the condition that she does not remarry, in which case, custody would belong to the father. According to *Hanafi* law on the issue, which the Civil Code is governed by on

this issue, the mother's right to custody terminates at age 7 for boys and till the attainment of puberty for girls. (Kamali, 1985, 160). A faction of the interviewees expressed a similar conviction, arguing for mother's the right to custody until the child reaches a certain age, a view held mostly among urban women. Based in Kabul, eighteen-year-old Zakiya, who is graduating secondary school this year, explains further, "*Till the child turns ten years ago, the mother has a right to take care of the child. But after that age, the child should be awarded to the father*". A similar statement is made by Maria, also from Kabul, "*Islamically, she can keep the child till the child reaches twelve years of age, even though the father is obliged to financially support them*". These women base the right to custody on the value assigned to motherhood in Islam, such as Setara, an unmarried woman from Kabul, "*In Islam, the mother has double rights than what the father has. Meaning, you have double the right over the child.*" A differing of strand of response, was witnessed amongst women from rural areas, who contend a husband's unilateral right to custody, straight after the child is no longer breastfed. Noor, a mother of seven, expressed the following "*The father must take care of the child, and if the child is still being breastfed, the mother must keep it*". A similar perspective is asserted by the majority of rural women, "*The right is the fathers, it is our tradition and by the book (ref. Quran)*". The perception of husband's primary right to custody of children, was shared by illiterate and educated rural women. Younger, educated women constructed the perceived lack of right to custody, as an Islamic protection to emancipate them from financial burdens, "*The man must take care of the children. It does not mean that the mother cannot see them, but he is obligated to take care of them. Because Islam does not wish to burden the mother financially.* Notwithstanding, that the Afghan Civil Code decrees the father to pay alimony until a son acquires the ability to work and a daughter attains marriageable age, reflecting *Hanafi* law on alimony (Republic of Afghanistan Ministry of Justice Afghanistan Legal Education Project, 1977, 46). This suggests that the perceived lack of right to custody is framed as a religious emancipation from a financial burden, without Islamic decrees being available to support the notion. Analogously, illiterate women expressed regret to the perceived right of a husband to unilateral custody, however, but accepted it as perceived to be an Islamic decree. This finding mirrors an unawareness of women's right to custody, according to both Islamic and State law, while simultaneously indicating the reality on the ground in Afghanistan, where women have limited means to financially supporting children. Only the male respondents in the study, were aware of the responsibility of providing alimony, akin to possessing knowledge of women's right to custody according to Afghan law. The discrepancy between the views of men and women can be seen as an indication of internalizing practical barriers, as the right to custody isn't fully claimed by women, possibly due to the socioeconomic position of women in Afghan society.

4.1.5 The basis of rights

The influence of an Islamic frame of reference is evident across female respondents on rights pertaining to matrimonial law, as they drew on Islam as the basis of their rights, without exception. As Hana, a young woman from Kabul, answers the question of the right to choose her own spouse, *“Islam has given women this right. In Afghanistan, it is not common to allow women this right and they themselves are not aware of their rights. Also, they place culture before religion and refuse women their right.”* Even though, an overall lack of factual knowledge on Islamic law was found amongst female respondents, they however, express a very proud attitude and an eagerness to profess the superiority of Islamic rights, presenting it as a liberating force in an otherwise constrained space for their rights. Similarly, the women referenced Islam as the basis when justifying their rights, while pointing to the failure of Afghan society to follow Islamic values and praxis. Basira conveys the following view, on the matter of inheritance, *“Very few women actually obtain their inheritance. People here are not aware of Islamic rights and even though the ones that know, close their eyes to it. They do not want to follow the principles of Islam.”* Correspondingly, several respondents utilize Islam as the basis of legitimacy of rights within matrimonial laws, *“Also, in Islam if a girl is forcefully married, it is invalid and haram (ref.unlawful) marriage”*, a young woman professes. As the women ground the legitimacy of their rights on Islam, it can be viewed in relation to the discourse of a reformist women’s movement working within an Islamic framework. Theorists such as Amina Wadud and Leila Ahmed, has argued that Islam introduced progressive rights for women, such as right to inherit and own property, thousand years before the notion of egalitarian rights for both sexes surfaced in the West. (Ahsan, 2012, 6) Also, men in the study drew on an Islamic basis of rights, underpinning the argument of women’s rights advocates who purport the efficiency of implementing an Islamic framework of rights in Afghanistan. Furthermore, only one respondent drew on alternative frame of reference, pointing to modern reforms enhancing women’s right to divorce in the Civil Code. On the issue of divorce, a woman argues *“In Islam you have the right to seek divorce, but you have to go to the courts.”* Also, some of the respondents convey that they disagree with the limitations of rights awarded to them, such as the following statement: *“But men have more rights than us. It is much easier for man to seek divorce, just on the basis that he is not happy, a woman can’t do that. I do not know if that is right, but it is what the Quran says.”* Even when seemingly disagreeing with limitation of rights, the young woman continues to place absolute authority on Islam as a basis of her rights. There is only one anomaly from this overall trend in the findings, a young woman who works in the Public Sector in Kabul who has been involved in women’s rights activism. Even though she referred to Islam as the basis of rights awarded to women,

