



## Evaluation of Mechanisms for Ensuring Women's Religious Identity from the Perspective of Jurisprudence and Legal System in Afghanistan

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### Abstract

The legal system of Afghanistan is based on the Islamic religion. In religious societies, religion and its teachings play a fundamental role in shaping the identity of individuals in society. Identity refers to the set of characteristics, emotions, and beliefs that distinguish an individual or group of individuals. The main objective of this research is to study and examine the mechanisms of ensuring the religious identity of women in jurisprudence and the legal system of Afghanistan. To achieve this goal, a descriptive-analytical method (content analysis) has been employed. The findings indicate that in Islamic jurisprudence, the position and high status of women have been more emphasized based on the principles of justice, wisdom, nature, and utility. Additionally, the legal system of Afghanistan has considered various mechanisms to ensure the religious identity of women, including adherence to the Islamic legal system based on the third principle of the constitution and also article 149 of the same law, modifying and adapting Islamic provisions, emphasis on the development and promotion of religious teachings for women, clarification of the educational system based on Islamic provisions, and taking necessary measures to combat customs contrary to Islamic teachings. Furthermore, the Supreme Court of Afghanistan, as the highest judicial and oversight authority in the judiciary of the Islamic Republic of Afghanistan, is tasked with reviewing the compliance of laws, legislative orders, treaties with the constitution, and the Islamic foundations and jurisprudence, which signifies its competence in interpreting laws in accordance with the religious identity of women.

**Keywords:** Mechanisms, Jurisprudence, Ensuring, Religious Identity, Legal System, Afghanistan.

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## Introduction

In recent decades, we have witnessed an increasing attention of researchers and scholars in various fields of humanities to the issue of "identity". Identity is defined as a combination of characteristics, emotions, and beliefs that distinguish an individual or group of people and set them apart from others. In religious societies, religion constitutes an important aspect and pillar of identity. The people of Afghanistan, who have been devout followers of the Islamic faith for centuries and have shaped all aspects of their lives based on Islamic beliefs, values, norms, and ethics, have had a significant role of religion in shaping and defining their identity. However, over the past century or so, profound political and socio-cultural events have occurred in this country, and various intellectual currents, influenced by global intellectual trends, especially those of the Western world, have come and gone. Despite the fact that the legal system of Afghanistan is based on Islamic teachings and jurisprudence, these currents, along with interventions and pressures from certain governments and international institutions, have influenced some aspects and issues, especially women's issues, in the regulation and formulation of Afghanistan's legal system. Therefore, the main question and issue of the present research is: What mechanisms exist in Islamic jurisprudence and the legal system of Afghanistan to ensure the religious identity of women?

Addressing this topic is necessary because almost more than 98 percent of the people of Afghanistan are Muslims and adhere to the rules and jurisprudence of Islam, and religion plays a major role in shaping their identity. Although some jurisprudential and legal studies have been conducted in the field of women and other aspects of Afghanistan's laws and legal system, particularly in terms of mechanisms for ensuring the religious identity of women and the jurisprudential perspective on women's issues, no specific research has been conducted. In formulating this article, we utilize the descriptive-analytical research method (content analysis). This research endeavors to study and examine the mechanisms of ensuring the religious identity of women in Islamic jurisprudence and the legal system of Afghanistan.

## Conceptualization

**Legal System:** In comparison to political, economic, cultural, and other social systems, the legal system is understood and comprehended, and it refers, terminologically, to the totality of institutions, organizations, and rules applied systematically and cohesively to achieve objectives such as justice and order. The common feature of religious legal systems is that legal rules are fundamentally created by God and are the product of His will; although within the framework of divine religions, reason, custom, and human experience may

also be influential in the emergence of legal rules. The legal system of Afghanistan claims to be based on Islam; however, the extent to which it is influenced by intellectual currents and human experiences is debatable.

