

Feasibility of the Role of the International Criminal Court in Addressing Gender Apartheid Against Women in Afghanistan

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The political environment in Afghanistan, characterized by systemic discrimination against women and extreme misogyny, has led to discussions among experts and human rights activists regarding the recognition of gender apartheid in Afghanistan. The central question that arises and is explored in this regard is whether the International Criminal Court (ICC) can play a role in addressing gender apartheid against women in Afghanistan. In other words, can the ICC intervene in addressing gender apartheid against women in Afghanistan? This article is descriptive-analytical and examines the aforementioned question through library research methods. The findings suggest that the Rome Statute recognizes the jurisdiction of the Court over several crimes, including crimes against humanity. However, gender apartheid is neither recognized as a crime under international law nor does the ICC have the jurisdiction to address it as a crime against humanity. Gender apartheid, like racial apartheid, could be recognized as an international crime, especially a crime against humanity. In this context, it is necessary for gender apartheid to be added either as an optional protocol to existing conventions, such as the Convention on the Elimination of Racial Discrimination or the Convention on the Elimination of All Forms of Discrimination against Women, or to be developed as an independent protocol. This requires political will and the investment of political capital within the United Nations system.

Keywords: *gender apartheid, Taliban, women, gender discrimination, crime against humanity.*

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1. Introduction

With the rise of the Taliban to power in Afghanistan, a form of gender discrimination emerged against women. The Taliban, through a remarkable decision, deprived millions of Afghan girls of their right to education at various levels, completely deviating from global strategies and programs in the education sector. Afghanistan, for reasons such as weak rule of law, lack of gender justice, the dominance of tribal

ideology, and patriarchal attitudes, has always witnessed numerous forms of discrimination and injustices between men and women across various social spheres. This has led to women enduring a state of gender insecurity. Although the role of women in Afghanistan has been somewhat notable, instead of being integrated into society, they have been largely marginalized. This marginalization has created a group whose mentalities and existing mechanisms have made various areas of life predominantly a domain for men. This has resulted in the



formation of a public mindset oriented toward male interests. The situation of women in Afghanistan, under the Taliban regime, has involved a complete disregard for even their most basic rights, including the prohibition of their free movement in public spaces and the denial of their right to education. The actions of the Taliban, in imposing gender discrimination and apartheid, have provoked numerous international reactions. In this context, the United Nations Security Council, in a statement issued on December 28, 2023, called for the full, equal, and meaningful participation of women and girls in Afghanistan, condemned the Taliban-led government's ban on women in universities, and called for the revocation of the ban on the education and training of Afghan women. The statement referred to this action as "a manifestation of the growing erosion of respect for human rights and fundamental freedoms." The most severe reaction came from Gordon Brown, the UN Special Envoy for Global Education. In the summer of 2023, Gordon Brown called the Taliban's ban on the education and employment of Afghan women and girls a "crime against humanity" that should be prosecuted by the International Criminal Court (ICC). The former British Prime Minister also sent a legal opinion to Karim Khan, the Prosecutor of the ICC, arguing that the ban on education and employment for girls and women constitutes "gender discrimination" and should be prosecuted by the ICC. Following Gordon Brown's remarks, Richard Bennett, the UN's senior expert on Afghanistan, urged countries worldwide to recognize the ongoing "gender apartheid" in the country as an international crime and to hold Taliban officials accountable for the severe and systematic abuses of women. This issue forms the basis of the present article, which essentially addresses the question of whether there is a feasible role for the International Criminal Court in addressing gender apartheid against women in Afghanistan. To examine this question, the article first discusses the conditions of women in Afghanistan under Taliban rule, and then examines the feasibility of the ICC's role in combating gender apartheid against women in Afghanistan.

2. Gender Apartheid of Women in Afghanistan

This section examines the issue of gender apartheid against women in Afghanistan.

