

William & Mary Journal of Race, Gender, and Social Justice

Volume 11 (2004-2005)
Issue 3 *William & Mary Journal of Women and
the Law*

Article 12

April 2005

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Caroline B. Fleming, *"Even in Dreams, They are Coming": Islamic Fundamentalism and the Education of Women in Afghanistan*, 11 Wm. & Mary J. Women & L. 597 (2005), <https://scholarship.law.wm.edu/wmjowl/vol11/iss3/12>

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“EVEN IN DREAMS, THEY ARE COMING”:¹
ISLAMIC FUNDAMENTALISM AND THE EDUCATION OF
WOMEN IN AFGHANISTAN

CAROLINE B. FLEMING*

*I stand by your ear unseen.
Three years. My youngest sister sickened
My father carried her to the hospital but
they told him to throw her away. She died at the door
That's when my anger endangered all of us
In her name I started a secret school. To read
to write, five little girls and I risked our lives
I would do it again. It was a way for ghosts
to have hands and voices for awhile.²*

I. INTRODUCTION: A BRIEF HISTORY OF AFGHANISTAN IN THE
TWENTIETH CENTURY

Since the United States military overthrew the Taliban regime in 2001, the political situation in Afghanistan has remained unstable, despite the promise of American assistance in crafting a new, progressive government to fill the power vacuum. While U.S. officials have touted the creation of a democratic, freely elected Afghan government dedicated to freedom and equality,³ the reality is that regional warlords and drug lords retain nearly total control in the country, and especially outside the capital city of Kabul.⁴ Often vestiges of the Taliban, these warlords maintain a tight rein on the rural population, dictating everything from the crops

1. Judge Marzia Basel, Address at William and Mary School of Law (Mar. 18, 2005) (describing the lasting effects of her years as an underground educator in Kabul, Afghanistan during the reign of the Taliban).

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2. Sue Silvermarie, *I Stand by Your Ear Unseen*, at <http://www.rawa.org/sue.htm> (last visited Apr. 21, 2005).

3. See *President's Statement on Afghan President Karzai's Election Victory* (Nov. 4, 2004), at <http://www.whitehouse.gov/news/releases/2004/11/20041104-1.html>.

4. See HUM. RTS. WATCH, AFGHANISTAN: RETURN OF THE WARLORDS (June 2002), available at <http://www.hrw.org/backgrounder/asia/afghanistan/warlords.pdf> (last visited Apr. 8, 2005) (documenting the rise of warlords particularly in southern, rural Afghanistan).

grown to the schooling of children.⁵ As observed by human rights watch groups, these warlords control, or at least profit from, the upsurge in cultivation of the opium poppy.⁶ They also influence (often through threats and intimidation) the voting and electoral process in rural Afghan provinces.⁷ Consequently, while the new Afghan government, supported by the recently-approved Constitution, advocates equality for men and women in all areas of life,⁸ Afghan women and girls still suffer under a political system that treats them as grossly inferior.

Women and girls in Afghanistan have not always been marginalized, however. Before the Soviet invasion in 1979, Afghan women enjoyed the freedom to participate in society to an extent far beyond that of Afghanistan's neighboring countries.⁹ Women in pre-war Afghanistan had the right to vote, to serve in government posts, to send their children, both male and female, to school, and to marry the person of their choosing.¹⁰ King Mohammed Zahir Shah instituted a number of these progressive changes, including the passage of the 1964 Afghan Constitution, a document that guaranteed equality to men and women while simultaneously emphasizing the country's Islamic roots.¹¹ This recognition of women's rights in Afghanistan was reflected by the sharp rise in literacy rates both for women and for men and the growing participation of women in the political process. By the time of the

5. *Id.* at 12-13. One anonymous female candidate for election to the *loya jirga* described the situation:

There are warnings about women not to do this or that: 'Do not go to school, we will kill you if you do. Do not go to work, we will kill you.' Rickshaw drivers drive past, and they hit women on the back of the head, and they say, 'do not go to school, we will kill you.' Or: 'Do not go to work.'

Id. at 13.

6. Council on Foreign Relations, *Afghanistan: Karzai vs. the Warlords*, at http://www.cfr.org/pub7791/esther_pan/afghanistan_karzai_vs_the_warlords.php (last visited Apr. 14, 2005).

7. See generally HUM. RTS. WATCH, *supra* note 4 (describing numerous such instances across Afghanistan).

8. See CONST. OF AFGHANISTAN, ratified Jan. 4, 2004, available at http://www.oefre.unibe.ch/law/icl/af00000_.html (last visited Mar. 21, 2005).

9. See Sonali Kolhatkar, *The Impact of U.S. Intervention on Afghan Women's Rights*, 17 BERKELEY WOMEN'S L.J. 12, 14 (2002). Kolhatkar notes that women's rights in Afghanistan reach back at least to the reign of Queen Souriya, who "worked to oppose Afghan traditions by opening schools for girls" in 1928. *Id.*

10. Amnesty International, *Women in Afghanistan: Pawns in Men's Power Struggles* (Nov. 1, 1999), available at <http://web.amnesty.org/library/index/engASA110111999> (last visited Apr. 19, 2005).

11. See CONST. OF AFGHANISTAN, arts. 25-26 (1964), available at <http://www.afghan-web.com/history/const/const1964.html> (last visited Mar. 21, 2005).

Soviet takeover in 1979, fifteen percent of government legislative posts were held by women.¹²

The invasion by the Soviet Union in 1979 marked the beginning of the deterioration of women's rights in Afghanistan. For over a decade, until the Soviet forces were ousted in 1989, the country struggled as communist Soviet troops fought Islamic militia forces, called *mujahadeen*, for control of Afghanistan.¹³ While the Soviet plan involved expanding women's rights and implementing changes to ensure equality in Afghanistan,¹⁴ conservative Muslims across the country resisted what they saw as the imposition of foreign rule on their culture.¹⁵ In the words of one conservative Muslim: "The government said our women had to attend meetings and our children had to go to schools. This threatens our religion. We had to fight."¹⁶ Consequently, while laws favoring women remained on the books during the years of war, for practical purposes, the rights of women were slipping away as Afghans turned their attention to fighting the invaders. By the time the Soviet army was overthrown in 1989, the country was in economic and social shambles.¹⁷ Rights for women, challenged during the years of the Soviet war, disappeared entirely when the *mujahadeen* took control of the country in 1989.¹⁸ This takeover finally ousted the Soviet troops from Afghanistan, imposing a cobbled-together regime of various Islamic extremists who, among themselves, fought for control of the country over the next six years.¹⁹ As the civil war dragged on, the *mujahadeen* imposed increasingly strict regulations on Afghans, especially Afghan women, in an attempt to gain through intimidation what they could not impose by force.²⁰

12. Kolhatkar, *supra* note 9, at 14.

13. Amnesty International, *supra* note 10.

14. John F. Burns notes that "[w]ithin hours of seizing the Arg Palace in Kabul, the Afghan capital, the Communists vowed to emancipate Afghan women, achieve universal literacy, and move the country beyond its bullock-cart economy." John F. Burns, *For Afghans, Full Circle*, N.Y. TIMES, Aug. 13, 1998, at A1.