**Identity:** The word "identity" has Arabic roots and is derived from the industrial participle of the absent masculine pronoun "hu," meaning "he" (Hosseini Tehran, 1409, 229). Its English equivalent is "Identity," and its French equivalent is "Identite." Linguists and scholars have expressed several meanings for the word identity:

Mohammad Ali Foroughi in the book "The Course of Wisdom in Europe" proposed "این‌همانی" in Persian as the counterpart to "Identity" in French (Identite) and English (Identity); however, in practice, it was the word "هویت" (identity) that gradually became the suitable equivalent for "Identity" in speech and writing. The word "identity" has its roots in the Latin word "Identitas," derived from "Idem," meaning "similar and the same" (Altaei, 1389, 23).

Identity is the reality of a person or thing, and according to the cultural interpretation (Oxford), it refers to the characteristics, emotions, or beliefs that differentiate people from others (Henry Murray 1884).

In the Cambridge dictionary, it is also stated: Identity means who a person is, or the characteristics of a person or group that make them different from others. In the social sciences terminology, identity is a set of essential social, psychological, cultural, philosophical, biological, and historical characteristics and specifications that intervene in the authenticity or essence of the group, meaning unity or similarity of its members with each other, and distinguish them in a specific and acceptable manner and consciously from other groups and individuals (Tajik, 1383, 29).

**Religion** "دین": is an Arabic word that in dictionaries means judgment, fate, conscience, religion, retribution, Sharia, obedience, servitude, etc. (Dehkoda, 1377, 10042, and Mo'in, 1360, 1597). It must be said that providing a definitive definition of religion due to the lack of unity and real existence is not feasible; however, in conceptual definition, it can be said: Religion is a collection of beliefs, laws, and regulations that concern both human perceptual principles and discuss his inclinations and also cover the ethics and affairs of his individual and collective life (Javadi Amoli, 1380, 40). In other words, religion can be considered as a system of spiritual beliefs, values, ethics, and regulations that link individuals within the framework of group relations with supernatural powers (Mansournejad, 1385, 37).

### Religious Identity

Various divisions have been proposed for identity, and in a broad division, it is divided into two categories:

**A) Individual and Personal Identity:** Individual identity encompasses physical and psychological characteristics. Characteristics such as gender, height, weight, age, and blood type constitute physical identity. These characteristics are related to our bodies and innate creation. Ethical and psychological traits are non-physical characteristics; such as patience, impatience, perseverance, and hopefulness.

**B) Collective/Social Identity:** Individuals acquire their social identity through membership in various social groups and becoming familiar with the values and beliefs of society. Our social identity is formed through interaction with society and the roles we undertake in each group; for example, by being a member of a family, we are considered a child, by being enrolled in a university, we are students, and by being part of Afghan society, we are considered Afghan, and by believing in the religion of Islam, we are Muslims.

Considering the above division, when discussing personal identity, we mostly refer to the differences and distinctions of individuals in terms of name, nationality, ethnicity, etc., and when talking about social identity, our intention is the similarities and commonalities that exist among a group or community (Haqdari, 1380, 59).

Scholars and theorists have divided social identity into various types such as ethnic, national, cultural, religious, etc. (Hajiani, 1388, 43), but it seems that the division of identity into various types is due to its different aspects. In the sense that one aspect of our identity makes us ethnic, another aspect makes us national, the third aspect makes us religious, and so on. When we talk about religious identity, we are actually referring to one aspect and one component of our social identity (Malouf, 1397, 27).

In any case, if we are asked "who are you?" in response, we refer to the characteristics, feelings, and distinguishing beliefs of ourselves. Many of our beliefs, ethical and behavioral traits, and even most of our emotions are influenced by religion and its teachings. Therefore, religion and its teachings are one of the levels or, in other words, one of the fundamental aspects of social identity. Islam has been in Afghanistan for more than thirteen centuries, and almost more than 98 percent of the people in this country are Muslims. A significant aspect of the identity of the people of this country has been constructed based on the religious beliefs, values, ethics, norms, and laws of Islam, and most of the governing laws are derived from Islam (Woodward Kath, 2000).