2.1. Gender Apartheid

The term "Apartheid" is of Dutch origin and means separation or segregation, which, until a few decades ago, was primarily recognized for its racial context in South Africa. Apartheid is an African term meaning separation and segregation, which was first introduced by South African Prime Minister Daniel Malan to describe the country's policies of racial segregation between white people and various non-white racial groups. Later, Nelson Mandela noted that "apartheid was a new term, but an old idea." In South Africa, apartheid not only became a practice but, from 1948 to 1990, evolved into the dominant ideology and legal framework, which was also implemented in some of its neighboring countries. Legal scholars and human rights defenders, based on the international legal framework prohibiting racial apartheid, have explained the concept of gender apartheid and shown how its practice violates fundamental international norms of equality and non-discrimination (Adetunji, 2024). Gender apartheid refers to economic and social gender discrimination against individuals due to their gender. This is a system that, through physical or legal means, is implemented to degrade individuals to inferior statuses (Kamminga, 1992). Feminist scholar Phyllis Chesler, a professor of psychology and women's studies, describes this phenomenon as: "the methods that condemn girls and women to a subordinate, separate existence, while transforming boys and men into eternal guardians of the chastity of their female relatives" (Chesler, 2011). Gender apartheid not only leads to social and economic incapacitation but can also result in severe physical harm (Löwstedt, 2014: 185). In fact, based on the international legal framework prohibiting racial apartheid, the concept of gender apartheid shows how its practice violates fundamental international norms regarding equality and non-discrimination. Similar to racial apartheid, gender apartheid (Babakhani & Ghasemi, 2016).

Similar to racial apartheid, gender apartheid is: a) a government system based on laws and policies that, as a dominant ideology, imposes the systematic separation of women and men, expelling them from public spaces and domains. This system institutionalizes the subjugation

and individualization of women by violating "fundamental principles recognized in international laws, including equality and non-discrimination." Just as racial apartheid violated international human rights norms, gender apartheid is also in stark contradiction to these norms. Gender apartheid erases the humanity of women and controls and scrutinizes every aspect of a woman's existence. It permeates all institutions and public and private spaces, leaving no escape. b) Gender apartheid is a hierarchical system that not only involves the separation of women from men but is also based on male superiority and female subordination; this approach sustains, reinforces, and deepens an unequal hierarchical system. Gender apartheid is based on discrimination, but what is essential to understand is its combined and systematic nature. c) Gender apartheid operates through the legal and cultural institutionalization of discrimination. Establishing a governance system based on discriminatory practices and designed to enforce them elevates abuse to another level (Andre & Haddadi, 2005). This institutionalizes gender discrimination in all political, legal, and cultural government infrastructures; a problem that distinguishes itself from the common patriarchal social norms found in many societies to varying degrees. In a context like the Taliban in Afghanistan, which organizes society along gender lines, the term "gender apartheid" seeks to describe the way in which discrimination has been embedded within the governing system itself, rather than deviating from it, such that the state's goal and public policy is the application of discrimination. This means that the implementation of discrimination is not an exception or deviation from the law but a rule and the law itself. This changes the relationship between the government (or the institution that effectively controls the government) and the discussed discriminatory practices, because the government or ruling institution itself becomes the engine of discrimination. It is no coincidence that the Taliban has provided minimal responses to international pressures in this regard. Their hatred against women is at the core of their governmental structure. All of this illustrates why normal human rights laws and non-discrimination norms are important components of criticism against apartheid but are insufficient to address it. The specific problem that apartheid based on race or gender creates

changes the assumptions of human rights law compared to other forms of discrimination or periodic abuses.

d) Human rights treaties assign a central role to the state, viewing it as the institution responsible for achieving equality. However, when the state apparatus is organized to enforce systematic inequality and its law or policy codifies discrimination as a norm, the international human rights model fails. The state becomes the primary source of discrimination, reinforcing its role in society. This, while violating fundamental international norms, is also an affront to the principles of the rule of law. In such circumstances, close international oversight and global participation are essential to achieving the fundamental objectives of international law. In fact, without these or without "a change in the entire system within the country" in accordance with international laws, achieving those objectives will be impossible.