15. Alicia Galea, *No Freedom for Afghan Women: The Taliban Hides Behind Religion to Control Its People*, 78 U. DET. MERCY L. REV. 341, 343 (2001).

16. See Kolhatkar, *supra* note 9, at 14 (quoting M. HASSAN KAKAR, AFGHANISTAN: THE SOVIET INVASION AND AFGHAN RESPONSE, 1979-1982, 346 (1995)).

17. Marjon E. Ghasemi, *Islam, International Human Rights, and Women's Equality: Afghan Women Under Taliban Rule*, 8 S. CAL. REV. L. & WOMEN'S STUD. 445, 448 (1999).

18. The Afghan rebel forces were supported in money and weaponry by the United States under both Jimmy Carter and Ronald Reagan — both Presidents were anxious to halt the spread of Communism in the Middle East, apparently at any cost. See *id.*

19. See Amnesty International, *supra* note 10.

20. *Id.* (noting, for example, the widespread use of rape "as a method of intimidating vanquished populations and of rewarding soldiers").

This power struggle opened the door for the Taliban, a fundamentalist Islamic sect that billed itself as a group of "religious students" intent on returning Afghanistan to a "pure Islamic state."²¹ The Taliban rapidly gained power in the southern and western regions of Afghanistan and marched into Kabul in September 1996.²² Eventually gaining control over virtually the entire country, the Taliban imposed a regime of suffocating oppression that kept women locked behind closed doors and painted windows, forbidden from leaving their homes without a *burqa*.²³ During the Taliban's regime, girls were prohibited from receiving education and even basic medical care unless a female doctor was available.²⁴ Women who violated these rules faced punishment ranging "from whipping to public stoning."²⁵ Further, in a country where an estimated fifty percent of the population had been "directly harmed by the war through death, injury, or displacement,"²⁶ war widows and other women without male relatives to provide for them were often forced into prostitution or into sending their children to work digging up corpses simply to survive.²⁷ These restrictions on liberty and movement were especially difficult in a country where before the Taliban took power, "50 percent of the university population, 70 percent of teachers, around 50 percent of civil servants and 40 percent of doctors were women."²⁸

The U.S.-led ouster of the Taliban, then, was widely regarded as a turning point for Afghanistan: with the Islamic fundamentalists removed from power, the country could focus on creating a democratic system of government that emphasized freedom rather than forced conformity.²⁹ However, the country has a long history of being governed not only by individual actors but also by the tenets of the world's largest, and largest-growing, religion. Any progress in Afghanistan must take into account its strong roots in Islam. This

21. LARRY P. GOODSON, *AFGHANISTAN'S ENDLESS WAR: STATE FAILURE, REGIONAL POLITICS, AND THE RISE OF THE TALIBAN* 77 (2001).

22. *Id.* at 77-78.

23. The Taliban's gross violations of human rights have been copiously documented. See, e.g., Amnesty International, *supra* note 10; Ghasemi, *supra* note 17.

24. Amnesty International, *supra* note 10.

25. Benazeer Roshan, Note, *The More Things Change, the More They Stay the Same: The Plight of Afghan Women Two Years After the Overthrow of the Taliban*, 19 *BERKELEY WOMEN'S L.J.* 270, 273 (2004).

26. GOODSON, *supra* note 21, at 94.

27. Roshan, *supra* note 25, at 274.

28. Jennifer Seymour Whitaker, *Don't Betray the Women*, *WASH. POST*, Nov. 15, 2001, at A47.

29. See Roshan, *supra* note 25, at 271.

paper examines the history of education laws in Afghanistan, both before and during the Taliban regime, and looks at the current constitution and political climate in the country to ascertain the current situation for women and girls in Afghanistan today seeking education. Using the Qur'ān, *Sunnah*, and *Hadith*, the paper argues that an understanding of Islam that encourages equality between men and women should be adopted and applied in Afghanistan, not only to further the goal of equal access to education but also to serve as a model of Islam's vast capacity for tolerance and understanding. By implementing Islamic principles in a progressive fashion, Afghanistan can serve as a model Islamic society, not only in the area of women's education but also for the religion as a whole. However, to implement such change would require significant commitment on the part of the Afghan government — a commitment not only to the advancement of women's rights to equality and education, but also to the interpretation of Islam as a religion of tolerance.

II. ISLAMIC LAW AND EDUCATION FOR WOMEN

*If the religious leaders have influence, they will not permit people's innocent daughters to be under young men at school; they will not permit women to teach at boys' schools and men to teach at girls' schools, with all the resulting corruption.*³⁰

The Qur'ān has been used to justify everything from tolerance to terrorism. As Asghar Ali Engineer has noted, "the 'ulama and the jurists maintain categorically that women have been given an inferior status; some modernists among Islamic scholars would like to believe that the holy book accords equal status to both the sexes."³¹ However, an understanding of the religion's provisions for equality — or lack thereof — must begin with an examination of the text itself. *Sūrah* 4 of the Qur'ān, *Al Nisā* ("The Women"), begins with the following verse:

30. AYATOLLAH RUHOLLAH KHOMEINI, ISLAM AND REVOLUTION: WRITINGS AND DECLARATIONS OF IMAM KHOMEINI 185 (Hamid Algar trans., 1981), quoted in Ravi Mahalingam, *Women's Rights and the "War on Terror": Why the United States Should View the Ratification of CEDAW as an Important Step in the Conflict with Militant Islamic Fundamentalism*, 34 CAL. W. INT'L L.J. 171, 175 (2004). The quotation is taken from a speech given by Ayatollah Khomeini in 1963. *Id.*