she also demonstrated an awareness of alternative frameworks of rights, *“In the Afghan context, Islam does not give us the right to divorce, but through modern reforms and state law, we have the right to get divorced”*.

On the inquiry of where the women had learnt about their rights, there was a varied response on the sources of their knowledge. Several young women and the male respondents, both from rural areas and urban center had either attended trainings on women’s rights, attended classes or read books on women’s rights in school or university. They specified that they had been taught about women’s rights in Islam, *“I have learnt from books in school, and also taken part in trainings. It was Islamic law because our state law is based on it”*, says Hana, a young teacher from Laghman. However, older women and uneducated women reported that they learnt about their rights from television and radio, in addition to stating that this was a common topic that women discussed in their communities.

5.2 What knowledge do Afghan woman have on the rights granted to them in state law (qanon)? Do they agree with these rights, and do they see these laws as secular/western or Islamic?

5.2.1 What knowledge do Afghan woman have on the rights granted to them in state law (qanon)?

A low level of knowledge on Afghan law was witnessed amongst female and male interviewees, as they exhibited low levels of awareness and proficiency on the rights awarded to them through the formal legal framework. The women exhibited substantially lower degree knowledge on state law (qanon), in comparison with notions they held on their fundamental rights (haqq). An equivalent trend was witnessed amongst the male respondents. Overall, the responses suggested that women have a very ambiguous notion of the laws awarded to them through Afghan law. One woman from Laghman noted, when asked about her knowledge on rights awarded through the formal legal framework, *“Not specifically, but they have given us freedom, to take an education and work”*. Complementary to the previous response, eighteen-year-old Zakiya from Kabul, says, *“They can choose their own life, they can get an education”*. Very few women are able to give specific answers as to what constitutes the rights awarded to women in Afghan law, efficaciously illustrated by the following response, *“In Afghanistan, laws? What laws? Afghanistan only has laws for men. But I do not know, but I have heard that men and women can go to the courts when they fight”*. Seena, who made the latter statement, expresses a lot of resignation that she has not been able to obtain knowledge on what rights she has, as she whispers quietly, that she wanted a divorce when she was younger, but was wary of the repercussions from family and society. Subsequently, a considerable segment of the interviewees, stated that the rights found in state law (qanon) are identical to their fundamental rights (haqq), as they that there is no variation between Afghan law and Islamic law.

As an uneducated woman from Laghman says, *“Yes, they are all the same. It has come from the Quran and the government is the same. I completely disagree with those who say that the state law is different.”* A view echoed by a young, educated woman from Kabul, *“Afghanistan is an Islamic country, whatever is in Islamic law is also in our laws.”* The consensus is founded on the belief that the rights awarded to women through state law (qanon) are identical to their inherent rights as women (haqq). Afghanistan is a Muslim country, therefore, it follows as an instinctive corollary that the formal legal system must also be based on Islamic law, according to respondents. There is only respondent, with a background in women’s rights activism in Kabul, who is able to distinguish between state law and Islamic jurisprudence. As commentators on the promotion of rights for Afghan women, have pointed to Afghan law and the formal legal framework being perceived as a Western construct, thereby lacking legitimacy on grassroot levels, this has not indicated by the interviewed respondents.