Given the systemic nature of rights deprivation, the transnational causes of the crisis, and the intractable situation, international legal mechanisms must be fully engaged (Andre & Haddadi, 2005). This is not only crucial for the people of Afghanistan but is also vital for the credibility of international law and the UN system. Recognition of gender discrimination, which the Taliban has imposed on Afghan women since early 2022, has begun among UN experts and women's rights activists. Despite the severe damage inflicted upon women, it has yet to be recognized by the relevant international authorities as a crime against humanity.

Afghan women are in a situation similar to the people of South Africa who suffered from racial discrimination; in South Africa, apartheid laws to impose racial segregation on black people were enacted, just as Taliban-issued decrees against Afghan women have been. The closure of educational centers, including schools and universities, beauty salons, women's baths, and sports halls, depriving women of political, economic, social, and cultural activities, prohibiting women from working in government institutions and foreign organizations, banning women from traveling without a male guardian, preventing women from entering parks, and banning female protests are among the main restrictions and deprivations women in Afghanistan face in the current conditions. Afghan women are isolated from public life and social interactions. There are numerous documents related to human rights, the elimination of

discrimination, the dignity of women, and their basic rights, which those drafting them must use to pay serious attention to the women of Afghanistan. For instance, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) emphasizes equality for women in education, employment, political participation, and access to public spaces; the right to education, employment, healthcare, equality before the law, participation in recreational activities, sports, and all aspects of cultural life, as well as equal rights in marriage and family life. Afghanistan is an unconditional member of this document. Therefore, any regime that takes power inherits Afghanistan's international obligations and is bound to respect them, and no provision of this document specifies any retreat from these commitments.

2.2. *Gender Apartheid of Women in Afghanistan*

Given the Taliban's dominance and the expansion of their radical religious ideologies and medieval, dark thoughts, which are framed as a return to the past Talib era or, in some ways, as Salafism, the situation in the country has worsened. This has effectively eliminated the political participation of women during this period. The Taliban's traditionalist thoughts have made the lives of women more tragic than ever before (Momeni, 2017). With the Taliban's rise to power in the early 1990s, women were faced with a retrogressive decline in their rights; they were deprived of their most basic civil rights, and several actions during this period, such as the prohibition of education, employment, public mobility, and shopping unless accompanied by a husband or male guardian, were implemented. Additionally, women were prohibited from working in foreign charity or relief organizations, even while wearing a burqa. Overall, these actions, along with dozens of other decrees during the Taliban era, led to the confinement of women to their homes (Dadashzadeh & Habibi, 2008).

The Taliban leadership believes that their actions are halting the spread of atheistic education and preventing the corruption of the people of Afghanistan, particularly the Taliban's youth militia. They claim that their sole aim is to protect their sisters from the immoral people of society because they view the primary role of women as that of raising children, and therefore, women should avoid public life and focus solely on domestic duties and child-rearing (Mirjafari et al., 2023).

In terms of politics and governance, the Taliban has not allowed women any participation at any level; they have made discrimination their official policy, removing women from both government structures and non-governmental institutions. They have structured governance based on a religious-tribal ideology, reducing women to a subservient role, and through misogynistic decrees, have subjected women and girls to discrimination, oppression, and exclusion. Girls have been definitively excluded from higher education and women have been deprived of the right to work and earn an income, which has had serious consequences for millions of women and their families. Women have been deprived of rights to freedoms such as free movement, choosing a career, choosing their attire, freedom of expression, participating in media, and holding peaceful demonstrations (Pourbafrani, 2003).

Misogyny is at the core of the Taliban's worldview, and their efforts to erase half of the population from the public sphere are among their primary means of consolidating power. The Taliban leadership claims that their anti-women policies are based on religion, tradition, and respect for women. Despite their rhetoric with Western officials about easing restrictions, they continue to intensify these policies. For the women who grow increasingly isolated and desperate, Afghanistan has become a place where no one can hear their cries.

