

Remaking of Afghanistan: How the Taliban are Changing Afghanistan's Laws and Legal Institutions¹

Haroun Rahimi

Summary

The Taliban took over the Afghan capital Kabul, in August 2021 and regained control of virtually the entire country. When the Taliban first ruled Afghanistan (1996-2001), they were then stepping into a country void of legal and political order. However, this time, the Taliban have taken over a two-decade-old political and legal order, the Islamic Republic of Afghanistan. What does the Taliban's takeover mean for the country's laws and legal institutions? What does it mean for Afghanistan's legal trajectory?

Introduction

Building on the ruins that the years of civil war and Taliban rule had left behind, the Republic of Afghanistan was founded on a constitution (2004),² which, by many standards, could be considered the most progressive constitution in the region. Within this progressive constitutional framework, two elected presidents and four elected parliaments enacted numerous laws.³ The Supreme Court was re-established as the head of a formally independent judiciary. The Attorney General's office was re-established to formally introduce the element of due process in the criminal justice system. The law and political science faculty and the *Shari'ah* faculty, two schools that would supply the justice sector personnel, started graduating people who would staff the growing justice sector. The surplus of law and *Shari'ah* graduates, the flow of aid to the formal justice sector and the increase in demand (and need) for formal legal services led to the emergence of a nascent private legal market where a formally independent bar association licensed and regulated the private defence attorneys.

While the formal components of the Afghan legal system developed, the post-2001 legal system never managed to make enough progress in enabling rule-based politics, establishing rule of law, curbing corruption, gaining public trust and meeting the needs of those involved in the justice sector. Elections were fraudulent, the culture of impunity deepened, corruption metastasised and most people preferred the informal justice sector to the formal justice sector. Even before their military victory, the Taliban capitalised on the failure of the formal justice sector by setting up shadow courts that not only handed down

¹ A slightly different version of this paper was originally published in Melbourne Asia Review, Asia Institute.

² *Qanun Asasi Jumhuri Islami Afghanistan* [Constitution of Islamic Republic of Afghanistan] (2004), https://www.constituteproject.org/constitution/Afghanistan_2004.

³ See the list of Afghanistan's Official Gazette, http://old.moj.gov.af/Content/files/Pages/OfficialGazetteIndex_D-header.htm.

harsh punishments but also resolved civil disputes, often faster and, in the views of some users, better than the government courts could.⁴

The Taliban ramped up military operations against the Afghan government forces soon after they made a 2020 deal with the United States (US) in Doha, Qatar,⁵ where they agreed not to attack the US and North Atlantic Treaty Organization (NATO) forces in exchange for a schedule for the complete withdrawal of foreign forces from Afghanistan. The deal also envisioned (in Parts 3 and 4), even if its text did not explicitly require it, that the Taliban would try negotiating a peace deal with the Afghan government.⁶ However, as the military withdrawal was underway, the intra-Afghan negotiations failed to make progress. As a result, on 15 August 2021, even before the withdrawal of foreign troops had concluded, the Taliban completed a rapid, chaotic takeover of the country without any transitional plans in place.

A few weeks after Kabul fell to the Taliban, a spokesperson for the group announced that it had reinstated the Islamic Emirate as the political system of the country, ending the post-2001 Republic; that Amir ul-Muminin, the Commander of Faithful, would be the head of the Afghan state; and a caretaker government, comprised exclusively of Taliban members, headed by a prime minister, would run the affairs of the country.⁷

The Islamic Emirate

The Emirate is a highly underspecified and undertheorised political system. The lack of interest in theorising and defining the Emirate is a function of the Taliban's history. Since its inception, the Taliban has remained primarily focussed on warfare. Internally, the distribution of power within the group has always been a delicate balance that has proven difficult to institutionalise.⁸ Externally, the Taliban's main supporters do not seem to demand a sophisticated argument in favour of the Emirate. To those willing to support the group, it seems to suffice that the Taliban are committed to making *Shari'ah*, as understood by the Taliban-affiliated Hanafi *Ulema*, the law of the land, and that alternative political systems are not sufficiently Islamic.