In the discussion of religious identity, the possession of a common religion and religious teachings in a society receives attention. Considering the intensity of developmental and renewal processes in contemporary societies, religion still remains as an important source for identity and meaning-making in the modern

and tumultuous world in all its dimensions (Mimar, 1378, 17).

Contrary to some perceptions that considered religion as fading away due to the continuation of the modernization trend, religion is still considered as a primary source of meaning-making and identity formation for many people in the world, such as Christians, Muslims, Buddhists, and Hindus (Salmanpour, 1384, 85).

### **Aspects and Components of Religious Identity**

According to the various aspects of religion, dimensions and components such as beliefs, ethics, and religious laws can also be considered for religious identity.

A) Beliefs: Belief in the truths and realities of the universe based on monotheism, which itself has elements and components. The most important components of this dimension are: belief in the origin, resurrection, divine justice, prophethood, and imamate (principles of religion according to the Twelver Shia sect), and belief in the origin, resurrection, and prophethood (principles of religion according to the Sunni sects) (Karimollahi, 1390, 89).

B) Ethics: Teachings that identify human virtues and vices, present the path of disciplining oneself from vices, and present one's character with virtues. This dimension of religion also has three levels of "ethical awareness," "ethical state and action," and "ethical dominion."

C) Rules, rituals, and regulations: Regulators of individual's relations with themselves, with God, and with others (Javadi Amoli, same, 28).

There are various classifications of issues in religious matters, but the most comprehensive and well-known of these has been presented by the scholar Helli in the book "Sharaye' al-Islam" (Shahabi, 1387, 74).

To study the mechanisms for ensuring the religious identity of women in the jurisprudence and legal system of Afghanistan, attention should be paid to various dimensions of religion. Firstly, the compatibility or incompatibility of the overall framework and spirit of the legal system of Afghanistan with the beliefs and principles of religion should be studied. Secondly, since the legal system does not directly address ethical matters, attention to this dimension of religion is neglected. Thirdly, most discussions regarding the compatibility or incompatibility of relevant laws with Sharia and jurisprudential rulings, although it is necessary to mention that the laws and regulations of the legal system of Afghanistan contain provisions that highlight the religious identity of women and emphasize its importance.

### **Proposed Model for Studying the Mechanisms for Ensuring the Religious Identity of Women in the Legal System of Afghanistan**

In light of the previous discussions, the following model can be proposed for

studying and assessing the mechanisms for ensuring the religious identity of women in the legal system of Afghanistan.

Dimensions of Religion		
Beliefs	The level of compatibility of the overall legal system of Afghanistan with religious beliefs	belief in God and God-centeredness
		belief in the afterlife
		belief in the Prophet
		Quranic-centeredness
Ethics	The legal system does not have direct regulations concerning ethics, but the compatibility of the overall legal system of Afghanistan with Islamic ethics is subject to study.	
Religious Laws (Compatibility of laws with Islamic jurisprudence)	Laws	Acts of worship: Due to the indirect relationship of laws with acts of worship, this section is not addressed.
		Contracts: In marital contracts, the authority of the guardian is accepted according to religious law. The compatibility of legal provisions with religious laws is evaluated.
		Penalties: In jurisprudence, the right to divorce is in the hands of the husband. The compatibility or incompatibility of relevant legal provisions with Sharia is examined.
		Inheritance: The compatibility or incompatibility of relevant legal provisions with Sharia.
		Judgment: The compatibility or incompatibility of relevant legal provisions with Sharia.
		Testimony: The compatibility or incompatibility of relevant legal provisions with Sharia.
		Hudud (Islamic punishments): The compatibility or incompatibility of relevant legal provisions with Sharia.
		Ta'zir (discretionary punishments): The compatibility or incompatibility of relevant legal provisions with Sharia.
Qisas (retaliation): The compatibility or incompatibility of relevant legal provisions with Sharia.		
Diyah (blood money): The compatibility or incompatibility of relevant legal provisions with Sharia.		