31. ASGHAR ALI ENGINEER, THE RIGHTS OF WOMEN IN ISLAM 41 (1992).

O mankind! Reverence
 Your Guardian-Lord,
 Who created you
 From a single Person,
 Created, of like nature,
 His mate, and from them twain
 Scattered (like seeds)
 Countless men and women —
 Fear Allah, through Whom
 Ye demand your mutual (rights),
 And (reverence) the wombs
 (that bore you): for Allah
 Ever watches over you.³²

Progressive scholars of Islam have used this *aya* to argue that because men and women were created from the same source, and “of like nature,” both genders should enjoy equality under the law.³³ Further, because the *aya* itself permits Muslims of both genders to “demand” their “mutual rights,” scholars argue that this means that Allah intended for “both men and women [to enjoy] equal rights: social, economic and political.”³⁴ However, as Engineer points out, the meaning of the verse is debatable in the sense that the interpretation of the term translated as “Person” may mean “father” rather than the gender-neutral alternative.³⁵ In that sense, then, it is possible to assert some form of male superiority, because life originated with the male.³⁶ However, as Maulana Azad has noted, the “implication is the same: namely that all have originated from one living being, men and women, and hence enjoy equal status,”³⁷ regardless of the gender of the Creator. Similarly, the Qur’ān forbids men to inherit wives from relatives who pass away. “On the contrary,” men are told to

32. ABDULLAH YÜSUF ‘ALĪ, *THE MEANING OF THE HOLY QUR’ĀN* at 4:1 (11th ed. 2004) (1425 A.H.).

33. See ENGINEER, *supra* note 31, at 42-43.

34. *Id.* at 42.

35. *Id.* at 43.

36. *Id.*

37. *Id.* Maulana Azad is a “noted commentator” on the Qur’ān, according to Engineer. IndianPost.com describes him as a “profound scholar, an eminent educationalist and a far-sighted statesman,” after whom multiple schools and colleges in India have been named. *Maulana Abdul Kalad Azad*, at <http://www.indianpost.com/viewstamp.php/Print%20Size/4.48%20X%203.3/MAULANA%20ABDUL%20KALAM%20AZAD> (last visited Apr. 20, 2005).

... live with them
On a footing of kindness and equity.³⁸

According to 'Alī, "all kinds of harshness are forbidden" toward widows, married women, and divorced women.³⁹

The distinction Engineer makes between "normative" and "contextual" meanings of the Qur'ān is especially instructive in considering the *ayat* that treat issues of inheritance and testimony.⁴⁰ According to his argument, understanding the context in which the *ayat* were revealed gives readers a greater ability to understand just what Allah intended.⁴¹ For example, Engineer cites *Sūrah* 4, in which Allah reveals that

(Husbands) are the protectors
And maintainers of their (wives)
Because Allah has given
The one more (strength)
Than the other, and because
They support them
From their means.
Therefore the righteous women
Are devoutly obedient, and guard
In (the husband's) absence
What Allah would have them guard.⁴²

Engineer argues that the *social* context in this *aya* is the key to understanding the meaning; Allah described the husband's role as protecting his wife because Islamic society, during the Prophet's time, was structured in a way that left women with little access to finances or property ownership.⁴³ Specifically, it is "due to the social functions that were *then* performed by the two sexes. Since man earns and spends his wealth on women, he *by virtue of this fact*, acquires functional superiority over women."⁴⁴ However, as societies have evolved and women have gained greater access to education, wealth, and social power, the need for men to provide for women's physical health and safety has declined; thus, the *aya* develops a more symbolic meaning — that men should

38. 'Alī, *supra* note 32, at 4:19.

39. *Id.* at n.528.

40. ENGINEER, *supra* note 31, at 42.

41. *See id.* at 42-45.

42. 'Alī, *supra* note 32, at 4:34.

43. ENGINEER, *supra* note 31, at 45 (emphasis in original).

44. *Id.*

take care to treat women kindly, but not necessarily patronizingly. 'Alī makes a similar point in a linguistic sense, noting that, depending on the translation, if one chooses to

take the rendering as in the text, the meaning is: the good wife is obedient and harmonious in her husband's presence, and in his absence guards his reputation and property and her own virtue, as ordained by Allah. If we take the rendering as in the note, we reach the same result in a different way: the good wife, in her husband's absence, remembering how Allah has given her a sheltered position, does everything to justify that position by guarding her own virtue and his reputation and property.⁴⁵

While 'Alī does not venture into a discussion of whether the notion of the "sheltered position" is due to normative constraints on women's position or on the social climate at the time the Qur'ān was revealed, the argument is clear that a wife is meant to guard the property — and not to obtain it herself — because society was structured in that way and not necessarily because she should be considered fundamentally less worthy or intelligent than her husband. Indeed, *Sūrah* 4:34 would seem to directly contradict such a reading.⁴⁶

Further, the evidence of the Prophet's treatment of and dealings with his own wives serves to contradict any patriarchal gloss that may be attributed to the Qur'ān, at least in a normative sense. For example, the *ayat* that treat Muslims' rights and obligations to participate in war or *jihad* do not limit participation in *jihad* to men alone:

Fight in the cause of Allah
Those who fight you,

45. 'Alī, *supra* note 32, at 4:34 n.546.

46. Geraldine Brooks makes an interesting point about the importance of social context to interpretation of the Qur'ān. Telling the story of Khadija, Muhammad's first wife, Brooks points out that

Khadija, the first Muslim woman, was never required to veil or seclude herself, and never lived to hear the word of God proclaim that "Men are in charge of women, because God has made the one of them to excel the other, and because they spend of their property [to support them]." Such a revelation would have come strangely from Muhammad's lips had Khadija still been alive and paying his bills.