More importantly, support for the Taliban has always been driven more by practical considerations than theoretical ones. Nationally, the Taliban have championed disarming the warlords, establishing law and order, curbing corruption and ending the foreign occupation – all of which are popular. Locally, the Taliban have also been attuned to diverse

⁴ Adam Baczek, How the Taliban Justice System Contributed to their Victory in Afghanistan (2021), <https://items.ssrc.org/insights/how-the-taliban-justice-system-contributed-to-their-victory-in-afghanistan/>.

⁵ Agreement for Bringing Peace to Afghanistan between the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban and the United States of America (29 February 2020), <https://www.state.gov/wp-content/uploads/2020/02/Agreement-For-Bringing-Peace-to-Afghanistan-02.29.20.pdf>.

⁶ Ibid.

⁷ Haroun Rahimi, Taliban Caretaker Government: Good for Internal Cohesion, Bad for Governance, *The Diplomat*, 9 September 2021, <https://thediplomat.com/2021/09/taliban-caretaker-government-good-for-internal-cohesion-bad-for-governance/>.

⁸ Andrew Watkins, An Assessment of Taliban Rule at Three Months, 14(9) CTCSENTINEL (2021), <https://ctc.usma.edu/an-assessment-of-taliban-rule-at-three-months/>.

local politics in different parts of the country and in co-opting varied local grievances to generate support in different locales across the country.⁹ Poor governance, divisive politics of the Republic and abuse by the foreign forces also made the Taliban's job much easier.

The Taliban never formalised their preferred political system – the Islamic Emirate. During the first Emirate (1996-2001), a council of *Ulema* gathered in Kabul to draft a constitution that would formalise the Islamic Emirate. However, the first Emirate never adopted the draft.¹⁰

After being ousted from power in 2005, the Taliban leadership in exile reportedly endorsed the draft prepared by the *Ulema* council and released its text publicly. From a theoretical standpoint, the Taliban's draft constitution is unimpressive. It reproduces almost verbatim a previous draft constitution prepared by the short-lived Mujahedeen government.¹¹ The Mujahedeen draft constitution itself infused the frame of an older Afghan constitution – the 1964 constitution – the last Afghan constitution with broad legitimacy, with the Muslim Brotherhood and Jamaat-e-Islami style Islamist ideology popular among the Mujahedeen leadership.¹²

The Taliban's draft diverged from the Mujahedeen draft and Islamist ideology in one crucial aspect: the Mujahedeen draft constitution envisioned a parliamentary form of government where the executive power is divided between a president and a prime minister and people elect members of parliament via general elections (Articles 8 and 46). The Taliban version rejected elections and vested power almost exclusively in the person of the Amir who would not only appoint the entire government and judiciary but also representatives from each province to a body that would assist in a limited form of legislation (Articles 46, 47, and 55). This limited form of legislation was meant to supplement the Hanafi jurisprudence of Islam which was deemed to be the supreme law of the land (Articles 5 and 6).

To the surprise of many, while re-establishing the Emirate in 2021, the Taliban did not adopt their draft constitution as the country's constitution. In a meeting with the Chinese Ambassador to Afghanistan, in what appears to have been an informal comment, the Taliban's caretaker minister of justice reportedly said that the Taliban had reinstated the 1964 constitution as the country's interim constitution, albeit only to the extent that its provisions do not violate *Shari'ah*.¹³ The 1964 constitution is an important milestone in Afghanistan's constitutional history. It gave effect to four decades of intra-elite dialogue (since the country's first written constitution in 1923) about the structure and role of the

⁹ See, for example, Thomas Ruttig and Sayed Asadullah Sadat, The Domino Effect in Paktia and the Fall of Zariat: A case study of the Taleban surrounding Afghan cities (14 August 2021), <https://www.afghanistan-analysts.org/en/reports/war-and-peace/the-domino-effect-in-paktia-and-the-fall-of-zariat-a-case-study-of-the-taleban-surrounding-afghan-cities/>.

