

## LEGAL SYSTEM UNDER THE TALIBAN

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### ABSTRACT

*This study examines the legal system of Emirate Islami Afghanistan, which was established after the Taliban regained power in 2021. It focuses on understanding the structure, foundational documents, and ideological influences that shape the dispensing of justice within the country. The research also explores the processes involved in civil and criminal cases, as well as the methods by which judges are appointed, highlighting their autonomous roles within the judicial system. Data for the study was gathered through in-depth interviews with approximately 15 individuals, including professionals from the Ministry of Justice and legal experts. The study's findings reveal that the Afghan legal system places significant power in the hands of individual judges, who are responsible for both prosecuting and delivering justice. These judges are selected based on their expertise in Hanafi Sharia jurisprudence, which forms the core framework guiding Afghanistan's legal system. The study suggests that the concentration of judicial authority within a single judge reflects a system where legal decisions are heavily influenced by religious interpretations, particularly those rooted in Hanafi thought. This concentration of power and reliance on a specific school of Islamic law highlights the system's distinct approach to governance and justice, differing from more pluralistic or democratic legal frameworks. Ultimately, the research sheds light on how the legal system of Emirate Islami Afghanistan functions, focusing on the role of judges, the influence of Sharia law, and the centralization of legal authority within the country.*

### INTRODUCTION

This paper is intended to understand the legal system of Afghanistan under the new government of the Taliban. As the Taliban came to power, they have abolished all the legal, political and economic structures of the previous government to install their own, according to their version of Islam. This study is thus an attempt to understand

the legal system of the new regime in Afghanistan. The study primarily focuses the legal structures through which justice is dispensed and criminal and civil cases are dealt at the national and local level. The paper explores the role of a judge and how judges are selected from the national level to the locality. The existing literature on the legal

and legislative system of the Taliban suggests that the Emirate appears to lack a coherent perspective on law and legislation. Divergent jurisprudential interpretations of the Holy Quran and the Prophet's hadiths are among the many causes that lead to this uncertainty. The problem is further complicated by the Islamic Emirate system's lack of a strong legal structure and its different approaches from international standards. Notably, the Emir's decrees, which are sometimes seen as mandatory, get particular attention (Mudaqiq et al., 2024).

On August 15, 2021, the Taliban quickly took over Afghanistan's political scene with the fall of the republican administration and the withdrawal of foreign soldiers. They then made the Islamic Emirate the model for governance, however even after over three years after they came to power, the Taliban's Islamic Emirate is still not accepted by the international world and has no legitimacy at home. There is no clear description of the form, nature, and organizational structure of the Taliban's Islamic Emirate system, making it an unusual political model in the modern period. Attempts to understand the theoretical and empirical foundations of the Taliban's political organization are hampered by the lack of a clear description of the Emirate system in political structure (Andrew Watkins, 2023). As a result, there is little clarity on the form and workings of the political system that the Taliban established. Furthermore, the Taliban's rule is distinguished by the lack of official rules and legislation, with the exception of sparse texts like Abdul Hakim Haqqani's "Islamic Emirate and Systems" and the Taliban's "Islamic Emirate Sharia Law," which consists of only fifteen articles primarily addressing moral behavior and basic security. The Taliban, who consolidate power under the Amirul Momineen's nominal leadership, are notable for their unwillingness to create extensive legal frameworks and instead depend on a simplified interpretation of Islamic texts to regulate society and conduct governmental activities (Bahman, 2024a).

According to reports, persons with no formal legal education who are Taliban members and have a basic understanding of Islamic law from the eighth century hold extraordinary influence over

the destiny of defendants and the settlement of civil cases in Afghan towns and villages. The majority of cases are settled quickly under this summary legal system, and a decision is frequently rendered on the initial appearance before a tribunal. After brief speeches by the plaintiffs and defendants, a decision is made (Ugarte, 2023).

Even in the most serious criminal cases, comprehensive verdicts are uncommon since prosecutors seldom conduct investigations and deliver the information to juries or courts. The Taliban's deputy chief justice, Abdul Malik Haqqani, stated that the new system requires all procedures to be handled in front of a judge, without the assistance of public prosecutors, from case assignment to charge and sentencing. "A judge's judgment cannot be based on the findings of a prosecutor's inquiry. Our Sharia beliefs are as follows," Haqqani said on local television. The Taliban's legal system is unique in that it operates quickly. Over 200,000 cases have been decided by Taliban judges in the first two years of their reign, free from bureaucratic red tape, including many that had been backlogged in the previous government's judiciary (Akmal Dawi, 2023). It is thus important to understand the structures of legal system in Afghanistan under the Taliban.

Existing studies on the Taliban government have primarily concentrated on its policies, particularly within Afghanistan, and its foreign policy approaches. Researchers have explored the government's stance on issues like human rights, governance, and its control over the country, often analyzing its impact on regional security dynamics. Much of the scholarly focus has been on the Taliban's efforts to gain international recognition and their global outreach, seeking to solidify their legitimacy in the eyes of the international community. This includes discussions on diplomatic relations, economic strategies, and the challenges posed by their controversial leadership (Ron Synovitz, 2022).