5.2.2 Do they agree with these rights and do they perceive these rights as secular/western or Islamic?

Within this research, the interviewed women, display an overall positive perception of state law. As illustrated in the former paragraph, the women do not possess extensive knowledge on the contents of Afghan matrimonial law. Regardless of this, the women array an affirmative inclination towards state laws, in addition to the state being perceived as an enforcer of the rights of women. As resident of Laghman, Hana, explains, *“In state law, we are also given the same rights (referring to Islamic rights). The government can protect us from forced marriage and the government stands with us”.* Many of the women express that they agree with the rights in state law due to the belief that the laws are based on Islamic law, *“Whatever is in Islamic law, is also in our laws. If the law gets implemented, it is very good as I agree with them”*, a young woman from Kabul affirms. However, respondents who demonstrated basic knowledge on the difference between state law and Islamic law, exhibit reservations towards certain rights awarded by the government, although not restricted to the topic of matrimonial law. One young female notes, *“Most of our rights are based on Islamic law, but there is small difference. As for example, in Islam women have the right to education, but it needs to be segregated. In state law, they do not follow these rules and in state universities, girls and boys study together.”* She concludes by remarking, *“Mostly, I do not mind state law, but I do not like the ones that transgress Islamic rights. If the government only implements Islamic lives, there would be less conflict and our lives would be better”.* A similar notion is shared by the male respondents, *“A*

woman should stay in hijab⁶ and segregation is necessary to maintain a woman's dignity, which Islam awards her", Mahmood notes, as he criticizes the government for permitting non-segregated public spaces. Correspondingly, the perception of the government being too liberal, by identifying that state law allows for greater freedoms than what Islam permits. This tendency can be seen in relation to a general movement in the Muslim world, such as in Egypt and Pakistan, where educated Muslim women are advocating through an Islamist lenses, rejecting universal notions of right and equality, by putting emphasis on "complementarity of roles" and utilizing an Islamic approach appropriate to the social, political and cultural setting (Abdellatif & Ottaway, 2007, 9). However, several respondents from Kabul point to the modernization of the society, as positive development, reflecting Afghanistan's historical background where liberal reforms were met with resistance from conservative rural areas. *"There are some differences between state law and Islamic law, such as women and being able to work and study together. This is allowed in Afghan law and I agree with it. We need to change people's minds and start change, but this cannot change overnight"*, explains a young professional residing in Kabul. However, also amongst urban women, the majority argues that the rights awarded through state law are based in an Islamic framework, however, indicating that women's rights can be expanded through reform. A view that reflects a strand of Muslim women's rights activism, often coined as "Islamic feminism", which argues that there is discrepancy between the rights awarded to women in Islam and the implementation in the legislature in Muslim countries (Abdellatif & Ottaway, 2007, 8) This is an view that can be identified amongst several of the educated respondents, *"It is not Western. We have more rights in Islam than Western culture gives. In Islam, women are the king of the house, but the society has turned us into slaves"*. The respondents were also asked about their view of the foreign presence in the country, if the foreigners supported Afghan women's rights or if they had committed mistakes in the advocacy of women's rights in Afghanistan. A greater number of respondents, both male and female, stated that they believed the foreigners support Afghan women, *"They have helped some women in the village and created schools. Also, they gave them grains and taught them about their rights"*. However, the woman also points to conservatives in the village being negative towards their involvement, *"There are many families that do not like what the foreigners have done, because women can then raise their voices and claim their right"*. Overall, the interviewed women seem positive to efforts made by the international community in Afghanistan. However, it is noted that foreign support is appreciated due to material assistance, but the women reject foreign notions of rights, as it considered as Western

⁶ Islamic head covering.