One of the major challenges for gender security is the lack of active participation in political affairs. The Taliban have ignored women's participation in political and social matters, which has led to opposition from the ruling religious forces. The Taliban's superficial views on women's status in their regime can be seen in decrees that instructed women to stay out of public view as much as possible, depriving them of employment and the right to education. Other prohibitions included driving, trading, and even the use of public baths by women. The Taliban imposed severe and extreme restrictions on Afghan citizens, especially women, in the regions under their control, including banning various social and economic activities. Women were only permitted to leave their homes to attend funerals, visit the sick, or make emergency purchases (Dehghan, 2010, p. 248). Mullah Omar, in line with his views, considered the protection of women's rights to be against Islam and believed that women's social participation would lead to moral corruption (Kashani, 1998, pp. 58-59).

Ashraf Ali Thanawi, a scholar affiliated with the Deobandi school, advised women to limit their social interactions to a few trusted and pious individuals, remain at home, engage in religious duties, and guide others along the same lines (Tavakoli, 2021, pp. 48-50). He stated that it was not appropriate for women to attend mosques and that, although certain tasks may not be equal to acts of worship, leaving the house for such purposes should not be considered acceptable. Therefore, leaving the home for trivial gatherings or customary ceremonies should certainly be deemed wrong (Rasouli & Mohammadi, 2023).

The Taliban ideology is based on the belief that women are the symbols of the honor and dignity of men and must be protected. Therefore, under this view, the only duty of women is to stay at home and protect themselves. They should avoid participating in political and social activities (Khavari & Simber, 2022).

The Taliban's restrictions on education and working outside the home for women, in addition to limiting access to healthcare, education, and public participation, have also deprived Afghan women of political-social opportunities. They have justified these actions as a means to protect society and women from cultural invasion (Anisi, 2004). During this period of repression, due to unfavorable working conditions, many skilled women left the country, which severely impacted the thirty thousand widows residing in Kabul and women who were the sole breadwinners for their families. In the end, many international non-governmental organizations operating in the country had to shut down or dissolve their centers due to the ban on women working. In reality, women were erased from the economic sphere of society, and the negative perceptions of men and the general public about women's inability to fulfill social roles led to a fear of women's social presence (Hosseini, 2018).

The situation of women in Afghanistan has turned into a full-fledged crisis after the Taliban's return to power over the past two years. The Taliban are deepening divisions that are unprecedented in the modern world, and few outside the country can comprehend the extent of these divisions. During the first Taliban regime, between 1996 and 2001, the treatment of women was extremely brutal, and this approach has worsened in the second regime (Khavari & Simber, 2022).

Although no challenges or barriers existed in the laws during the 20 years of the Republic system, some women refrained from exercising their rights due to security concerns and limiting traditions. Overall, in many remote and insecure regions, women's political participation was lower than that of men, and in some areas, it was nonexistent. Among the main obstacles to women's political participation were traditional beliefs, illiteracy, a lack of public awareness about gender equality in elections, economic problems related to the cost of travel to voting stations, and the shortage of female police in local areas. Despite significant efforts in recent years to increase political participation among women, with the fall of the Republic system and the return of the Taliban to power, Afghanistan, like in all other areas, has reverted to the past 20 years. Women no longer have any role or place in the political and social structure of the country. The lives of women are now confined to the corners of their homes, and their roles are limited to household duties. The Taliban's interpretation of women has no place in today's world, and unfortunately, the international community has not taken any constructive action in response to this. It remains to be seen whether women will ever regain the position granted to them by religion and modern laws or whether they will remain in this darkness.

3. International Criminal Court and Combatting Gender Apartheid of Women in Afghanistan

This section examines the role of the International Criminal Court (ICC) in combating gender apartheid against women in Afghanistan.

