

Recent Developments in Afghan Family Law: Research Aspects

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Summary

In 1985 the Afghan jurist Hāšim Kamālī wrote the following in his book *Law in Afghanistan*:

In Afghanistan, a man may acquire a wife in any one of the following four ways: he may inherit a widow, gain a bride in exchange marriage, gain a bride as compensation for a crime of which he or his relatives were the victim, or pay a bride price. Inheriting a widow, exchange marriage and wives as compensation for a crime are all not acceptable according to shari'a standards and of course do not conform to human rights standards.¹

The aim of this article is to explore whether this situation still prevails more than twenty years after the country went through the experience of Soviet occupation (1979-1988), which had a clear tendency to secularise the legal system, the time of re-establishment of the Islamic system during the rule of the Mujāhidīn, the civil war (1988-1994) and the Taliban who tried to impose their strict interpretation of Islamic law on the country (1994-2001). Furthermore, the paper will examine which solution the Afghan intellectuals, jurists and politicians see for the prevailing problems of the Afghan legal system with regard to family law. On the basis of the concept of legal pluralism and with the scarcity of recent scientific research in mind, I will try to analyse the legal situation and contribute some considerations on the character of the public legal discourse in Afghanistan with regard to family law. After a short introduction on the state of affairs and an outline of the history and legal developments (1), I will describe the legal norms and practices in family law (2) and – with regard to the intense interest of the international community since the fall of the Taliban in dealing with the gender problem and improving the legal and social situation of women and children – I will analyse the situation and the strategy of problem solution proposed by Afghan jurists and intellectuals (3).

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Keywords: Afghanistan, family law, statutory law, Islamic law, bride price, child marriage, human rights, situation of Afghan women, need for legal reform

¹ Kamali 1985, 84.

Editor's Note: few parts of the text are printed in 'Arial Unicode MS'. We apologize for any inconvenience while reading.