¹⁰ Taliban constitution is released (28 July 2009), <http://www.afghanpaper.com/nbody.php?id=2356>

¹¹ Haroun Rahimi, A Constitutional Reckoning with the Taliban's Brand of Islamist Politics: the Hard Path Ahead (2021), https://www.aiss.af/assets/aiss_publication/Reckoning_with_Islamist_Politics.pdf.

¹² See Oliver Roy, Islam and Resistance in Afghanistan (1990).

¹³ "Taliban Say They Will Use Parts of Monarchy Constitution to Run Afghanistan for Now", VOA News, 28 September 2021, <https://www.voanews.com/a/taliban-say-they-will-use-parts-of-monarchy-constitution-to-run-afghanistan-for-now/6248880.html>.

Afghan state. However, the value of the Taliban's acting caretaker minister's statement is often exaggerated.¹⁴

Practically, the Taliban are yet to reference or invoke the 1964 constitution in their conduct. Normatively, the 1964 constitution envisioned a constitutional monarchy with popular elections, whereas the Taliban have consistently rejected elections and maintained that the political system of the country will remain the Islamic Emirate. Since their return to power, important appointments and decrees in administrative, legislative and judicial areas have been issued by the authority of the Taliban's elusive Amir. The 1964 constitution formalised the separation of power and the popular legislature and included a bill of rights as the limits on the power of the state; whereas the Taliban have so far not shown any deference to separation of power, participatory governance (save for some low-level public liaison posts in Kabul) or the boundedness of the power of the state. The 1964 constitution formalised a government of laws. The 1964 constitution considered the state legislation to be the primary source of law in the country if it did not violate the basic principles of Islam and considered the Hanafi jurisprudence of Islam to be a supplementary source (Article 64(2)) whereas the Taliban maintain the reverse of this order.

In what constitutes the first attempt to theorise the Emirate, in April 2022, Abdul Hakim Haqqani, Taliban's acting Chief Justice released a book titled, *Islamic Emirate and its Order [Al-Emirate Al-Islami'a wa Nezamaha]*. The Taliban's current Amir has endorsed the book and has written an introduction to the book. The book differentiates between two types of state: a state whose aim is taxation and a state whose aim is guidance.¹⁵ The author describes the first type as a set of extractive institutions whose purpose is to enrich those who control these institutions. This type of state prioritises political and material considerations over religious and ethical considerations, the author argues. The second type, a state whose aim is guidance, is focused on guiding people towards Allah and enjoining good and prohibiting vice.¹⁶ The Islamic Emirate, the author proclaims, is of the second type.

Haqqani defines three constitutive elements of a state of guidance: 1) independent judiciary; 2) Islamic army; and 3) divine law.¹⁷ The author warns that "an Islamic state will not succeed without implementation of laws of Quran and Sunnah, in accordance to the understanding of the early generation of Muslims and Jurists (*Mujahedeen*), and this was the aim of the Jihad of the Islamic Emirate of Afghanistan, and this too is the preference of people of Afghanistan..."¹⁸

¹⁴ Haroun Rahimi, "A Constitutional Reckoning with the Taliban's Brand of Islamist Politics: the Hard Path Ahead" (2021), https://www.aiss.af/assets/aiss_publication/Reckoning_with_Islamist_Politics.pdf, p. 45.

¹⁵ *Islamic Emirate and its Order [Al-Emirate Al-Islami'a wa Nezamaha]* (Office of Darul Ulum Shari'a: April 2022), p. 20.

¹⁶ *Ibid*, pp. 20-21.

¹⁷ *Ibid*, p. 22.

¹⁸ *Ibid*, p. 24.