GERALDINE BROOKS, NINE PARTS OF DESIRE: THE HIDDEN WORLD OF ISLAMIC WOMEN 4 (1995). It is coincidental, perhaps, that the revelations seemingly prohibiting women from working were not announced to Muhammad during his businesswoman wife's lifetime; at any rate, the point is well taken that such a situation *could* have contributed to the meaning or interpretation of such scripture. *Id.*

... And fight them on
 Until there is no more
 Tumult or oppression,
 And there prevail
 Justice and faith in Allah.⁴⁷

Hadith have often interpreted these verses to mean that only men may fight,⁴⁸ because one of the requirements of *jihad* is that "women, children, old and infirm men should not be molested."⁴⁹ However, it is well documented that one of Muhammad's wives, Nusayba Bint al-Ka'b, "fought with Muhammad at the famous battle of Uhud" and in fact saved his life on the battlefield, when his male Companions had fled the scene.⁵⁰ It is thus clear that the Qur'an itself, as well as the innumerable *Hadith* surrounding the holy book like a penumbra, is ripe for interpretation by its adherents. Indeed, the sheer variety of ways in which qur'anic verse is employed in the Muslim world, justifying everything from total gender equality to absolute seclusion and separation between the sexes, speaks forcefully to the idea that *ijtihad*, or "individual reasoning," is a necessary part of understanding and living Islam.⁵¹

The Qur'an does not explicitly discuss women's access to education. The *ayat* that address the issue do so generally, instructing Muslims to:

47. 'ALI, *supra* note 32, at 2:190-93.

48. See, e.g., SAHIH BUKHARI, BOOK 29: PENALTY OF HUNTING WHILE ON PILGRIMAGE 3.29.84 (recounting Muhammad's wife A'isha's instruction that the "best and the most superior Jihad (for women) is Hajj which is accepted by Allah"); see also SAHIH BUKHARI, BOOK 52: FIGHTING FOR THE CAUSE OF ALLAH (JIHAAD) 4.52.43 (recounting the same story). But see SAHIH MUSLIM, KITAB AL-JIHAD WA'L-SIYAR 19.4456: "You have written asking me whether the Messenger of Allah (may peace be upon him) took women with him to participate in Jihad. He did take them to the battle and sometimes he fought along with them."

49. 'ALI, *supra* note 32, at 2:190 n.204.

50. Miriam Cooke, *Islamic Feminism Before and After September 11th*, 9 DUKE J. GENDER L. & POL'Y 227, 229-30 (2002).

51. See Irshad Abdal-Haqq, *Islamic Law: An Overview of Its Origins and Elements*, 7 J. ISLAMIC L. & CULTURE 27, 59 (2002). Abdal-Haqq notes that *ijtihad* is traditionally reserved for Muslim scholars who have been educated in Islamic jurisprudence and *Shari'a*. *Id.* at 55. However, Abdal-Haqq points out that the practice is likely to "play an important part in the future development of Islamic law." *Id.* at 54. It is important to note here as well that Afghanistan follows the *Hanafi* school of Islamic jurisprudence, "considered to be the school most open to modern ideas." See CONST. OF AFGHANISTAN, art. 130; Wikipedia: The Free Encyclopedia, *Hanafi*, at <http://en.wikipedia.org/wiki/Hanafi> (last visited Apr. 26, 2005).

Rise up: Allah will
 Raise up, to (suitable) ranks
 (And degrees), those of you
 Who believe and who have
 Been granted Knowledge.⁵²

However, while Allah thus seems poised to reward faithful Muslims who seek out knowledge, the *aya* could also be interpreted to mean that Allah is actively *granting* knowledge to faithful believers. This vagueness necessitates an examination of *Sunnah* and *Hadith* in the search for a clearer understanding of the Islamic position on education and any gender differences therein. According to many Islamic scholars, the Prophet placed a premium on education and instructed his followers to learn to read and write, a skill that Muhammad never acquired during his lifetime.⁵³ More tellingly, several *Hadith* specify that women were to be allowed access to education. Sahih Muslim recounts:

Abu Sa'id Khudri reported that a woman came to Allah's Messenger (may peace be upon him) and said: Allah's Messenger, men receive your instructions; kindly allocate at your convenience a day for us also, on which we would come to you and you would teach us what Allah has taught you. He said: You assemble on such and such a day. They assembled and Allah's Messenger (may peace be upon him) came to them and taught them what Allah had taught him and he then said: No woman amongst you who sends her three children as her forerunners (in the Hereafter) but they would serve him as a protection against Hell-Fire. A woman said: What about two and two and two? Thereupon Allah's Messenger (may peace be upon him) said: Even if they are two and two and two.⁵⁴

This *Hadith* seems to suggest that Muhammad endorsed the teaching of women, at least in the tenets of the Qur'an; one can

52. 'ALI, *supra* note 32, at 58:11. See also Fatimah Majidi et al., *Misconceptions about Women in Islam (Submission)*, available at <http://www.submission.org/women/mis.html> (last visited Apr. 18, 2005) (noting that "no gender is advocated, the order is for everyone. Islam (Submission) does not put any limit on the kind or field of education a woman may choose").

53. Kathleen A. Portuan Miller, *The Other Side of the Coin: A Look at Islamic Law as Compared to Anglo-American Law — Do Muslim Women Really Have Fewer Rights Than American Women?*, 16 N.Y. INT'L L. REV. 65, 121 (2003) (citing a *Hadith* that states, "The pursuit of knowledge is the duty of every Muslim . . . Pursue knowledge even if you have to go as far as China").

54. SAHIH MUSLIM, BOOK 32: THE BOOK OF VIRTUE, GOOD MANNERS, AND JOINING OF THE TIES OF RELATIONSHIP (KITAB AL-BIRR WAS-SALAT-I-WA'L-ADAB) 32.6368.

imagine that such endorsement would extend to more formal schooling, and that the Prophet did not personally provide such education simply because he did not have the means to do so. Sahih Bukhari reports a nearly identical *Hadith*, in which a woman asks Muhammad to teach the women of their community by saying, "O Allah's Apostle! Men (only) benefit by your teachings, so please devote to us from (some of) your time, a day on which we may come to you so that you may teach us of what Allah has taught you."⁵⁵

These *Hadith*, in which the Prophet willingly gives time to teach Muslim women in the ways of Allah, show that Islam clearly values education for both men and women, not only in the area of Islamic studies but also in a larger sense. Scholars also point out that the women surrounding Muhammad were hardly shrinking violets; "historically women not only expressed opinions freely, but they also argued and participated in serious discussions with Mohammed the prophet."⁵⁶ It is not a far stretch for those engaging in *ijtihad* to conclude that the Prophet, surrounded by strong, articulate women and willing to educate those women who asked for instruction, fully supported (if not mandated) the opportunity for Muslim women to share in opportunities for education equal to those for Muslim men. As Ravi Mahalingam notes, "contrary to positions claimed by militant Islamic fundamentalists, the primary sources of Islamic law do not expressly or necessarily prohibit the right of women to receive an education."⁵⁷