3.1. *The Possibility of Replacing Racial Apartheid with Gender Apartheid*

The three elements of the crime of apartheid, derived from the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute, are: 1) the intention to maintain the domination of one racial group over another, 2) a systematic context of oppression by one racial group over another, and 3) inhuman acts. If "gender" and/or "sex" are substituted for "racial group," it is clear that the Taliban in Afghanistan easily meet all three necessary elements for their regime to be classified as one of gender apartheid. The question we then face is whether international law can permit such a substitution (gender for race)? The

prohibition of discrimination based on sex, like racial discrimination, is a cornerstone of modern international legal order. In fact, the right to non-discrimination on any ground, including gender, is one of the few human rights explicitly mentioned in the United Nations Charter. The preamble to the Universal Declaration of Human Rights emphasizes that "the peoples of the United Nations have in this Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women." Based on this principle, every fundamental document in the international human rights bill guarantees gender equality. Two binding treaties, which define the scope of rights in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, not only include a prohibition on gender discrimination but also impose positive obligations for the substantive equality of men and women in enjoying all rights. Article 2 of the International Covenant on Civil and Political Rights states that all parties must "guarantee that the rights recognized in the Covenant will be enjoyed without discrimination of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status." Article 3 specifically states that all parties must "ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in this Covenant." The inclusion of Article 3, focusing solely on gender among the grounds of discrimination, underscores the centrality of the human rights project in addressing this particular form of discrimination. Articles 2 and 3 of the International Covenant on Economic, Social, and Cultural Rights provide nearly identical guarantees. Each of these standards is binding on Afghanistan and any institution administering it.

While the United Nations Charter establishes the foundation for gender equality and non-discrimination, the International Human Rights Bill provides for its enforcement, the Convention on the Elimination of All Forms of Discrimination Against Women has created a high level of protection for women's rights. This treaty, focused solely on ending discriminatory behavior against women, currently has 189 member countries and two signatories, making it one of the most important global human rights treaties. The Convention contains many provisions related to gender equality, including

those in Article 2, which stipulates: (a) the inclusion of the principle of equality between women and men in the constitution or other relevant national laws, if not already provided, and ensuring its effective realization through law or other appropriate means; (b) the adoption of appropriate laws or other measures, including sanctions if necessary, to eliminate discrimination against women; (c) the establishment of legal protection for women's rights on the basis of equality with men and ensuring effective protection against any discriminatory acts through competent national judicial bodies and other government institutions; (d) the prohibition of any discriminatory acts or practices against women and ensuring the implementation of these commitments by government agencies and institutions; (e) the adoption of all appropriate measures to eliminate discrimination against women by any individual, organization, or private company; (f) the necessary steps, including the enactment of laws, to amend or repeal laws, regulations, customs, or practices that discriminate against women; (g) the repeal of all national criminal provisions that lead to discrimination against women.

This Convention explicitly includes the fight against gender-based discrimination concerning many human rights under the reciprocal framework of international human rights law, including the right to political participation and access to public spaces, the right to education, employment, healthcare, and equality before the law, and the right to participate in recreational activities, sports, and all cultural life aspects, as well as equal rights in marriage and family life. In fact, the Convention includes a more general obligation to eliminate discrimination in all areas, as stated in the general terms of Articles 1 to 3. The Convention on the Elimination of All Forms of Discrimination, which provides the most aspirational article of the entire body of international human rights law, mandates in Article 5(a) that states parties take all appropriate measures to reform the social and cultural patterns of behavior of men and women to eliminate prejudices and all traditional practices that are based on the notion of the inferiority or superiority of either sex or the perpetuation of stereotypical roles for men and women. Women's rights advocates worldwide view this transformative norm as essential, as it shows that in international law, it is not culture that dominates

women's rights but rather gender equality that will shape the future human rights cultures. The Convention's Committee, as the monitoring body for the implementation of the Convention, has emphasized that in interpreting this Convention, "states parties are obligated to address cultural barriers to equality rather than relying on culture as an excuse for not advancing equality." Even culture (which includes religion, as the Convention does not make specific reference to it) cannot disregard the "faith" international law has in the equality of women.