The author then goes on to produce a list of reasons why human made laws are baseless.¹⁹ Haqqani, however, argues that the Islamic state should observe the nature and customs of the people too, as long as they do not contradict with *Shari'ah*.²⁰

The Status of Shia Afghans under the Taliban

The 2004 constitution was the first Afghan constitution to recognise a limited role for Shi'a jurisprudence, that is, Jafari jurisprudence, in the legal sphere. This is despite the sizeable population of Shi'a Muslims in Afghanistan. On issues of different schools of Islamic jurisprudence (*maddhab*), the Taliban's acting Chief Justice, in his book, writes that the Islamic state should follow the *maddhab*, common to all or majority of the residents in the country.²¹ In Afghanistan, Haqqani argues, that is Hanafi jurisprudence.²²

Since their return to power, the Taliban's decision to elevate Hanafi jurisprudence to the status of state law and the exclusion of other accepted jurisprudential views within Islam, at least on one occasion, has clashed with the Shi'as jurisprudence. To increase government revenue, the Taliban government has levied a tithe tax on agricultural harvest (*ushr*) and is planning to collect almsgiving (*zakat*), in accordance with the Hanafi jurisprudence which diverges from the Shi'a jurisprudence. While the Council of Shi'a Ulema of Afghanistan publicly pleaded that the Shi'as should be excepted from the obligation, given their jurisprudential differences,²³ there is no indication that the Taliban authorities have made any religious accommodation for Shi'as so far.

There are also reports that the Taliban authorities have removed Jafari jurisprudence from the curriculum of universities in Bamiyan which is a Shia majority province in Afghanistan.²⁴

The Taliban's Interim Government

The Taliban preserved the administrative scaffolding of the Republic with some exceptions.²⁵ They replaced the Ministry of Women's Affairs with the infamous Ministry of Promotion of Virtue and Prevention of Vice and dissolved the electoral commissions. They also re-empowered certain ministries by reversing the Republic area decisions that had created several powerful agencies, directorates and committees independent of ministries.

In terms of staffing, at the national level, the Taliban seems to have kept most of the staff in technical ministries who remained in the country but have placed Taliban members in leadership roles. The security ministries were almost entirely purged from non-Talibs, on the other hand. In the ministries that dealt with issues considered sensitive by the Taliban, such

¹⁹ Ibid, p. 25.

²⁰ Ibid, p. 39.

²¹ Ibid, p. 37.

²² Ibid, p. 37.

²³ Council of Shi'a Ulema of Afghanistan: Don't Collect Tenth and Alms-due from Shias (7 September 2021), <https://www.etilaatroz.com/131168/taliban-should-not-collect-zakat-from-the-shiite-people/>.

²⁴ Removal of Jafari Fiqh from Bamiyan University (16 June 2022), <https://www.bahebab.ir/time/conversion/>.

²⁵ Andrew Watkins, An Assessment of Taliban Rule at Three Months, 14(9) CTCSENTINEL (2021), <https://ctc.usma.edu/an-assessment-of-taliban-rule-at-three-months/>.

as the ministry of education and higher education, it appears that the Taliban have replaced most of the staff with their members.

On the local level, hoping to cement their control over the country and generate employment for the now oversized fighting force, the Taliban appear to have replaced most of the staff in the local administration with Taliban members but have kept most teachers and professors. Most of the staffing decisions at the national and local levels were taken primarily based on proximity to the Taliban and not qualifications.

The Treatment of Legal Institutions

Under the 2004 constitution, the legislative power of the state was formally vested in two houses of the national assembly (even though the president was given a large role in the legislative process and both Afghan presidents exceeded their expansive constitutional powers as well).²⁶ The Taliban have formally dissolved both houses. The Amir has enacted important legislation via decrees²⁷ while other matters were legislated via the cabinet and ministries in the form of cabinet resolutions or ministerial directives.

The Ministry of Promotion of Virtue and Prevention of Vice has possibly issued the highest number of directives. These directives often purport not to legislate but notify the public that the ministry intends to enforce certain provisions that it considers to be obligatory upon Afghans by virtue of being Muslims (or subjects of a Muslim state, in the case of non-Muslims) and the Hanafi jurisprudence of Islam being the supreme law of the land. Examples of these directives include the requirement to have beards and head coverings for male government employees and the requirement that women cover their faces and be accompanied by a male relative when they travel beyond a certain distance.