ideology. As Maria notes, *“They have furthered rights that we do not agree with, and collides with Islamic rights, which creates problems in families”*. She refers to freedoms that she believes that the foreigners have created for Afghan women, *“They said women should be able to travel alone and that they don’t need to wear the chadari (ref. hijab that also covers the face)”*. Similarly, educated women voiced criticism that the foreigners did achieved less than what they expected, considering the resources that was spent. *“They came and spent billions, but they did not achieve much. We cannot close our eyes to the fact that they made a difference, but there was much greater potential”*, notes a young woman who previously worked in the Ministry of Women’s Affairs. She continues to explain, *“Their engagement was very symbolic. They created schools in cities, but in the village’s, girls sit under trees and risk getting acid thrown at their faces for attending school. Half the money was contracted away by NGOs and the rest wasted in corruption. It was all show. I saw it myself”*. This reflects an equivalent attitude as highlighted earlier, of foreign involvement in women’s rights advocacy being viewed as nuts and bolts assistance, while women reject alternative frames of reference for the basis of their rights. One can draw lines to women’s rights advocacy in other Muslim countries, with the case of women’s rights NGOs in Egypt, who have stressed the importance of religious references in the advocacy for a new matrimonial law, grounded on religious conviction and a strategic choice for advocacy under the present premises (Sharafeldin, 2013, 64)

5.3 What do they perceive as obstacles to realizing their rights?

5.3.1 Lack of education

The most discernable obstacle to realizing rights, was recognized as lack of education, which all the women and men in the study pointed to. The high illiteracy rates amongst men and women represents an immense challenge, as government services rely on a basic literacy and an ability to navigate through a complex bureaucracy (Luccaro, Tim and Gaston, 2014, 43) Additionally, a lack of awareness of basic notions of rights based on Islamic and Afghan law, creates barriers as women cannot navigate within the justice landscape or locate services offered by government agencies. Seena, a mother of four, has only completed elementary school, she expresses a lot of grief on not being able to continue her education due to family objections. When explaining why she believes education is a tremendous obstacle, she says, *“Women cannot go to schools. They have curtains before their eyes. They cannot read or write, and small children have to guide them on the street”*. She refers to an Afghan tradition in rural areas, of young boys having to accompany adult women going outside the house, as they need to be accompanied by a *mahram*(a male family member). She

expresses anger when explaining that a woman cannot even read a danger sign on the street, while a small six-year old boy is able to. *“They don’t know of their rights and they are not educated. Rights for women are not from the West, it is Islam, but they keep us uneducated so that we cannot claim them”*, she concludes. Basic literacy is considered a barrier to obtaining rights, as an illiterate woman is constantly dependent on external assistance, due to inability to read or write official documents. A young woman, who previously taught courses to illiterate women in Laghman, also points to the importance of education in terms of gaining pathways of information, *“Women in Afghanistan have started to educate themselves and opened their eyes. But women in the villages still live with closed eyes because they aren’t educated.”* She also refers to lack of education creating a reality, where women have no choice due to an unawareness of their rights, *“If she is unhappy, she has no choice. She doesn’t understand the right of divorce or that she even has a right to be happy. She has one husband and that is her entire life”*. Illiterate women also drew on lack of education as an important obstacle. Zeenat, a mother of five, who has never attended any school or course, noted, *“How can you expect them to obtain their rights, they have no education and they do not know”*. This view is supported by Basira, an educated young woman from Laghman, who also has taught training sessions for women in her local village, funded by UNICEF. She explains, *“The women we taught, thought we were trying to corrupt their minds. The women would be shocked when they learnt about their Islamic rights. They would say these are not our rights and this is a Western construct, especially the older women.”* She remarks that after completing the course, the women’s views changed dramatically, *“They were very thankful, and their minds improved.”* The latter statement supports the argument of advocates who contend for increased Islamic literacy to further women’s rights, as the findings suggest an awareness of rights after attending women’s rights courses based on an Islamic framework.

5.3.2 Culture

Another major obstacle identified by the respondents in the study, is a cultural barrier and the social restrictions put on women. A distinction between religion and Afghan culture and norms is made, *“We need to realize our religion is more important than our culture.”* A young woman from Laghman confirms the latter notion, *“The biggest obstacle is our culture, as Islam has never hold us back. The culture is holding us back”*, referencing a conservative, male dominated society where egalitarian rights for women are impeded by cultural norms. Interestingly, culture was not referenced as an obstacle by the male interviewees, perhaps reflecting a male dominated society awarding men higher status. Previous reform programs in Afghanistan, aimed at strengthening the rule of law, have been criticized for the failure to resolve the disconnect between equal rights to women and