### Mechanisms and Oversight for Ensuring Women's Religious Identity in Afghan Jurisprudence and Legal System

This section addresses two important topics, initially discussing the mechanisms for ensuring religious identity and subsequently explaining oversight for ensuring women's religious identity in Afghan jurisprudence and legal system as follows:

## **Mechanisms for Ensuring Women's Religious Identity in Afghan Jurisprudence and Legal System**

### **Conformity of Laws with Islamic Jurisprudence**

Article 2 of the Afghan Constitution, which recognizes Islam as the state religion, (Afghan Constitution, 2003, Article 2) and Article 3, which states: "No law can be contrary to the beliefs and provisions of the holy religion of Islam in Afghanistan", (ibid, Article 3) explicitly states the conformity of the legal system of Afghanistan with Islam, which generally consists of beliefs and provisions. Article 3 addresses the strong connection between the two religious and Islamic value systems and their role in the country's legal system. This principle has also been addressed in previous constitutions, albeit with the interpretation of "beliefs and provisions of the holy religion of Islam" instead of "foundations of religion". However, the meaning of "beliefs" and "foundations of religion" has not been explained or clarified in any of the laws.

In Article 130 and 131, it is stated: "Courts shall apply the provisions of this Constitution and other laws in the cases under consideration. If there is no rule in this Constitution or other laws for a case, the courts shall adjudicate it in accordance with the provisions of the Hanafi jurisprudence, within the limits set by this Constitution." (ibid, Article 130 and 131) For Shiites, the courts apply the rulings of the Shiite sect in personal status cases. In other lawsuits, if there is no ruling in this Constitution and other laws, the courts adjudicate the case according to the provisions of this sect.

By including these two articles of the constitution alongside Article 3, it is concluded that there should be no law or regulation in the legal system of Afghanistan that is incompatible with the provisions of Islam.

A study of the legal system of Afghanistan reveals that the existing laws, including the Constitution, Civil Code, Penal Code, Law on Elimination of Violence Against Women in Afghanistan, and others, are generally based on Islam. Below is a brief examination of some issues in these laws:

### **Marriage Contract**

The issue of marriage is addressed in Chapter Two, from Article 60 to Article 130 of the Civil Code. Marriage and all related issues and provisions, such as the marriage contract, its conditions, consequences, age of spouses, the authority of the guardian, dowry, alimony, etc., are regulated and formulated based on jurisprudence. (Civil Code of Afghanistan, 2005, Article 60-130)

### **Dissolution of Marriage**

The issue of dissolution of marriage, which is covered in Chapter Eight and Chapter Nine of Chapter Two of the Civil Code from Article 130 to Article 216, includes annulment of the marriage contract and its conditions, divorce, its types

and conditions, and separation. This section is also consistent and compatible with Islamic jurisprudence, including the fact that divorce is in the hands of the husband. (ibid, Article 130-216)

### **Inheritance**

The discussion of inheritance and its provisions and issues is also covered from Article 1993 to Article 2102 of the Civil Code. The presentation of topics and the arrangement of issues and provisions therein follow the same pattern as the arrangement of topics in jurisprudential texts. In Islamic jurisprudence, matters such as the causes of inheritance are discussed, and the legal system of Afghanistan has also accepted the same, such as: 1) "Kinship and Lineage": in its broad sense, including any relationship created between two individuals through birth at various levels, including between man and woman and between adult and child. 2) "Marriage and Reason": includes relationships created between individuals through marriage. 3) "Allegiance": includes relationships found between two individuals other than through kinship (reason and lineage), such as "allegiance of favor, allegiance of allegiance" (Sarakhsi, 1405 AH, 310).