The Taliban have purged the judiciary from the appointees of the Republic era. In their place, the Taliban Amir has exclusively appointed individuals who bear the title of *Akhund*, *Shaykh*, *Mufti* and *Mulavi*.²⁸ These titles are not standardised and they do not correspond to a fixed set of qualifications. However, these titles suggest that the person possesses knowledge of the prophetic tradition, qualification to issue authoritative answers on questions of Islamic law or varied levels of madrasa education. While the intellectual pedigree of these appointees remains unknown, indicators suggest that all these appointees are trained in the Hanafi school of Islamic jurisprudence. Ending the pluralism of the Afghan judiciary, these appointments have purged from the judiciary those with modern legal education and training in Afghan state legislation.

²⁶ Ali Yawar Adili, Rohullah Soroush, Sayed Asadullah Sadat, The Stagnation of Afghanistan's State Institutions: Case studies of the Supreme Court, Senate, provincial councils and the constitutional oversight commission (31 March 2021), <https://www.afghanistan-analysts.org/en/reports/political-landscape/the-stagnation-of-afghanistans-state-institutions-case-studies-of-the-supreme-court-senate-provincial-councils-and-the-constitutional-oversight-commission/>.

²⁷ See, for example, Afghanistan's Taliban Ban Poppy Cultivation (3 April 2022), <https://www.wsj.com/articles/afghanistans-taliban-ban-poppy-cultivation-11649003599>.

²⁸ See, for example, Supreme Court Appoints 69 Provincial Judges (16 December 2021), <https://tolonews.com/afghanistan-175920>.

The Taliban have also restructured the judiciary. Under the Taliban, each court (or division within a court) usually comprises a judge, a *mufti* and a clerk. The clerk attends to the administrative affairs of the court. The division of labour between the position of the judge and the *mufti* is less clear. The Taliban's enacted rules for the court state that *muftis* and other participants in the trial cannot pose questions to the claimant, defendant or witnesses and only the judge can do so (Article 18 citing Article 1801 of the *Majallah*).²⁹ This suggests a possible division of labour along factual and legal questions. This type of division would be in line with the history of judiciary in Islam, particularly during the Ottoman Empire, where *muftis* articulated the law within a *maddhab*, and then a judge would determine the facts, choose between the varied opinions of *muftis* and apply the law as articulated by the preferred *fatwa* to the facts of the case in the form of a judgement.³⁰ However, unlike the Ottoman judiciary, in the Taliban judiciary, the *mufti* is a government appointee and not an independent scholar. Moreover, unlike the Ottoman judiciary, the Taliban are appointing judges exclusively from among the Hanafi *Ulema*.

In terms of substantive law, the Taliban Supreme Court has stated that the laws of the Republic are not to be relied upon in courts. There is a committee formed within the Afghanistan National Academy to review the entirety of the laws of Afghanistan for compliance with *Shari'ah*. In the meantime, Taliban judiciary relies heavily on another product of Ottoman Empire: *Majallah*. This is a code-like compendium of Hanafi jurisprudence of Islam compiled by Hanafi jurists during the Ottoman Empire. Outside the judiciary, the Taliban have suspended the independent status of Afghanistan's Independent Bar Association and placed it under the control of the Ministry of Justice.³¹ The licenced defence attorneys are required to pass an oral test administered by the Ministry of Justice to keep their licence.

The Taliban have shown no consideration for due process of law. Unlike their treatment of the judiciary, the Taliban have yet to dismiss the Republic-era prosecutors. However, the scope of work of the prosecution department is still unclear. To add to the confusion, the Taliban enacted the rules for the courts and assigned the investigation authority to the judge, not the prosecutors. In any case, under the Taliban so far, the formal criminal justice system only handles a small number of cases and punishing those accused of crimes in many cases has been left to the Taliban's fighters and local commanders. The Taliban fighters have tended to punish those accused of a crime on the spot or after a brief on-site consideration. The punishment has ranged from public shaming to corporal punishment and, in serious cases, death. According to media reports, at least in one case, a Talib commander in a northern province of the country ordered and oversaw the stoning of two people accused of committing adultery.³²

²⁹ The Admin and Legal Procedure for the Islamic Emirate of Afghanistan's Courts (2014).