Afghanistan's patriarchal culture. Also, advocates of women's rights have contended that past programs could have achieved a greater level of success, if they were explicitly framed within an Islamic framework, as Islam would act as a counterweight to restrictive cultural norms (Jennifer Kristen Lee, 2009, 552) One of the interviewees, an older unmarried woman, has recently been inducted in school for adult women in Kabul, she states, "*Family objection. The family controls the women. People speak badly of women who educate themselves, especially in the villages.*" She stresses that women in the cities are freer in that sense, as women in villages are heavily burdened by social stigma of going against social norms. She explains her own situation, with her father previously being against her obtaining an education. He considered it to be shameful that his daughter would have to leave the house, stating that her father preferred for her to remain, "*blind, deaf and speechless.*" Also, this sentiment is shared by Maryam, who recalls one of her classmates being pulled out of school due to her mother-in-law's disapproval, "*She wrote a letter and told the teacher about her situation. It was very sad.*" She concludes by stating that many Afghans still abide by the old proverb, "*A women belongs in the home or the grave*". One can draw a reference to Taliban's gender segregation, perceived to be based on their interpretation of *Sharia* law, but in fact reflected Pashtun practices and culture in Afghanistan (Choudhry, 2007,158). Furthermore, several women point to social restrictions as an impediment to obtain rights or seek judicial relief, as it goes against social norms to seek assistance from outside the family. Since 2001, efforts to improve Afghan women's rights have mainly rested on an assumption of unawareness of rights acting as the main obstacle. However, it is suggested by respondents in the study that culture and community norms, creates normative and consequential barriers to women's ability and willingness to obtain their rights. As Nazia remarks, "*In our culture it is considered shameful to seek divorce or seek judicial relief. She will be frowned upon because she claims her rights.*" Indicating that women choose to forfeit their rights, despite an awareness of them, due to rational and practical considerations made on the basis of cultural norms. She also points to women taunting each other, labeling women who claim her rights as a "bad" woman, "*It is seen as this woman likes the justice of the Westerners.*" The latter statement can be seen in relation to the former argument on the importance of referencing an Islamic framework, to avoid fault lines that can delegitimize women's rights as a foreign "idea" by conservative segments of society. As the women identify Afghan culture as an obstacle for obtaining their rights, the "victimization" rhetoric applied to Afghan women, remains obfuscated by women expressing an unwillingness to seek for solutions externally, as pointed out here, "*Our religion has been misused and adjusted to our local culture*". As witnessed in other Muslim countries, Muslim women demonstrate agency in ways that differ from conventional

Western notion of equality, as they wish to conform to religious ideals that might differ from liberal ideas of women's equality (Rinaldo, 2014, 825)

5.3.3 Poverty and security

As the security situation remains challenging in Afghanistan, high poverty rates are rising as the drawdown of international troops since 2012, resulted in decline of military and civilian aid, leading to decreased economic activity, a stagnating economy and a deteriorating security situation (Chaudhuri, 2018) With Afghanistan's present reality as the backdrop, several of the women referred to poverty and security as an integral obstacle of realizing their rights. Poverty as an obstacle was referenced by men and women who had attended university, although one illiterate woman also drew on the issue of poverty. As Mahmood expressed, *"If a family is poor, the brother cannot fulfill his obligation towards his sister"*, referencing the customary practice of women ceding their right to inheritance to brothers. Basira a young student from Laghman, explains that poverty leads to both men and women not obtaining education, which she then argues, leads to an unawareness of rights which impedes the ability to obtain them. She references poverty as an indirect obstacle to obtaining rights, as illiteracy rates are higher amongst poorer segments of the population in Afghanistan. She also points to security as an issue, *"Security is bad which holds back our justice"*, also the security situation leads to an unwillingness to allow women to travel in order to access higher education, *"If someone gets accepted into a university in a different province, they are not allowed to travel because the government cannot provide security"*. Roya, a woman's rights activist from Kabul, shares this perception: *"The security of the country is holding women back, as progress cannot be made when there is a war and development is stalled"*. She describes security as one of three obstacles, which together with Islam and culture is holding women as hostages. She is the only woman who mentions religion as an incidental obstacle, *"Religion has been misused and adjusted to our local culture"*. In spite of the lack of security, she explains, *"We still have brave women who are out there and fighting for their rights"*, and she concludes, *"The Afghan woman has turned into a battlefield herself"*. As the respondents express, Afghan women do not live in vacuums as they identify the issues of poverty, culture and lack of education and security, as structural barriers to obtaining their rights.