Therefore, just as in Islamic jurisprudence, based on the verses of the Holy Quran (Women, 7-12), women and children inherit, and merely being a woman or a child does not prevent them from inheriting, this issue has also been accepted in the legal system of Afghanistan based on Islamic jurisprudence.

### **Testimony of Women**

The legislator of Afghanistan, in paragraph 2 of Article 321 of the Code of Civil Procedure, has paid attention to this matter and states: "The court is obliged to strictly observe the conditions of witness testimony." (Code of Civil Procedure, 1990, Article 321) However, it has not specified what these conditions are, and in paragraph 1 of Article 337, it refers to Islamic law: "The provision of compulsory testimony and the conditions for its provision are subject to Islamic law." (ibid, Clause 1, Article 337)

The legal system of Afghanistan, in accordance with Islamic jurisprudence, has accepted testimony as one of the proofs of substantiating claims. The testimony of women, as generally accepted in jurisprudence, is also mentioned as one of the proofs of substantiating claims in the laws of Afghanistan.

### **Judgment by Women**

According to the opinion of Abu Hanifa's jurisprudence, in all matters where a woman can testify, she can also judge, except in limits and retaliation. (Zahili, 1422 AH, 338) Generally, in the legal system of Afghanistan, judgment by women is accepted according to the perspective of Abu Hanifa's jurisprudence. However, on the contrary, the prevailing view of Shiite jurists is that women cannot hold the position of judge. (Najafi, 1404 AH, 12)

### **Implementation of Hudud Punishments, Penalties, Retaliation, and Diya**

The first article of the Afghan Penal Code states:

"This law regulates crimes and criminal penalties. Offenders of hudud, retaliation, and diya crimes are punished according to the provisions of Hanafi jurisprudence of Islamic law." (Penal Code, 2016, Article 1)

This article of the Penal Code clearly indicates that the legal system of Afghanistan, in its penal section, refers entirely to the provisions of jurisprudence.

### **Not Modifying and Contradicting the Provisions of Islamic Law**

Article 149 of the Constitution stipulates that the principle of adherence to the provisions of the sacred religion of Islam and the Islamic Republic system are not modifiable.

The term "تعديل" has various meanings derived from the root "عدل", such as straightening, dividing with justice, reading upright, and reducing intensity and severity. In this article of the Constitution, the latter meaning, i.e., reducing and diminishing, is intended.

This principle of the Constitution considers the adherence to the provisions of the sacred religion of Islam in all areas as non-negotiable and irrevocable. Therefore, based on this principle, the legal system and other governmental and non-governmental institutions are not entitled to engage in any activities that lead to modifying and diminishing adherence to the provisions of the sacred religion of Islam. One of the instances of modifying and diminishing adherence to the provisions of Islamic religion is when the religious identity of all people or a part of them, such as women, is reduced and diminished by certain actions.

This article is another general measure for preserving and ensuring the religious identity of women in the legal system of Afghanistan.

### **Dependence of Education on Islamic Jurisprudence**

In the seventeenth and forty-fourth principles of the Constitution, it is stated:

"That: The government, for the promotion of knowledge at all levels, the development of religious education, and the organization and improvement of the status of mosques, schools, and religious centers, takes necessary measures."

And also, the forty-fourth principle of the Constitution declares:

"The government is obliged to formulate and implement effective programs to create balance and development in education for women, improve the education of nomadic children, and eradicate illiteracy in the country." (Constitution of Afghanistan, Article 44)

Some of the abnormalities and injustices against women stem from the low level of literacy and awareness, including religious awareness. These two principles of the law focus on taking necessary measures by the government to

promote knowledge at all levels, development, reconstruction, and expansion of religious education, organizing and improving the situation of religious places such as mosques, schools, and religious science centers. By promoting knowledge and expanding religious awareness among individuals in society, such as their acquaintance with their Islamic and human rights and duties, their quality of life will improve, and they will enjoy a more peaceful and healthier life. The first clause, with its inclusivity, also encompasses women. In other words, it is essential that the Constitution of the country explicitly states and recognizes religious education and its promotion. Therefore, one of the mechanisms for ensuring, preserving, and strengthening the religious identity of women is for people, including women, to receive religious education and for their religious teachings and knowledge to be promoted and expanded, and for schools and religious centers that were previously entirely masculine to include the part related to women's education so that women and girls can also learn religious provisions and issues.

