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A legal assessment, against the study of war crimes in Afghanistan



Unfortunately there was a war in Afghanistan since the past three decades and has not only been able to eradicate the country's material and spiritual assets, but also both side of conflict-related they have done acts which was against of the human rights, Islamic Sharia , Humanitarian international law and the international criminal court and against humanity charter, recently the international criminal court ([Fatou bensouda](#)) Has asked the International Criminal Court to explain about the prevention of investigating the war crimes by US forces in Afghanistan because the prosecutor had previously asked the international criminal court that the war crimes committed by US forces in Afghanistan Should be looked into and make fair decisions about international criminal justice.

What are wars crimes? Crimes which have been done by the Americans in Afghanistan, what is the authority and responsibility of international court for the

investigation of these crimes? And what's the position of America, So all these questions have been answered in this weekly analysis.

What crimes are war crimes?

According to the United Nations Charter, the war crimes are as follow:

1. Any act that is against peace.
2. Cruelty on civilian of the any nation and tribes.
3. Mass killings, people's mobilization, keeping huge number of people forcefully in prison and in other places.

As per article eight of the International Criminal court, war crimes are as follow:

1. Damage of goods that are not used for military needs.
2. Miss-Behavior with prisoners of war and those individuals who have surrendered themselves and forcefully enrolling in war lines.
3. Attack on cities, villages and on other places which is not belong to military.
4. Usage of those weapons and guns which have much side effects.
5. Sexual abuse.
6. Violence on human beings, especially killing, ruthless torture and so on.

The crimes committed by the Americans in Afghanistan

Since 2001, Americans began their military presence in Afghanistan, since that time they have used and tested their military equipment and weapons in Afghanistan, and even now they use the same in Afghanistan. They have used weapons and bombs on weddings, funeral, mosques, hospitals, villages and towns and the use of such weapons was prohibited by the international community, for instance, the mother of all bombs are used by Americans in the Achin district of Nangarhar province, And also the same have been welcomed by the national unity government.

Also, usage of Daisy cutter, Cruise, AGM missile and the GM-13 In eastern parts of Nangarhar province, Marja of Helmand, In Maiwand of Kandahar, and in other areas of Kandahar, and still they use.

Up to what kinds of crimes? The international criminal court have access to investigate it:

The International Criminal Court was established in Italy in 1998, at that time, the 160-member delegates attended the meeting of establishment. Now more than 160 countries are active member.

Afghanistan is also included in the member states of the international criminal court and Afghanistan has signed a constitutional amendment in 10th of April 2003, at that time Afghanistan didn't have parliament so without approval of the parliament, it has been accepted as a valid and has received membership.

The International Criminal Court describes four types of crimes under the authority of the court in the fifth article of the Constitution, as follows:

1. Crimes of Killing Generation
2. Crime against humanity
3. war crimes
4. violation Crime

Other than all criminal cases, the above all crimes are defined in the basis of the International Criminal Court, the above criminal crimes are the war crimes that govern by the International Criminal Court in accordance with Article 5 of this kind of crime. And can punish the perpetrators.

Are the decisions of International Criminal Court can be implemented upon America?

As per the provisions of the Constitution of international criminal court the states are divided into three types across the world:

First: Those countries who have signed the Constitution and have also approved in their country's parliament. These countries have received a membership of the court and are considered to be the full members of the court that the number of countries reaches 120 countries and they are considered to be fully under the law of the constitution.

Second: Those countries that have not yet signed the Constitution and have not approved it. These countries do not have absolute obligation on the basis of the constitution and they are not applicable to the constitutional order. Only in one case the provisions of court can be applicable on them, if they request in a particular case of voluntary part of the implementation of Charter provisions would then only the provision may implement upon them.

Third: Those countries which they have signed but haven't approved the constitution, These countries do not have any obligation against the principals as well This also for completing a stage for approval of the draft, for the activation as their position is not clear, if they have a membership and are not obliged to stand before the standpoint, which do not perform anti-general practices or actions of the constitution. However, when the status of these countries is clear, it will not be empty from two conditions.

Regardless they will give up on membership, Or the draft will not be approved in their parliament, then in such cases they are free from the vary same in future and they are in list of non-member countries.

If they approve the constitution then they are considered as a member country and all rules and regulations can be implemented upon them.

The United States has not approved the Constitutional Criminal Court in parliament, but has just signed the same and even last year they rejected the membership of the court and due to the same act United states is not a member of the International Criminal Court, that is why the order of the court is not applicable on them. It is worth mentioning that the United States was the first country that was against the establishment of the criminal court and the reason was that it is in conflict with our national sovereignty. It is true that the Criminal Court orders can't be implemented in this country, if they conduct a crime in a member of the World Criminal Court in any of the member country, then in two cases the court can punish these crimes. First if the member country complains to the court and second if the prosecutors refer the case to the court. As Afghanistan is a Full member country of the court, they have not complained to the International Criminal Court about the crimes of US troops, but recently ([Fatou bensouda](#)) demanded that war crimes of US troops must be investigated in Afghanistan, Unfortunately the same is not followed by the court. There are many reasons for not following but here we have taken some reasons as per opinion of Alex Whiting:

1. The American political influence and the impact on International Criminal Court.
2. Imposing pressure on the Afghan government to do not cooperate with the International Criminal Court in this study and oppose these investigations.
3. Challenged by the US President Donald Trump that if they continue to pursue the investigation, then US will stop financial facilities.