III. WOMEN'S RIGHT TO EDUCATION IN AFGHANISTAN

*Reading and writing are not just basic skills but can lead to self-awareness and critical thinking about oppressive social situations. Ultimately, emancipatory education can lead one to take action to change one's world.*⁵⁸

Since the first implementation of Afghan laws assigning meaningful rights to women,⁵⁹ women and girls in Afghanistan

55. SAHIH BUKHARI, BOOK 92: HOLDING FAST TO THE QUR'ĀN AND SUNNAH 9.92.413.

56. Anastasia Telesetsky, Note, *In the Shadows and Behind the Veil: Women in Afghanistan Under Taliban Rule*, 13 BERKELEY WOMEN'S L.J. 293, 302 (1998).

57. Mahalingam, *supra* note 30, at 196.

58. ANNE E. BRODSKY, WITH ALL OUR STRENGTH: THE REVOLUTIONARY ASSOCIATION OF THE WOMEN OF AFGHANISTAN 105-06 (2003). For further discussion of RAWA, see *infra* notes 81-83 and accompanying text.

59. Queen Souriya's establishment of girls' schools in Kabul in 1928 would qualify as a watershed moment for women's rights and freedoms in Afghanistan. See *supra* note 9

have endured an often-changing status. Starting with the 1964 Constitution, which granted full equality to women in all aspects of Afghan law and society, and continuing through the Soviet war and subsequent civil war and Taliban takeover, laws in Afghanistan have changed rapidly and dramatically in their acknowledgement and protection of women's rights. The state, while remaining Islamic in name and in practice, has seen the tenets of Islam used to implement both progressive and oppressive laws regarding women's status in Afghan society.

A. Education for Afghan Women in the 1960s and 1970s

The 1964 Constitution, introduced by King Mohammed Zahir Shah, mandated a revolutionary provision regarding women's rights: "The people of Afghanistan, without any discrimination or preference, have equal rights and obligations before the law."⁶⁰ This short article opened the door for organizations such as the Democratic Organization of Afghan Women to lobby for the elimination of "illiteracy among women, forced marriages, and the brideprice."⁶¹ Additionally, the 1964 Constitution granted the protections of Article 34 to all Afghan women:

Education is the right of every Afghan and shall be provided free of charge by the State and citizens of Afghanistan. The aim of the State is to reach a stage where suitable facilities for education will be made available to all Afghans, in accordance with the provisions of the law. The Government is obliged to prepare and implement a program for balanced and universal education in Afghanistan. It is the duty of the State to guide and supervise education. Primary education is compulsory for all children in areas where facilities for this purpose are provided by the State.⁶²

and accompanying text. Even so, this analysis will treat the 1964 Constitution as the starting point for reform in the Afghan government's official recognition and enforcement of women's right to equal opportunities in Afghanistan.

60. CONST. OF AFGHANISTAN, art. 25 (1964), available at <http://www.afghan-web.com/history/const/const1964.html> (last visited Mar. 21, 2005).

61. VALENTINE M. MOGHADAM, MODERNIZING WOMEN: GENDER AND SOCIAL CHANGE IN THE MIDDLE EAST 244 (2003). DOAW was founded by six Kabul women in 1965 and, although facing pressure from conservative *mullahs*, managed to secure the right for women to study abroad and work outside their homes. *Id.*

62. CONST. OF AFGHANISTAN, art. 34 (1964), available at <http://www.afghan-web.com/history/const/const1964.html> (last visited Mar. 21, 2005).

While not granting absolute access to education for all Afghan girls, Article 34 of the 1964 Constitution does provide a concrete goal toward which the government could strive in establishing school facilities for both boys and girls. And although the educational opportunities for girls were far more numerous in cities like Kabul than in rural areas of Afghanistan, which often could not have afforded to establish schools even if the conservative *mullahs* would have allowed them,⁶³ reports show that “women and girls in Afghanistan’s capital city of Kabul and many other parts of the country [had] attended co-educational schools since the 1950’s.”⁶⁴ Even though the co-educational schools were outnumbered by single-sex institutions, it is important to note that the educational system in Afghanistan in place during the 1960s and 1970s achieved no small measure of success:

Afghan women were sent all over the world through foreign education programs to earn higher degrees in leading universities. They returned to become professionals in their own country. In fact, Afghanistan had the highest percentage of foreign students who returned to their own country after receiving their foreign training. Professors at the university, doctors at the hospitals and new medical schools, members of the ministries, lawyers and judges in the courts, and entrepreneurs of all sorts emerged during this era. They helped move Afghanistan forward socially and economically. It was a thrilling time.⁶⁵

B. Education for Afghan Women During the Soviet Conflict, 1979-1989

The Soviet invasion of 1979 initially promised not only to continue the progressive reforms implemented by King Shah and the 1964 Constitution, but also to expand on the rights women

63. See Shefali Desai, Note, *Hearing Afghan Women’s Voices: Feminist Theory’s Re-conceptualization of Women’s Human Rights*, 16 ARIZ. J. INT’L & COMP. L. 805, 823 (1999) (citing several news articles that reported on the differences between the relatively cosmopolitan capital of Kabul and the conservative rural Afghanistan, where “in Afghan villages . . . [girls] never went to school, for many years before the Taliban issued decrees enforcing these taboos”) (quoting *Taliban Cleric Sweetly Unreasonable*, N.Y. TIMES, Nov. 29, 1996).

64. Meri Melissi Hartley-Blecic, Note, *The Invisible Women: The Taliban’s Oppression of Women in Afghanistan*, 7 ILSA J. INT’L & COMP. L. 553, 572 (2001).