The next principle specifies and emphasizes that the government is specifically obligated to undertake effective programs for balance, development, and expansion of women's and nomadic children's education and to eradicate illiteracy in the country. Education for women includes both religious and non-religious teachings.

The forty-fifth principle of the Constitution of Afghanistan stipulates that the curriculum of educational institutions should be based on the provisions and jurisprudence of Islam and states:

"The government formulates and implements a uniform educational curriculum based on the provisions of the sacred religion of Islam and national culture and in accordance with scientific principles, and formulates the content of religious teachings of schools based on the Islamic sects existing in Afghanistan." (ibid, Article 45)

### **Taking Necessary Measures to Combat Customs Contrary to Islamic Law Regarding Women**

Article 54 of the Constitution of Afghanistan regards women and families as the cornerstone of society and thus obligates the government to take measures to preserve the identity and dignity of women and families and prevent tribal customs and practices contrary to Islamic jurisprudence and laws. This article speaks to the position and identity of families and women, stating:

"The family forms the fundamental pillar of society and is protected by the state. The state, for the purpose of ensuring the physical and mental health of the family, especially children and mothers, upbringing of children, and eradicating customs contrary to the provisions of the holy religion of Islam, takes necessary

measures." (Constitution of Afghanistan, 2003, Article 54)

This principle, while emphasizing the importance of the role of mothers and families as the fundamental pillar of society and their protection by the government, also obligates the government to take necessary measures for two other very important purposes; ensuring the physical and mental health of family members, especially children and mothers, and combating and eliminating customs inconsistent with the provisions of the sacred religion of Islam. Unreasonable customs and practices contrary to religion are more or less prevalent in all human societies. The people and society of Afghanistan are no exception to this rule. In our country, some of these customs and practices, which affect women to their detriment, are contrary to the provisions of religion and Islamic jurisprudence and are inconsistent with the religious identity of the Islamic society, especially in contradiction to the religious identity of women; including forced marriages of women and girls or disregarding their opinion and consent in this regard, depriving them of inheritance, and the like.

By including this principle in its constitution, the legal system of Afghanistan has adopted a mechanism and policy to preserve the religious identity of women.

### **The Constitution and Acceptance of Women's Property Rights**

The fortieth Article of the Constitution of Afghanistan accepts the property rights of all individuals, including women, based on Islamic jurisprudence. This principle states:

"Property is inviolable. No one shall be forbidden from acquiring property and taking possession of it, except within the limits of the law." (ibid, Article 40)

Although this principle of the law does not directly relate to guaranteeing the religious identity of women, it can be inferred that this article explicitly states and recognizes the property ownership and possession of all members of society, including women, in relation to their property. Women can engage in legitimate transactions, albeit unfortunately during the rule of despots and warmongers, especially during the rule of the Taliban regime, women have been deprived of inheritance, the right to work, and property ownership and have been deprived of any economic and social activity.

### **Religious Identity of Women and Approval of the Law on Prevention of Harassment and Abuse of Women**

This law was enacted in 1395 by the Joint Committee of the Two Houses of the National Assembly, composed of five members from each house, to enact legislation on the prevention of harassment and abuse of women and children in three chapters and 29 articles. The aforementioned law seeks to determine and

elucidate the duties of ministries, institutions, and government organizations regarding the issue of harassment and abuse of women and children. In the third chapter, various authorities have been defined and designated for investigating complaints in various locations. What is relevant to our discussion in this law are the duties specified for the Ministry of Guidance, Hajj, and Endowments.