6. Discussion

As the title of this study indicates, *"An Islamic liberation of Afghanistan? A study of the legitimacy of different frameworks for the promotion of women's rights in Afghanistan"*, an overarching objective of this study is to explore the effectiveness of spectrum of normative approaches employed

in the work for women's rights in Afghanistan, by conducting a study of Afghan women's perception of the fundament of their rights in the area of matrimonial law. As identified in the deliberation of the results for first research question, Afghan women in this study exhibit precise conceptions of what they perceive to be their fundamental rights. However, they also demonstrate less than an elemental degree of actual knowledge on rights awarded to them in Afghan law or Islamic law. These findings are key, as they confirm an assumption made by a strand of women's rights advocates, on women lacking a basic understanding of legal conceptions and legal framework of Afghanistan. Given that women see Islam as the basis of the rights awarded to them, while lacking basic Islamic legal literacy, it creates a challenge for women to be able to argue for their rights, without an understanding of the terminology and framework of rights which they claim their rights to be based on (Luccaro, Tim and Gaston, 2014, 43). As witnessed by Wimpelmann in her research in Afghanistan, and also confirmed by a women's rights advocate in this study, women rights activists in Kabul were deliberate in their decision to employ an Islamic terminology based on a strategic decision. In the discussions on the implementation of EVAW law, female MPs in the Afghan Parliament grounded their arguments on the Quran and *Sharia*, as they were aware of Islamic references occupying absolute authority in a conservative society. Nonetheless, the debates were partially successful, as the female MPs could not speak Arabic or held sufficient competence on Islamic jurisprudence (Torunn Wimpelmann, 2017, 68) Similarly, in second research question, "*What knowledge do Afghan woman have on the rights granted to them in state law (qanon)? Do they agree with these rights, and do they see these laws as secular/western or Islamic?*", the results display an opaque awareness of rights awarded to women through Afghan law. However, the "victimization" rhetoric applied to Afghan women post-2001, have not resulted in the perception that Afghan laws are westernized, despite the governments close ties with the foreign intervention. Respondents identify Islamic and Afghan law as analogous, as they base it on the conviction of the legal framework of Afghanistan being based on Islamic jurisdiction. At the same time, poverty/security, lack of education and culture are identified as the most pressing obstacles, in the third research question, "*What do they perceive as obstacles to realizing their rights?*" As this study suggests, Afghan woman see Islam as the fundament of their rights in matrimonial law, seeing few contradictions between Islamic and Afghan law, while identifying lack of education, culture and security/poverty as obstacles. Which leads to the question of what implications does these findings have for the contestation of different approaches to advocacy of women's rights in Afghanistan?

Firstly, as women identify an Islam as the basis of their rights and pinpoint culture as an obstacle to obtaining their rights, one can draw lines to women's rights NGOs, who have contended that Islamic

law is viewed as more credible at the community level, while also being more progressive than customary norms and practices (Hozyainova, 2014, 1) Yet, the argument for implementing an Islamic framework is frequently grounded on the Afghan government lacking legitimacy and being perceived as a “puppet of the West”. Thereby, it is argued that programs and laws associated with the Afghan state lacks legitimacy with its local constituents, however, this creates an artificial demarcation between Afghan law and Islamic law. As confirmed by findings in this study, Afghan women perceive the formal legal framework to be largely based on Islamic law. Advocates have argued that the legal protections in Afghan law are uncertain to survive as Western involvement in Afghanistan decreases, thereby recommending an alternative Islamic framework to promote women’s rights, as a preference over legal protections for women in state law. This merits critique, as the study indicates that both male and female respondents, exhibit a positive notion of Afghan law, also recognizing the government agency of enforcing citizen rights. By constructing the idea of an Islamic framework to promote women’s rights, as an external frame of reference, might delegitimize the formal legal framework by reinforcing a false dichotomy between Afghan law and Islamic law. Afghanistan suffers from a fragmentary legal framework, drawing upon secular and Islamic jurisprudence, however, the laws governing matrimonial law in the Civil Code, are entirely based on Islamic jurisprudence. As there is a lack of knowledge on rights awarded through Afghan law, indicated by the study, greater literacy might contribute to awareness of rights and also strengthen the credibility of Afghan laws, to protect against discriminatory cultural practices.