³⁰ See, for example, Amira Sonbol, "Women in Shari'ah Courts: A Historical and Methodological Discussion", 27(1) Fordham International Law Journal (2003), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1918&context=ilj>.

³¹ "Afghanistan bar association head pleads for international help as armed Taliban take over offices, displace leadership" 24 November 2021, <https://www.jurist.org/news/2021/11/afghanistan-bar-association-head-pleads-for-international-help-as-armed-taliban-take-over-offices-displace-leadership/>.

³² "A woman and a man were stoned to death in Badakhshan", 20 February 2022, <https://rukshana.com/en/a-woman-and-a-man-were-stoned-to-death-in-badakhshan>.

Status of Rights

The Taliban have reversed the clock on individual rights in Afghanistan, especially in the case of women's rights. The Taliban have restricted women's movement, education and work.³³ They have required that women cover their bodies from head-to-toe, except for their eyes, in public.³⁴ They have cracked down on free speech, freedom of media and dissent.³⁵ They have also restricted personal liberties on a range of issues, including the people's choice of attire, entertainment and the particularities of how they may wish to practise their faith.

The Taliban views on rights are informed by classical works of Hanafi jurisprudence of Islam, which reached its zenith during the Middle Ages, as elaborated and taught in a network of madrassas in the Indian subcontinent in the context of colonialism, the Cold War and the so-called global 'War on Terror'. The pre-modern origin of these jurisprudential texts, along with the hostile context of their reproduction in modern times, means that these texts do not share the conception of rights that underpin the civil rights and human rights discourse in the West and other Muslim societies whose *Ulema* and intellectuals have had the opportunity to re-imagine them in a modern context (some segments of Afghan society fall within the latter group as well but the Taliban are not coming from those segments of Afghan society).

Within the intellectual world to which the Taliban *Ulema* are native, human beings and Muslims are thought of in terms of the responsibilities they bear towards their creator, family members, the broader society and even themselves. Humans and Muslims are not thought of in terms of sovereign individuals. As such, the function of a state is to disable the exercise of private choice while facilitating and coordinating social life. The state-society relationship is not envisioned in terms of a social contract that would limit individual liberty to the extent necessary for social life. Instead, the state is to make the individuals honour their obligations and put them on the path decreed for them by their creator to achieve a good life on earth and salvation in the hereafter (that is, a state of guidance). The terms of this type of social contract require the state to enforce *Shari'ah* on behalf of the society.³⁶ In this kind of worldview, it does not make sense to limit the power of the state to protect individual rights. The state is good because it enforces the divine law upon often unwilling individuals with potential for wickedness ostensibly for the latter's benefits – benefits that are not measured in the person's satisfaction but compliance with the divine law as interpreted by the Taliban-affiliated Ulema of Hanafi jurisprudence.

The Taliban's views on rights also empower their leadership to pursue whatever policies they may consider necessary to protect the 'Islamic government as the custodian and enforcer of the divine law, no matter the cost to the rights of the people. Anyone who

³³ "Afghanistan: Taliban Deprive Women of Livelihoods, Identity", 18 January 2022, <https://www.hrw.org/news/2022/01/18/afghanistan-taliban-deprive-women-livelihoods-identity>.

³⁴ "The Taliban orders women to wear head-to-toe clothing in public", 7 May 2022, <https://www.npr.org/2022/05/07/1097382550/taliban-women-burqa-decree>.

³⁵ "Afghanistan: Taliban Threatening Provincial Media", 7 March 2022, <https://www.hrw.org/news/2022/03/07/afghanistan-taliban-threatening-provincial-media>.

³⁶ For a similar analysis, see Clark B Lombardi and Andrew F March, "Afghan Taliban Views on Legitimate Islamic Governance: Certainties, Ambiguities, and Areas for Compromise", 8 February 2022, <https://www.usip.org/publications/2022/02/afghan-taliban-views-legitimate-islamic-governance>.

opposes the Islamic Emirate (ostensibly by force), a recent gathering of pro-Taliban *Ulema* pronounced, is spreading corruption on earth, an offence proscribed in the Quran and punishable by death.³⁷

The Taliban's framework of rights also privileges the position of ultraconservative *Ulema* whose authority is often increased by their denial of practical considerations in favour of a literal reading of the Hanafi texts. These *Ulema* and a core group of Taliban members tend to come from specific communities in Afghanistan where gender norms remain extremely restrictive, creating a vicious cycle that maximises the restrictive potential of classical Islamic jurisprudence on women's rights while minimising its empowering potentials.