By intertwining these strands, the fabric of women's equality in international law is normatively strong and cannot be trampled or annulled. This issue also applies to women's rights in Afghanistan. The Committee on Economic, Social, and Cultural Rights, the body monitoring United Nations treaties overseeing the implementation of the International Covenant on Economic, Social, and Cultural Rights, has rightly stated in its General Comment No. 16 that "the equal right of men and women to enjoy all human rights is one of the fundamental principles recognized under international law and is incorporated into the core international human rights instruments."

Similar to the framework for gender discrimination, foundational international human rights documents, including the United Nations Charter and the International Human Rights Bill, explicitly prohibit racial discrimination, and the International Convention on the Elimination of All Forms of Racial Discrimination aims to create an international community free from racial discrimination and segregation. This Convention specifically emphasizes in Article 3 that "states parties condemn racial segregation and apartheid and undertake to prevent, prohibit, and eliminate this type of discrimination in their territories." While racial discrimination is rightly considered a peremptory norm, gender discrimination is often understood as a desirable (ideal) law. In 2019, the International Law Commission (a body with few women members) refrained from adding new peremptory norms to its existing list, which includes systemic racial discrimination but excludes gender. However, the case law of the Inter-American Court of Human Rights generally treats the principles of "equality and non-discrimination" as binding legal norms, stating that "the principle of equality before the law... and non-discrimination belong to the peremptory

law because the entire structure of national and international public order is based on it, and it is a fundamental principle in all applicable laws."

This Commission, despite positive evidence, ignores the human rights norms related to gender equality and international judicial practice over the past decades. Therefore, such an approach serves "to marginalize gender and devalue the interests and experiences of women [and] girls..." Thus, in response to such an approach, the concept of gender apartheid is needed as a correction for such an institutional breakdown.

Some scholars argue that due to the explicit classification of racial discrimination as a peremptory norm and the differences in treaties, international law has created a "hierarchy of forms of discrimination," where racial discrimination takes precedence over other forms. However, this interpretation contradicts the explicit language of the United Nations Charter, which obligates states to promote the universal enjoyment of human rights without discrimination based on gender and race. The language of international human rights law and newer international instruments explicitly places racial and gender discrimination (and other forms) on an equal priority (Rasouli & Mohammadi, 2023).

Perhaps because gender discrimination—such as that imposed by the Taliban—is often mistakenly coded as a "cultural matter," while racial discrimination is rightly understood as a political project, the human rights consequences of systematic discrimination against women are less reflected in the international system. This reflects a flawed framework that ignores the political consequences of discrimination against women and the political commitment of some states and rulers to it.

Just as there were norms for racial equality in South Africa, the violations of gender discrimination norms by the Taliban are so pervasive and blatant that tolerating them harms the entire international system supporting women's rights and weakens these rights everywhere. The Taliban have previously demonstrated that they are largely immune to criticism and indifferent to it. This means that, in order to support women's rights in practice, as well as to maintain the integrity of the international system that guarantees women's rights everywhere, an intense international response is needed. The legal entrenchment of racial inequality "in all areas of life" distinguished South Africa from other

repressive regimes. "The nature of apartheid" is a situation of systemic discrimination supported and maintained by the state. The illegality of apartheid was initially recognized for racial reasons in South Africa, but this principle can and should be extended to gender apartheid, based on the prohibition of discrimination in all fields. Despite opponents' claims, there is no exception called culture regarding such prohibitions.

3.2. *The Possibility of Combating Gender Apartheid as a Crime Against Humanity*

An important question addressed in this section is whether the gender discrimination practices by the Taliban against women in Afghanistan can be considered a crime against humanity. In the current situation, with the intensification of restrictions, discriminations, and the suppression of women by the Taliban, it is essential, alongside addressing gender apartheid, to pursue alternative and feasible solutions according to existing international norms and laws to address the actions of the Taliban against women. One such framework is the use of the International Criminal Court (ICC). According to the Rome Statute, gender-based torture is classified as a crime against humanity. Crimes against humanity are among the most egregious international crimes. Under Article 7 of the Rome Statute and the International Criminal Court, crimes against humanity are those acts committed as part of a widespread or systematic attack against a civilian population, with knowledge of the attack. These include torture, sexual violence, extermination, enslavement, deportation or forced displacement, imprisonment, forced sterilization, forced pregnancy, and other inhuman acts deliberately carried out with the intent to cause great suffering or harm to physical or mental health. Article 7 of the Statute defines and sets the elements of crimes against humanity, listing eleven acts as examples. According to Paragraph 1 of this article, "crimes against humanity are any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder, (b) Extermination, (c) Enslavement, (d) Deportation or forcible transfer of population, (e) Imprisonment or severe deprivation of physical liberty in violation of the fundamental rules of international law, (f) Torture, (g) Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of