Secondly, following the vein of identifying Islam as the basis of rights for Afghan women, it can be analyzed in light of the general debate in the Muslim world. Either by employing secular Western “universal” standards, without considering religious, moral and ethics of Muslim countries. While the counter approach is based on advocacy of women’s rights within an Islamic framework, by attempting to change social and cultural attitudes about women’s role in society and their human rights (Long-Bas and Afkhami, 2000, 495). While the respondents express that the Western intervention has contributed to positive developments, for instance, financial aid and support for girl’s education, they simultaneously reject notions of foreign basis of rights. Thereby, indicating that the approach to gender rights in Afghanistan should be based on reference to Islam, as it is established as the fundament of rights pertaining to matrimonial law. However, claim of women that they see no contradiction between Afghan law and Islamic law, is based on an unawareness of the actual rights rewarded through the formal legal framework and Islamic law. As discussed in results section, women contest to having a right to divorce, while being unaware of severe restrictions on a woman’s ability to obtain divorce, according to *Sharia* jurisprudence. Similarly, respondents exhibit an unawareness over instances in which classical Islamic *hanafi* jurisprudence permit minor girls to

be contracted into marriage without prior consent (Kamali, 1985, 107). One can question, as advocates of an Islamic framework encourage Islamic literacy, if a better understanding of Islamic jurisprudence would alter women's perception of Islam as the only legitimate basis of their rights. Also, among the respondents, young educated rural women and male respondents exhibited a preference for conservative rights, in comparison to urban women, reflecting the heterogeneity of Muslim women, within one country. The findings reflect a development within the Muslim world, where higher literacy and education rates, have resulted in a resurgence of Islamist women's rights advocates, who advocate for women's rights based on the notion of "complementarity", which regarded as being in opposition to "universal" Western conceptions of equality. This was witnessed amongst young, educated women who expressed a dislike for co-sex education, while urban women displayed fondness for a non-segregated society and reform of Islamic jurisprudence. This reflects the fact that an Islamic framework is multilayered, thus not consisting of a singular approach to advocate gender equality.

On the question of how to effectively women's rights advocacy in Afghanistan, the results point to an oversimplification of referring to an Islamic framework, as a remedy for sustainable, long-term impact. An Islamic framework of rights includes reformists who wish to participate in the interpretation of Islamic sources, with the aim to develop egalitarian laws for women, such as women's rights groups in Malaysia, working within an Islamic legal framework to reform matrimonial. While in Lebanon and Egypt, Islamist women's rights groups have based women's rights advocacy on the "complementarity of the sexes", reflecting a classical interpretation of matrimonial law, which claims male privilege in divorce, inheritance and female obedience (Long-Bas & Afkhami, 2000, 497) As women in the study exhibit disparate views on what rights constitutes their rights in Islamic law, it can be argued with continuing urbanization and higher levels of literacy in Afghanistan, commentators who advocate for legal reforms based on reinterpretation of Islamic sources, might face unexpected defiance from Muslim women. As found in the study, young, educated rural women display a preference for classical interpretation of Islamic jurisprudence, indicating that a reformist Islamic feminism would not be embraced by all Afghan women. This is in contrast to arguments made by commentators, such as Choudhry, who have argued that Islamic feminism would be relevant to Afghan women on the basis of religious belief (Choudhry, 2007, 198) The rejection of reformist laws based on Islamic law, is supported by longstanding discussions on gender, feminism and agency in Muslim countries, where fieldwork conducted in Egypt, found that women exhibit a non-liberal attitude when conforming to religious ideals, defined as pious agency (Rinaldo, 2014, 825) However, the findings indicate that advocacy of women's rights in Afghanistan, should not attempt to challenge or threaten an Islamic basis of rights. However, there is