65. Arline Lederman, *The Zan of Afghanistan: A 35-Year Perspective of Women in Afghanistan*, in WOMEN FOR AFGHAN WOMEN: SHATTERING MYTHS AND CLAIMING THE FUTURE 46, 53 (Sunita Mehta ed., 2002).

had already been granted in Afghanistan.⁶⁶ Under the Afghan Socialist Constitution (ASC), implemented by the Soviet regime that took power in Afghanistan in 1979, the "freedom to educate was afforded to the parents of Afghan children, because education was made available to all children."⁶⁷ Because the country was suffering the effects of a decade-long conflict, however, the provisions made by the ASC were meaningful more as a symbol of the gender equality desired by the Socialist regime than as a practical implementation of that equality.⁶⁸ As Arlene Lederman notes, "The Soviet invasion of Afghanistan, devastating though it was, brought further positive evolution to the public Afghan woman Schools were expanded throughout the country, and women went to them with great success."⁶⁹ More importantly, though, while the ASC retained the nominal primacy of Islam as the national "religion of Afghanistan and . . . no law could run counter to its principles,"⁷⁰ Afghans were outraged that a foreign political power was attempting to impose its values on the country, values that many saw as running counter to the fundamental principles of Islam and the cultural values of the nation.⁷¹ Ultimately, then, the price of such social freedoms, "loss of freedom for all members of society under the repressive Communist regime . . . was too high";⁷² Afghans were unwilling to trade their sense of self-determination and cultural identity for the guarantees of social and gender equity offered by the Soviet regime. Consequently, the country dissolved into civil war as "the Communists deployed even more of their forces in the riotous areas";⁷³ Afghan Muslims abandoned any thought of implementation of the new, "radical" Soviet progressive agenda, choosing instead to fight for their traditional way of life.

C. Afghan Women's Education Under the Mujahadeen, 1989-1996

With the Soviet troops' withdrawal in 1989 came a power vacuum, into which stepped various and opposing groups of *mujahadeen*, who adhered to a strict interpretation of Islam and implemented vast changes in the Afghan political system, more

66. See Galea, *supra* note 15, at 345-46.

67. *Id.* at 345.

68. *Id.* at 344.

69. Lederman, *supra* note 65, at 54.

70. Galea, *supra* note 15, at 344.

71. *Id.* at 343.

72. Lederman, *supra* note 65, at 54.

73. See Ghasemi, *supra* note 17, at 448.

often by sheer force rather than through diplomacy or any official shift in the laws.⁷⁴ After a decade of fighting the Soviet invaders, Afghanistan had “effectively ceased to be a functioning state,” with all the country’s resources and energy going toward the war instead of toward social programs like education of children.⁷⁵ Consequently, the schools established under the 1964 Constitution and even by the Soviet regime began once again to exclude girls; in 1995, UNICEF reported that it was “suspending assistance to education programmes in those parts of Afghanistan where girls were excluded from education.”⁷⁶ According to the State Department, girls’ schools had been closed across the country by 1994, partially a result of the Taliban’s increasing power and partially because of the *mujahadeen*’s influence.⁷⁷ Beyond the closing of schools, however, was a fundamentalist mindset beginning to reveal itself through the hard-line *mujahadeen* controlling the country; Amnesty International reports that in 1994, a Kabul girl “was repeatedly raped in her house in Kabul’s Chel Sotton district after armed guards entered the house and killed her father for allowing her to go to school.”⁷⁸

D. Afghan Women’s Education Under the Taliban, 1996-2001

The fundamentalist Taliban regime began to enact its hard-line policies against women from its first days in power. Arguing that the education of women is un-Islamic, Taliban officials immediately closed down schools for girls, dismissed women teachers, and prohibited females of any age from attending any school not strictly for the teaching of the Qur’ān.⁷⁹ The effects of these bans on women’s and girls’ education have been devastating; according to one widely-cited source, the literacy rate among females in Afghanistan is the worst in the world, with only an estimated three or four percent of Afghan women able to read and write.⁸⁰ Women activists have attempted to contravene the ban on women’s and girls’ education in Afghanistan by operating clandestine

74. See *supra* notes 17-20 and accompanying text.

75. Ghasemi, *supra* note 17, at 448.

76. Nancy Hatch Dupree, *Afghan Women Under the Taliban*, in FUNDAMENTALISM REBORN? AFGHANISTAN AND THE TALIBAN 145, 146 (William Maley ed., 1998) (citing UNICEF, *Girls’ Education is a Human Rights Issue* (Nov. 10, 1995)).

77. U.S. Department of State, *Afghanistan Report on Human Rights Practices for 1996* (Jan. 30, 1997), available at http://www.state.gov/www/global/human_rights/1996_hrp_report/afghanis.html (last visited Apr. 10, 2005).

78. Amnesty International, *supra* note 10.

79. See Ghasemi, *supra* note 17, at 452-53.

80. See Shannon A. Middleton, Note, *Women’s Rights Unveiled: Taliban’s Treatment of Women in Afghanistan*, 11 IND. INT’L & COMP. L. REV. 421, 452-53 (2001).

girls' schools in their homes; one covert teacher and member of the Revolutionary Association of Women of Afghanistan (RAWA)⁸¹ said, "our teachers have to give secret lessons in people's homes. We'll have a copy of the Koran on the table, and if the Taliban arrive we immediately hide the textbooks. That way, we can say we're studying the Koran."⁸² Because these educators were (and remain) in constant danger of beatings or assassinations by the Taliban, "most projects administered by RAWA are entirely underground operations. Some members move from one home to another every few months to maintain their secrecy."⁸³

Originally justifying their wholesale closure of schools across the country, Taliban officials argued that education of girls went against the teachings of the Qur'ān.⁸⁴ Leaders later backpedaled, offering excuses for the closings of schools ranging from the expense of operating the schools⁸⁵ to concern for the safety of girls traveling to and from the school.⁸⁶ Finally, according to Shefali Desai, the Taliban acknowledged that the problem stemmed not from the Qur'ān but from the Taliban's specific interpretation of it:

After restricting girls' access to education, the Taliban's Minister of Education issued a statement saying that the suspension of girls' education was only a temporary measure that had to be taken until a fully segregated system of education could be constructed. In 1996, shortly after the Taliban closed down schools for girls, the Education Minister, Maulavi Abdul Salam Hanafi, was quoted as saying that "lady teachers and girl students will be given permission to return to school when a specific program has been organized for them by the Taliban."