**Article 11:** The Ministry of Guidance, Hajj, and Endowments has the following duties:

Arranging regular programs for delivering sermons and speeches regarding the rights and duties of men and women according to Islamic law and their execution by clerics, preachers, and speakers of mosques and congregations (Hussainiyas) and ensuring their compliance.

Holding seminars, workshops, and conferences for clerics, preachers, and speakers regarding preventing harassment and abuse of women and children in society.

Explaining and elaborating on the factors of harassment and abuse of women and children and the consequences thereof, documented by Islamic rulings and jurisprudence through relevant publications.

Violence against women and their harassment and abuse exist more or less in every society; however, in a country like Afghanistan, some of these ugly and inhumane behaviors are colored and justified by religion. The reason for this is the illiteracy of the majority of the people and consequently not knowing Islamic rulings and rights, or misinterpretation of these rulings.

The aforementioned law, by specifying the above duties for the Ministry of Guidance, Hajj, and Endowments, seeks to eliminate or at least reduce violence and harassment against women and children. The solution offered for this purpose is to educate the general public about their Islamic rulings, rights, and obligations at all individual, familial, and societal levels. (Law on Prevention of Harassment and Abuse of Women in Afghanistan, 1395, Article 11)

### **Law on Prevention of Violence Against Women in Afghanistan**

This law, after two years of discussion, study, and work at the Ministry of Justice and approval by the Council of Ministers, was promulgated by Presidential Decree No. 91 dated 29/4/1388 in 4 chapters and 44 articles under the signature of the President of the country, Mr. Hamid Karzai, and was submitted to the National Assembly on 28/3/1392. Although this presidential decree was enforced in the Afghan courts after its issuance, promulgation, and publication in the official gazette, it was not approved by the parliament due to the opposition of some members to some articles of this law with the provisions of Islamic law. Some of these axes are:

**A. Determining the age of marriage:** In Article 37 of the Law on Prevention

of Violence Against Women, marriage before reaching the legal age has been considered a crime. Critics and opponents believe that such a matter has been prescribed by the guardian of the daughter in Islamic law.

**B. Guardianship and parental permission:** Article 27 states that "if a person prevents a woman from getting married or deprives her of the right to choose her spouse, he shall be sentenced to short-term imprisonment." (ibid, Article 27)

**C. Polygamy:** Article 37 states that if a man marries more than one woman without observing the provisions of civil law, he shall be sentenced to imprisonment for more than three months. Critics argue that this article contradicts the prescription of polygamy in Sharia law. (ibid, Article 37)

**D. Inflicting harm and beating:** Article 23 states that "a person who exposes a woman to insult and beating but does not result in her injury or disability, depending on the situation, shall be sentenced to short-term imprisonment for a maximum of three months." Critics believe that this article also includes punitive beating in the law, while it is prescribed in Sharia law. (ibid, Article 23)

Despite the deficiencies and shortcomings of this law from an Islamic perspective, its compatibility with the provisions of Islamic law is much greater. Therefore, its implementation is in favor of society and the people and leads to the improvement of the overall quality of life, especially for women, from an Islamic perspective.

### **Supervision over Ensuring the Religious Identity of Women in the Legal System of Afghanistan**

Despite the emphasis on the necessity and criteria for monitoring laws in the Constitution, regarding the competent authority for monitoring and reviewing laws and their conformity with the third principle of the Constitution, there is a significant deficiency and gross inadequacy. Considering the need to safeguard the Islamic nature of the system, it seems necessary and essential to have an authority responsible for monitoring and safeguarding its fundamental pillar. Now the question is, which authority or institution is responsible for supervision and monitoring, or if a new structure is needed for law monitoring, how can it be formed?