sexual violence of comparable gravity, (h) Persecution against any identifiable group or collective on political, racial, national, ethnic, cultural, religious, or gender grounds, as defined in paragraph 3, or other grounds universally recognized as impermissible under international law, (i) Enforced disappearance of persons, (j) Apartheid, (k) Other inhuman acts of a similar nature intentionally causing great suffering or serious injury to body or mental or physical health."

Upon careful examination of the article's preamble, it becomes evident that committing any of the listed acts, under the condition of being "systematic," "widespread," and "directed against a civilian population," can be considered a crime against humanity. Therefore, the gender-based discrimination carried out by the Taliban could potentially align with various sections of this article, including subparagraph (h), which refers to "Persecution against any identifiable group or collective on grounds of... gender." Given the Taliban's implementation of laws regarding gender discrimination, the organized and premeditated nature of these actions is also evident. Additionally, the widespread nature of gender discrimination practices is undeniable. Therefore, it seems that the conditions for committing a crime against humanity through the persecution and harassment of women are present. However, such persecution and harassment could take various forms, such as depriving women of education, forcing them to wear specific clothing, prohibiting gatherings and interactions with men in public spaces, or requiring them to wear gloves when handling money or goods in stores. Failure to comply with these forms of discrimination may result in the most severe penalties. Generally, such persecution and harassment occur when victims are forced to do or refrain from doing things that, according to international legal standards, violate their fundamental rights. What is significant is the severe and deliberate deprivation of basic rights, which is imposed based on the target population's membership in a specific group—in this case, women (Cassese, 2013). In other words, the persecution and harassment referred to in this section involves a violation of the fundamental right to equality, to the extent that it leads to the denial of one of the primary or fundamental human rights (such as the right to freedom of movement, the right to education, the right to dress, and the right to protection from violence) (Kamminga, 1992). As international

criminal law experts have noted and as the International Criminal Court has confirmed, there is no exhaustive list of the examples of persecution and harassment described in this section, and in fact, its examples may be expanded and are not limited (Rober Cryert, et al., 2010: 259). This is justifiable because gender-based harassment is so widespread that it is unrealistic to expect it to be fully captured in a single legal provision. Furthermore, harassment does not necessarily mean physical harm; it can also include psychological or emotional abuse.

Sexual harassment as a crime against humanity was first criminalized by the Rome Statute, the treaty that established the International Criminal Court, which was adopted in 1998 and entered into force in 2002. This term refers to "any crime within the jurisdiction of the Court that is based on the gender of the individual or individuals harmed." The crimes under the Court's jurisdiction include genocide, crimes against humanity, war crimes, and the crime of aggression (see Articles 5 to 8 of the Rome Statute). Furthermore, Article 7 criminalizes "Persecution against any group or population identifiable on political, racial, national, ethnic, cultural, religious, or gender grounds, as defined in paragraph 3, or on other grounds universally recognized as impermissible under international law" (Article 7 (1) (h)) or "Harassment" as "the intentional and severe deprivation of fundamental rights contrary to international law on the basis of the group's or population's identity" (Article 7 (2) (g)).

Acts that fall within the jurisdiction of the International Criminal Court and violate the fundamental rights of women and girls as a collective, if they meet the Court's criteria, may be classified as sexual harassment. These acts or omissions must be "systematic or widespread," "intentional," and involve "severe deprivation of fundamental rights contrary to international law."