81. RAWA is the oldest and best-known organization of activist Afghan women. Their activities range from operating schools to training medical personnel to administering refugee camps in neighboring countries. See <http://www.rawa.org>. One of RAWA's guiding principles is that "[r]eading and writing are not just basic skills but can lead to self-awareness and critical thinking about oppressive social situations. Ultimately, empacipatory education can lead one to take action to change one's world." BROADSKY, *supra* note 58, at 105-06.

82. Kolhatkar, *supra* note 9, at 27 (quoting *A Day in the Life of Zoya*, SUNDAY TIMES (UK), Aug. 5, 2001).

83. *Id.* at 28; see also Basel, *supra* note 1. Judge Basel discussed moving from house to house in Kabul while she served as an underground educator. *Id.*

84. See Desai, *supra* note 63, at 822. Desai voices the frustration that many Islamic scholars and women's rights activists have experienced, because while

Taliban leaders have said that the Taliban's interpretation of Islam comes exclusively from the Qur'ān . . . [w]hat this means, however, is not clear because "Islamic scholars say that the Taliban's edicts on women have no basis in the Kuran," and they may not have a basis in Sunna either.

Id.

85. Telesetsky, *supra* note 56, at 298.

86. See Dupree, *supra* note 76, at 151 n.24.

Two years later, women still could not work and girls could not attend school. Hanafi conceded that Islam does not prohibit women from going to school, but that according to Shari'a law members of the opposite sex cannot legally mix with one another by stressing that "Islam is not against education for anybody, but Islam is against corruption within the education system."⁸⁷

This shift in official reasoning from calling women's education un-Islamic to labeling the danger "corruption" is interesting because it affords a glimpse into the Taliban's true motivation — controlling the Afghan population, and specifically its women, through oppressive laws that discourage women from protesting because they fear for their safety if caught outside their homes.⁸⁸ In that connection, Alicia Galea notes that the Muslim Women's League "asserts that the Taliban's insistence on secluding women from public life is a political maneuver disguised as Islamic law and also that the Taliban manipulated and used the rights of women as tools to gain control of the country."⁸⁹ Rather than employing a valid interpretation of the Qur'an or *Shari'a*, the Taliban relied on its own narrowly drawn interpretations of men's and women's roles in society.⁹⁰ It would appear, then, that the Taliban applied its own brand of *ijtihad* to the Qur'an and *Hadith*, extracting their desired meaning from verses that clearly offer women and men equal rights in the religion.⁹¹

IV. CONCLUSION: AFGHANISTAN AFTER THE TALIBAN — A PROMISING FUTURE?

Islam has a great deal to enlighten the modern world about men, women, and their peaceful and respectful coexistence. It is clear that the Taliban and others who seek to confine and suppress the voices of women had not studied the Qur'an properly, nor are they familiar with Islamic history. It is time for the authentic voice

87. Desai, *supra* note 63, at 824-25.

88. For a similar argument, see Galea, *supra* note 15, at 351-52.

89. *Id.* at 349.

90. See Ghasemi, *supra* note 17, at 453-54 (advocating for a progressive examination of the Qur'an, *Sunnah*, and *Hadith*, and relying on a contextual interpretation: "In discussing the Qur'an, or any text written so long ago, it is necessary to look at the social context in which the text was created to fully understand it."). See also discussion of normative versus contextual meanings, *supra* Part II.

91. See discussion of *ijtihad* and qur'anic interpretation, *supra* Part II.

*of Islam to be heard . . . I am proud to be what
God has created — a woman.*⁹²

Since the Taliban was overthrown in late 2001, the governmental structure of Afghanistan has undergone drastic changes. Most importantly, the *Loya Jirga* approved the new Afghan Constitution on January 4, 2004,⁹³ codifying the principles of equality and freedom that were first suggested by King Shah forty years ago. Echoing that progressive 1964 Constitution, the 2004 Constitution provides, in Article 22, that “[a]ny kind of discrimination and privilege between the citizens of Afghanistan are prohibited. The citizens of Afghanistan — whether woman or man — have equal rights and duties before the law.”⁹⁴ This provision seems to be the answer to Afghan women’s prayers: a codification of a long-held desire to be recognized as fully equal in all parts of Afghan society. Even better news is the new constitution’s provisions for education:

Education is the right of all citizens of Afghanistan, which shall be provided up to the level of the Bachelors (*lisans*) free of charge by the state. The state is obliged to devise and implement effective programs for a balanced expansion of education all over Afghanistan, and to provide compulsory intermediate level education

The state shall devise and implement effective programs for balancing and promoting education for women, improving of education of the nomads and elimination of illiteracy in the country.⁹⁵

These provisions address themselves directly to the vast literacy crisis in Afghanistan and seem to promise a politically-endorsed solution. Far from the crushing oppression imposed by the Taliban, the new, democratically elected President Karzai and his administration guarantee that all women and girls will have equal and specific access to education. Women’s rights activist groups such as RAWA have new cause to celebrate — they have achieved what they have fought so long for: equality under the

92. Sanaa Nadim, *Women and Equality in Islam*, in *WOMEN FOR AFGHAN WOMEN: SHATTERING MYTHS AND CLAIMING THE FUTURE* 35, 45 (Sunita Mehta ed., 2002).

93. CONST. OF AFGHANISTAN, *ratified* Jan. 4, 2004, *available at* http://www.oefre.unibe.ch/law/icl/af00000_.html (last visited Mar. 21, 2005).

94. *Id.* art. 22.

95. *Id.* arts. 43-44.

law. This equality has been met with real success and encouragement, it seems; enrollment is up in elementary schools across the country, and girls are enrolling in schools for the first time in nearly six years.⁹⁶

However, accounts of the reality of the situation in Afghanistan belie such optimism. Human rights watchers report that "Afghan women continue to suffer egregious human rights violations."⁹⁷ In many parts of the country, especially outside Kabul and in rural areas, women are still being subjected to sexual violence and acid attacks if they are found out of doors without a male relative to escort them.⁹⁸ Women avoid going out of the house without wearing the *burqa* for fear of Taliban-style attacks.⁹⁹ One Kabul University student said in March 2003, "Yes, people are afraid of what would happen from the gunmen if they allowed their girls to go to school. Of course they are afraid of men with guns or other groups."¹⁰⁰ Benazeer Roshan reports that "from August 2002 to June 2003, there had been more than thirty fundamentalist attacks on girls' and boys' schools in which educational facilities and materials were either burned or bombed. The attacks on schools were preceded by anonymous pamphlets warning parents not to send girls to school."¹⁰¹ With such violence still shadowing women and girls in Afghanistan who are seeking merely to engage their newly-guaranteed constitutional right to education, can the system really work? Or is the 2004 Constitution simply giving lip service to requests from human rights groups, with little chance of making a concrete impact in women's access to education, healthcare, and employment?