According to the Constitution of Afghanistan adopted in 1382, the Supreme Court is considered the highest judicial authority at the head of the judicial branch of the Islamic Republic of Afghanistan, and Article 116 states: "The judiciary is the most important pillar of the Islamic Republic of Afghanistan. The judiciary consists of a Supreme Court, courts of appeal, and primary courts, the organization and jurisdiction of which are regulated by law." (Constitution of Afghanistan, 1382, Article 116)

Or in Article 121, it also states regarding the position of the Supreme Court:

"The competence of the Supreme Court to review the conformity of laws, legislative decrees, international treaties, and conventions with the Constitution and their interpretation at the request of the government or courts is according to the law." (ibid, Article 121)

According to the Constitution of Afghanistan, the Supreme Court is considered the highest judicial body at the head of the judicial branch of the Islamic Republic of Afghanistan. According to Articles 117 and 118 of the Constitution, this supreme judicial institution, composed of nine members familiar with the judicial system of Afghanistan, with higher education in legal or jurisprudential sciences, and having the necessary commitment, expertise, and experience, are appointed by the President with the confirmation of the House of Representatives (Wolesi Jirga). The review of the conformity of laws, legislative decrees, treaties, and international conventions with the Constitution and their interpretation, at the request of the government or courts, falls within the jurisdiction of this judicial institution. (ibid, Articles 117 and 118)

## Conclusion

By studying the legal system of Afghanistan, especially the Constitution and the Law on Prevention of Violence Against Women, it is evident that the position of women among Islamic provisions and provisions influenced by Western human rights perspectives and civil liberties is fluctuating. On one hand, it is stated based on Article 3 of the Constitution that the legal system is based on Islamic beliefs and provisions, on the other hand, in Articles six and seven of the same law, it accepts the support of human rights and respects the Universal Declaration of Human Rights, which in general does not align with Islamic principles and provisions.

Despite this, mechanisms for preserving and ensuring the religious identity of women in the legal system of Afghanistan have been considered, including:

According to Articles 3, 130, 131 of the Constitution and Article 1 of the Penal Code, in the legal system of Afghanistan, there should be no law or ruling incompatible with Islamic jurisprudence; meaning firstly, the Constitution and other laws such as the Penal Code, Civil Code, and other laws should not be incompatible with the beliefs and provisions of the Islamic religion; secondly, if there is no ruling on a matter in the Constitution and especially in other laws, the Islamic jurisprudence authority is consulted, where each person refers to the jurisprudential rulings of their own religion.

Article 129 of the Constitution considers adherence to Islamic provisions and jurisprudence in all areas irrevocable and immutable.

Article 17 of the Constitution deals with the necessary measures to be taken

by the government to promote knowledge at all levels, the development of public and religious education, the regulation and improvement of religious places such as mosques, schools, and centers of religious sciences. With the development and enhancement of public and religious awareness in society, such as familiarity with their Islamic and human rights, their lives will be more peaceful, healthier, and of better quality. In Article 44, the government is obliged to develop effective programs for the balanced development of women's education and the eradication of illiteracy among them.

The legal system of Afghanistan, by including Article 54, which specifies the adoption of necessary measures by the government to combat customs contrary to Islam, in its Constitution, has intended a mechanism for preserving the religious identity of women.

The legal system of Afghanistan, by enacting and enforcing the two laws "Law on Prevention of Violence Against Women and Children" and "Law on Prevention of Violence Against Women in Afghanistan," has taken effective steps towards strengthening and ensuring the religious identity of women overall.

The Supreme Court or High Court of Afghanistan, according to the Constitution of Afghanistan, as the highest judicial and supervisory body at the head of the judiciary of the Islamic Republic of Afghanistan, has the most important duty of examining the conformity of laws, legislative decrees, treaties, and international conventions with the Constitution and the Islamic principles and jurisprudence, and the interpretation of laws, based on the request of the government or courts, falls within the jurisdiction of this judicial institution.

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