room for utilization of different components within the Islamic framework, to reflect both conservative and reformist attitudes towards matrimonial rights amongst women. Furthermore, the respondents recognize socioeconomic realities on the ground, as poverty/security, lack of education and culture, as the obstacles to obtaining their rights. Women's understanding of practical realities on ground, elevates the debate beyond a victimization rhetoric, which is often employed to women of the global South. As pointed out by Kandiyoti, gender activism needs to be understood in the context of the society, instead of applying cultural determinism. She argues that in Afghanistan, war and mismanagement have broken down trust, decency and reciprocity in the Afghan society, which creates a challenging context for women's rights advocacy. Emphasis is put on gender being viewed through a pragmatic lens, moving beyond a "clash of civilizations" between Western and Islamic ideals (Kandiyoti, 2009). As the debate on advocacy on women's rights in the Muslim world often rests on the normative conflict of universal rights with Islamic values, which are often equated as "backward", the study finds that women are concerned with overall progress of the society in which they live. They perceive their rights and the access to obtain them, as tied to the progress of society as a whole, reflecting an aspect which has gone unnoticed in the Afghan debate over frameworks of rights. The aspect of women being an integral part of the family structure, community and society as whole, transcending the simplistic understanding of women's rights, as a separate issue.

7. Conclusion

With the uproar following the killing of Mullah Reyhan, Afghan men and women rose up to challenge the Taliban, who have claimed religious authority in Afghanistan since the mid-1990s. Their brand of authoritarian Islam was often coined as an Afghan "Islam". This study has found that Afghan women view Islam as the basis of their rights, however, they consider Islam to be a liberating force in a tribal society. Every single woman in this study brought up Mullah Reyhan in their interview, without being asked about him. His death was considered as an attack on a pious man, an attack on Islam and on Afghan women. This study has confirmed findings which are also found in other Muslim-majority countries; women view the concept and basis of their rights, as an inherent divine right awarded to them by Islam. At the same time, women profess to strategic decisions to employ a religious narrative in the advocacy for women's rights. Furthermore, an important discovery in this study is on Afghan state law not being perceived as a Western construct, but as an extension of Islamic law. As commentators have argued for pursuing an alternative frame of rights based on Islam, arguing that the government lacks legitimacy, the approach to abandon state law would not be recommended. As the results show, even though women lack elemental knowledge of state law, they do not identify a dichotomy between the rights awarded to them through state law

and Islamic law. In Afghanistan, religious authority is intimately linked to legitimacy, therefore it is recommended to continue to advocate for women's rights through the state apparatus. The debate over women's rights in Afghanistan, have often been focused around the opposition of two strands of approaches, secular, "universal" approach and an approach based on an Islamic framework. However, as this study has found, women perceive the main obstacles to their rights to be linked to socioeconomic realities, such as poverty/security, education and gender norms in the society. These elements are undeniably linked to realities on the ground, as well societal and religious attitudes towards women. As study confirms, an Islamic basis of rights hold legitimacy to Afghan women and their male counterparts, thereby making a recommendation to ground the quest for egalitarian rights on Islamic terminology. However, women in the study also display disparate notions of what constitutes their rights, reflecting both conservative and liberal attitudes. As an Islamic framework doesn't constitute a homogenous frame of reference, the results indicate that there should be space for classical Islamic jurisprudence, as some women reject concepts such as co-sex education and a non-segregated society. On the other hand, other women express a reformist attitude, which can be facilitated through an Islamic framework by the reinterpretations and developments occurring under the movement of Islamic feminism. As women see the viability of their rights connected to the progress and socioeconomic realities on ground, the advocacy of women's rights needs to move away from simplistic debates on normative discussions over frames of reference, by acknowledging women's rights as not being separate issue in the Afghan society. Even with the "Afghan woman" morphed into highly politicized figure, the study exhibits the obvious fact, that Muslim women are a part of the society they live in. The progress of women's rights is connected to issues of security, economic developments and education, with an understanding that Islam constitutes the basis of inherent rights for Afghan woman. Therefore, a holistic approach to women's rights advocacy based on Islamic framework is recommended, facilitating women holding traditionalist and reformist views, as both approaches are more progressive than traditional norms and customs found in Afghanistan. Afghan women do not consider themselves to be gendered slaves, however, as articulated by one woman in the study, "*The Afghan woman has turned into a battlefield herself*". However, this is a battle that Afghan woman are conducting through educating their daughters, by participating in society and utilizing Islam as their most important weapon.

7. References

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