Some criminal acts under the jurisdiction of the International Criminal Court are considered crimes against humanity if they are "committed as part of a widespread or systematic attack with knowledge of the attack, against a civilian population." These crimes are listed in Paragraph (1) of Article 7 of the Rome Statute: murder; extermination; enslavement; deportation or forcible transfer of populations; imprisonment or other severe deprivation of physical liberty in violation of fundamental international law; torture; sexual violence,

sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity; enforced disappearance of persons; apartheid; or other inhuman acts intentionally causing great suffering or serious injury to body or mental health.

To determine whether the discriminatory restrictions imposed by the Taliban against Afghan women and girls qualify as a crime against humanity of gender-based persecution, the Taliban's policies must be assessed in accordance with Article 7 of the Rome Statute and other relevant documents, such as the Office of the Prosecutor's "Policy on Gender-Based Crimes" and the "Elements of Crimes." The term "deprivation of fundamental rights" is not defined in the Rome Statute, but examples of these rights are now listed in the new "Policy on Gender-Based Crimes" published by the Office of the Prosecutor of the International Criminal Court in December 2022 (paragraph 24): the right to life, freedom from torture or other cruel, inhuman, or degrading treatment or punishment; freedom from slavery, servitude, and trafficking; freedom of assembly, thought, expression, movement, and religion, including the right to freedom of religion; rights to equality, dignity, bodily integrity, family, privacy, security, education, employment, property, political or cultural participation, access to justice, and healthcare. Violations of human rights, whether individually or cumulatively, can result in severe deprivation of fundamental rights.

4. Conclusion

Gender apartheid is not yet recognized as an international crime, and both the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute only address it as part of crimes against humanity, such as sexual harassment. In fact, "gender apartheid is antithetical to fundamental norms of international law," and "gender apartheid annihilates the humanity of women, controlling and scrutinizing every aspect of their existence." According to international law, "apartheid" is considered a crime against humanity; however, there are still ambiguities in international law regarding "gender apartheid." Although the term "gender apartheid" has been frequently mentioned in reports and statements from human rights experts, especially concerning Afghanistan, it has not yet been officially defined or

criminalized as a specific crime in international law. The concept of gender apartheid in international law is generally discussed as a form of discrimination based on gender, but it has not yet been formally defined as a distinct crime in international law. In many international documents and core human rights principles, gender-based discrimination is considered a human rights violation, and actions have been taken to address it. For instance, the International Covenant on Economic, Social, and Cultural Rights ensures that all individuals, without discrimination, enjoy the rights specified in the covenant, and the Convention on the Elimination of All Forms of Discrimination against Women calls for the eradication of all forms of gender discrimination and guarantees women's rights in all social, economic, and cultural aspects, where the concept of gender apartheid is a key issue. The Convention on the Rights of the Child also ensures the rights of children, including boys and girls, in various fields, which implies the prohibition of gender apartheid.

In general, the concept of gender apartheid has increasingly been discussed in global literature due to growing attention to gender discrimination and injustices. This concept continues to develop and receive more focus. If gender apartheid is formally defined as a specific crime and incorporated into international law, the international community would be obligated to establish mechanisms to prevent and hold accountable governments that systematically perpetrate gender apartheid. If gender apartheid is recognized, more equitable laws and policies will be implemented to guarantee gender and gender identity rights, and gender-based discrimination in various areas will be prevented. The existing laws on racial apartheid could serve as a forward-looking and gender-sensitive model to achieve sustainable development goals in gender equality, as agreed upon by all governments. In other words, conventions and standards related to racial apartheid could be directly applied to gender apartheid. Such an approach is not unprecedented in international law. For example, when the Committee on the Elimination of All Forms of Discrimination issued General Recommendation No. 19, it framed violence against women within the scope of the Convention, even though the term "violence" was never mentioned in the 1970s Convention. No state opposed significantly expanding the scope of their obligations, although it

must be acknowledged that these commitments remain within the realm of gender.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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Declaration of Interest

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Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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