The ultraconservative views of these *Ulema* are incorporated into the Hanafi jurisprudence of Islam for which they are the authoritative spokesmen through what can be described as a three-step process: first, what may be considered as matters of rights are framed in terms of permissibility in the language of classical Islamic jurisprudence; second, then what is permissible is restricted if doing so would serve some moral and practical goals or not restricting the permissible could lead to something that is prohibited; and the last puts the Taliban-affiliated *Ulema* in a position to decide how Afghans should live their lives in a matter that minimises any perceived moral risk in essence replacing the judgment of these *Ulema* for the choice of individual Afghans, Afghan families or Afghan communities.

In April 2021, Taliban-linked social media accounts circulated the audio of a speech given by Mullah Omar on the eve of the group's takeover of Kabul to a gathering of *Ulema* in Kandahar on 30 March 1996. In the speech, he states that the Taliban's mission is to "implement the Din [religion] of God on God's land, to serve the God's word, and to establish *Shari'ah* rulings and limits of Allah." He articulates a division of labour in implementing this mission between *Ulema* and *Talibs*. The latter, who he describes as "foot soldiers", ought to take up arms and fight to "clean the land from corruption and from corrupters", making the establishment of *Shari'ah* possible. What makes their fighting different from other fighting factions is that they are fighting to put the [Hanafi] *Ulema* in charge, Mullah Omar states. He argues that the only way to establish God's limits and *Shari'ah* on the land is to put *Ulema* in charge because only they know the 'limits of God' and *Shari'ah*. In March 2022, Mullah Omar's successor, Mullah Hebatullah Akhund, in a meeting in Kandahar, sided with those *Ulema* to keep secondary schools closed for Afghan girls against the outcries of the broader Afghan society, the international community and some within the Taliban movement.³⁸

In the last week of June 2022, 3,000 men, the majority of whom were Taliban-affiliated *Ulema* gathered in Kabul to discuss the most pressing issues facing the Emirate. While many hoped that the gathering would lend support to the reopening of secondary schools for girls, the final announcement of the gathering remained vague on the issue. Article 9 of the communique acknowledges the importance of both religious and modern education but it

³⁷ The text of the communique as detailed by the Taliban's spokesman on his Twitter, https://twitter.com/Zabehulah_M33/status/1543484014278971398?s=20&t=HVP7nqIPu93_oSVtFV1swQ.

³⁸ Ashley Jackson, "The Ban on Older Girls' Education: Taleban conservatives ascendant and a leadership in disarray", 29 March 2022, <https://www.afghanistan-analysts.org/en/reports/rights-freedom/the-ban-on-older-girls-education-taleban-conservatives-ascendant-and-a-leadership-in-disarray/>.

does not clarify if women too have a right to modern and religious education.³⁹ The same article stresses the need to observe the undefined rights of the women within the limits of *Shari'ah*. While the communique remains unclear on women rights, it is clear in its support of the Emirate to the extent that it bans public disagreement among the *Ulema* on issues which are deemed controversial,⁴⁰ in effect banning public criticism of the Taliban's approach to enforcement of the Hanafi jurisprudence of Islam.

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Dr Haroun Rahimi is Assistant Professor of Law at the American University of Afghanistan and a Visiting Professor of Law at Bocconi University. He can be contacted at rahimi.haroun@gmail.com. The author bears full responsibility for the facts cited and opinions expressed in this paper.

³⁹ The text of the communique as detailed by the Taliban's spokesman on his Twitter, https://twitter.com/Zabehulah_M33/status/1543484014278971398?s=20&t=HVP7nqIPu93_oSVtFV1swQ.

⁴⁰ Ibid, Article 8.