Two types of solutions present themselves in answer to these questions. First, as Roshan points out, the language of much of the 2004 Constitution is gender-neutral.¹⁰² And while gender-neutral language may be "more effective in a country where that

96. UNICEF, *The State of the World's Children 2004: Coming Back in Afghanistan*, at http://www.unicef.org/sowc04/15579_coming_back.html (last visited Apr. 21, 2005) (estimating that three million children, thirty percent of them girls, returned to schools last year).

97. Roshan, *supra* note 25, at 276.

98. WOMANKIND WORLDWIDE, TAKING STOCK: AFGHAN WOMEN AND GIRLS SIX MONTHS ON 6-7 (July 2002), available at <http://www.reliefweb.int/library/documents/2002/wk-af-3jul.pdf> (last visited Apr. 21, 2005).

99. *Id.* at 7.

100. Roshan, *supra* note 25, at 271 (quoting HUM. RTS. WATCH, "KILLING YOU IS A VERY EASY THING FOR US": HUMAN RIGHTS ABUSES IN SOUTHEAST AFGHANISTAN 3 (2003), available at <http://www.hrw.org/reports/2003/afghanistan0703/>).

101. *Id.* at 280.

102. *Id.* at 285.

language is reflected by democratic practices . . . [w]ithout explicit rights-creating language uniquely tailored to Afghan women in the Constitution, it will take years for women to assert their rights to equality.¹⁰³ One immediate improvement to the lack of women's presence in the 2004 Constitution would be to ratify as part of the official Afghan Constitution the Women's Bill of Rights, a document created by Afghan activist women and submitted to President Karzai in 2003.¹⁰⁴ A list of twenty-one demands on the new Afghan government, the Women's Bill of Rights enumerates issues crucial to the achievement of equality for women in Afghanistan.¹⁰⁵ Adoption of the Bill would not only automatically include more gender-sensitive and gender-specific language in the Constitution; it would also provide the government with concrete methods to fully integrate women into the new, democratic Afghanistan.

Similarly, the incorporation of the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW)¹⁰⁶ into the 2004 Constitution would provide women with more concrete law on which to rely in the (re)construction of their equal place in Afghan society.¹⁰⁷ While, interestingly, the United States is one of very few countries in the world not to have ratified CEDAW, Afghanistan ratified the Convention in 2003 and is bound by its provisions.¹⁰⁸ Incorporating those provisions more directly into the Afghan Constitution would not only make an international statement that Afghanistan is prepared to deal with the issue of gender apartheid; it would also provide Afghan women with a practical statutory basis on which to base claims and plans of action.

As progressive and innovative as such Constitutional inclusions would be, however, the basic fact remains that Afghanistan is a country deeply rooted in the Islamic tradition. Any meaningful and deep-seated change, therefore, must necessarily originate with a new understanding of the basic principles of Islam and that

103. *Id.* at 285.

104. AFGHAN WOMEN'S BILL OF RIGHTS, presented to President Karzai Sept. 5, 2003, available at <http://www.womenforafghanwomen.org/events/BillofRights.html> (last visited Apr. 22, 2005).

105. *Id.*

106. *Convention on the Elimination of All Forms of Discrimination Against Women*, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1981), 1249 U.N.T.S. 13, available at <http://www.un.org/womenwatch/daw/cedaw/> (last visited Apr. 21, 2005).

107. See Meghan Hallock, *A Policy of Mediocrity: A Review of United States Policy Concerning the Women of Afghanistan*, 11 WM. & MARY J. WOMEN & L. 481, 494-95 (2005).

108. *Id.* at 494.

tradition's treatment of women. As the 2004 Constitution provides, "In Afghanistan no law can be contrary to the beliefs and provisions of the sacred religion of Islam."¹⁰⁹ However, rather than remain mired in the strict (and, some would argue, fundamentally incorrect) interpretations set forth by the Taliban, the Afghan people must turn to *ijtihad* to learn to understand their religion as a vibrant, growing tradition that is fully capable of adapting to changing times and social mores. As Marjon Ghasemi points out,

Ijtihad . . . can result in greatly beneficial egalitarian consequences . . . the concept of *ijtihad* should be looked at in light of how progressive the notions espoused by the Prophet were for his time . . . Just as calling for the elimination of slavery at a time when it was common and economically significant would have led to a rejection of Islam by the Arabs, demanding gender equality in a patriarchal society would have had the same effect. Therefore, the same foundational Islamic concepts of equality, kindness and respect that led Muslim scholars to eliminate slavery, should lead them to eliminate patriarchal views from Islamic jurisprudence.¹¹⁰

Ghasemi's analogy is all the more fitting because the comparison — slavery — reflects the situation that women in Afghanistan have faced for decades. Bearing in mind that Allah's words to his followers indicate a basic equality between genders and among all true believers, it is simple to understand the meaning of the *Hadith* that states, "All people are equal, as the teeth of a comb. There is no claim of merit of an Arab over a non-Arab, or of a white over a black person or of a male over a female. Only God-fearing people merit a preference with God."¹¹¹ By accepting that this tolerant, inclusive vision of Islam is a vision in keeping with both the words of the Prophet and the manner in which Allah has directed believers to live, Afghan citizens — men and women — can come to understand that to follow Islam means to respect the "countless men and women" all "scattered" from the same Creator.¹¹²

109. CONST. OF AFGHANISTAN, art. 3, *ratified* Jan. 4, 2004, *available at* http://www.oefre.unibe.ch/law/icl/af00000_.html (last visited Mar. 21, 2005).

110. Ghasemi, *supra* note 17, at 456.

111. MUHAMMAD ABDUL-RAUF, THE ISLAMIC VIEW OF WOMEN AND THE FAMILY 21 (1977) (quoted in Ghasemi, *supra* note 17, at 455).

112. 'Ali, *supra* note 32, at 4:1.