4. Threat by the US government, if continuing to investigate, then they will sanctions on judges and will not provide the Visa to them.¹

The final word

Investigation of war crimes, as the White House seriously opposed the investigation it appears that US troops have done widespread war crimes in Afghanistan and the country fear that if these crimes be investigated so they will have defamed And the soldiers will be apprehended to the trial table, therefore, they are trying to impose the pressure on this court, to don't investigate, and it is still successful.

The world must listen to the people of Afghanistan, the crimes should be investigated and also, they need to encourage and support the Court of International Justice for investigation. This is also in a position where the Afghan war is ending, and probably American after an agreement with the Taliban, may leave Afghanistan completely. Demand of justice, must be implemented, before the withdrawal of US troops from Afghanistan.

Mother's Day and the Troubles of Afghan Mothers



Fourteenth of June is the day that is celebrated for the appreciation of the immense work of the Mothers. One of the roles of being a woman is being a mother, who, along with other things, is coming out of this heavy responsibility. Mothers in the modern world, despite their ease, are still suffering from a series of problems, no matter what kind of facilities they are provided. But in developing countries and the third world countries, Mothers have fewer opportunities than developed countries. In the analysis of this week, we discuss the challenges of mothers in Afghanistan relative to the facilities of Western mothers and especially the European ones.

Challenges faced by Afghan women:

1. **No access to health services:** Afghan mothers who are in provinces, northern Afghanistan, do not have access to health services. Due to the lack of clinics, hospitals and doctors, sometimes mothers die at the time of delivery or suffer from various illnesses. The reason for the lack of health services in the villages is the lack of security in these areas. This has led to an increase in maternal mortality. While In European and American countries, pregnant women have special maternity benefits for pregnant women. And in Australia and some European countries, the average birth cost of a child is \$ 5312. And the child mortality rate remains low, In Finland and Spain out of 15100 children one die.
2. **Educational services \ Education:** Lack of access to schools and universities in remote areas of the country has led to a low level of literacy or illiteracy. This is directly related to lack of access to employment and financial resources, which is one of the big problems of women. Due to the custom and religion of Islam, most women don't continue to study because of the co-education, and this is one of the factors leading to a low level of literacy in Afghanistan. In the European countries for mothers who wish to continue their education then the fees will be free to them. That's the ease for the subscribers in the program called exchange program. Or certain companies in support women and their education and after completing their courses, these companies will be providing jobs.
3. **The weakness of government support:** War and insecurity in Afghanistan have made the lives of most Afghan families and mothers are responsible of family. However, Ministry of women Affairs says the government has no mechanism to support these women. The ministry's only thing is that the

women and mothers who are interested in training, they will be introducing to the local authorities in this field. The government will consider the reform program, if it is considered to be, specific to the big cities, while the plans for mothers who are illiterate and most of the Afghan women's populations are not used in terms of their abilities and talents. In European countries for women to progress in their specialized field of gender equality at the highest level as their political agenda, and the role of women in their professional lives as they progress in their mother. Women in some European countries are the largest labor force, therefore, more mothers have benefited from their extensive child protection system in order to return to their careers while the child is too busy. The system is intended by the governments of these countries are considered easy for the mother and using the force of your economy to circulate them. Governments support such systems for the well-being of the people. Government for the welfare of mother's legislation provides for the protection of mothers and children. Mothers, besides being supported by the government, are sponsored by international organizations NGO They are also supported. And they propose legislation to make it easier for mothers to come to parliament in these countries. Lonely mothers who are in poverty and under poverty line, along with their efforts and government support policy, are educating their children. The government support policy includes: child protection, child support, minimum wage guarantees, equal access and high quality work, support for housing policy and social support .

4. **Employment problem:** women in Afghanistan, due to their low education level and illiteracy, sometimes they may go for heavy work to find a piece of bread and in some cases even they may go for begging in streets, especially in European countries, for such mothers, the state considers a certain amount

of money or takes more labor-intensive work so that both the mother cares for her job and her family responsibilities. A mother, who is working and also family pressures, is trying to make a variety of choices to balance her life. For mothers who give birth, they consider leave with pay. For example, in Norway, for a mother giving birth, she has 35 weeks paid leave or 45-weeks leave, with 80% pay.

5. **Social problems:** Social issues and miss-behavior against the women and mothers who's caretaker of their family, as their husbands for some reason lost or been separated from them is another challenge. Cruelty and violence against mothers are another form of pressure, which sometimes lead to divorce or escape from home and sometimes lead to suicide. The divorce phenomenon in Afghanistan is seen in different ways, and a woman who is divorced often does not marry. While in the West, it is a simple issue for women who separate from their husbands and take care of their families, and if they see violence from one of their family members, they will refer to the judicial authorities, so the Judicial Authorities will look after such issues and they do have support of the community.

Recommendations

In order to improve the status of women, especially mothers, it is necessary for the government and people of Afghanistan to pay close attention to the following issues:

1. Establish a legal support mechanism.
2. The government should consider economic support for mothers.
3. The government should conduct literacy courses and various professions.

4. Entrepreneurship for mothers.
5. The government should provide security to provide other facilities such as health services and educational services to remote areas.
6. Motivation of private investment in this sector to pave the way for women's self-sufficiency.
7. Creating ease of access for women to justice and judicial institutions.
8. Struggle with custom and the unpleasant traditions.
9. Culture of Impunity.
10. The government needs to establish Universities for women in the following fields: Psychology, Medicine, Education, Science and Social Sciences ... that can be in the form of public or private Universities, The government need to have at least such universities in the big cities to resolve the problem.

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