However, this study narrows its focus to only two specific studies that are closely linked to the central question being investigated. Sayed Nasim (2024) provides an in-depth analysis of the Islamic Emirate system, focusing on its nature, structure, and key characteristics. The study

highlights several traits of the Taliban's governance, such as its autocratic and totalitarian tendencies. It emphasizes personalized governance, where power is concentrated in the hands of a few individuals. The study also notes a systematic disregard for the rule of law, with decisions made based on authority rather than legal frameworks. Additionally, the study identifies patriarchal tendencies and a strong inclination toward monopolizing power. These features offer a clearer understanding of the Taliban's unique governance structure (Bahman, 2024)

Haroon Rahimi (2022) offers a comprehensive discussion on the ideological foundation of the "vaguely" defined legal system under the Taliban. He explores critical questions regarding the implications of the Taliban takeover for Afghanistan's legal institutions and the future trajectory of the country's laws. Rahimi delves into the Islamic Emirate's approach to legal institutions and its treatment of rights. He argues that the Taliban's system draws inspiration from the Deobandi-Ikhwani interpretation of Islam, attempting to create a legal and political framework based on this ideology. However, Rahimi contends that the system remains vague and lacks clarity (Rahimi, 2022). This study thus centralize the question of structure and procedures of the legal system to have some clarity about the legal system under the Taliban.

### Methodology

This study is qualitative in nature, aiming to critically evaluate and analyze the legal system under the Taliban in Afghanistan. The paper's primary goal is to understand the structure and functioning of the legal system, from its upper echelons down to local practices. It seeks to answer several key questions regarding the dispensation of justice under Taliban rule, including how civil and criminal cases are handled, the accessibility of justice for citizens, and the legal framework that guides these processes. Additionally, the study explores the selection and procedure for becoming a judge, shedding light on the inner workings of the legal system.

To address these complex questions, the study draws on data collected from 15 individuals who possess expertise in law under the Taliban regime. These individuals, who are primarily law professionals, lecturers, or experts working within the Taliban's legal departments, provided insights into the legal system. Due to the sensitive nature of the topic and the potential for repercussions under Taliban rule, most participants requested to remain anonymous. This anonymity reflects the prevailing climate of fear and censorship that limits open discourse in Afghanistan under the current regime.

The data collected is analyzed thematically, focusing on the core issues identified in the study's objectives. By organizing the information in this way, the paper aims to present a clearer picture of how justice is administered in Afghanistan, particularly under the Taliban's rule. This thematic analysis allows for a deeper understanding of the legal procedures, challenges, and limitations people face when seeking justice in such a repressive environment. Through this method, the study strives to offer an accurate and comprehensive evaluation of the Taliban's legal system.

### Legal system in Afghanistan under the Taliban

This section is primarily based on the data collected through in-depth interviews. The section is started with a general question about the legal system in Afghanistan and then different sides of the systems are analyzed. When the Taliban came to power, they have abolished the whole political system of the previous government. Asmat Ullah, a law professional and local EIA official was of the view that "After the Islamic Emirate regained power in Afghanistan; there have been profound changes in the justice and judicial system. The prosecution authorities have been abolished, the role of defense lawyers has been reduced, the powers of the courts have been increased, previous laws have been repealed, and new administrative-judicial regulations have been enacted."

Ahmed Norzai, a legal expert, was of the view that "After the Islamic Emirate came to power in Afghanistan, the justice and judicial system was in a state of uncertainty for a while, but recently



its affairs have become somewhat organized, but not in the way that the justice and judicial system requires.” In order to understand the current state of Afghanistan’s judicial system under the re-established Islamic Emirate, we asked respondents to evaluate it. Their insights provide varying perspectives on the functioning and challenges of the system. Ahmed Norzai, a legal expert, shared his evaluation of the judicial system by noting that following the return of the Islamic Emirate to power, the judicial system was initially in a state of uncertainty. According to him, while the system has recently become somewhat more organized, it still falls short of meeting the necessary standards required for a functional and fair justice system. Norzai’s perspective suggests that while some progress has been made, significant challenges remain in ensuring a just and consistent legal framework.

Janbaz Qadir, a local official in EIA, said that “The justice and judicial system of the Islamic Emirate is implemented based on personal relationships. Where relationships are cordial, any case is dismissed, and where cases are referred to the general public, they are fully implemented.”

Janbaz Qadir, a local official within the Islamic Emirate of Afghanistan (EIA), provided a different view. He argued that the judicial system under the Taliban operates largely on the basis of personal relationships. According to Qadir, the outcome of cases often depends on the nature of the relationships involved. If the relationships are cordial, cases tend to be dismissed, potentially undermining fairness and equality before the law. However, when cases are presented to the general public or involve broader issues, they are fully implemented, suggesting a more rigid approach to justice in some situations. Qadir’s assessment reflects a system where informal networks and personal ties appear to play a significant role in judicial outcomes, rather than strict adherence to legal principles or consistency.

When asked about the foundation of the judicial and legal system under the Taliban, respondents provided differing perspectives, reflecting both idealized and practical understandings of how the system operates. Amjad Haqqani, one of the respondents, offered a straightforward response, stating that the judicial and legal system is based

on “Islamic Sharia, Hanafi jurisprudence.” This reflects the official stance of the Taliban, which claims to implement a legal framework grounded in Islamic principles, particularly the Hanafi school of thought. Hanafi jurisprudence, one of the four major Sunni schools of Islamic law, is often emphasized as the guiding doctrine for legal matters under Taliban rule.

Akbar Syal, a local lecturer of law said that “According to them, the basis is the Quran, Sunnah, consensus, analogy, and Hanafi jurisprudence, but unfortunately, in reality, they do not refer to any of these. And whatever the authorities want, they carry out the same actions.” Akbar Syal, offered a more critical evaluation of the situation. According to him, while the Taliban formally asserts that the legal system is based on foundational Islamic texts—such as the Quran, Sunnah (the practices of the Prophet Muhammad), consensus (Ijma), analogy (Qiyas), and Hanafi jurisprudence—this ideal is often not reflected in practice. Syal expressed concern that in reality, the judicial and legal processes rarely adhere to these principles. Instead, he argued that the authorities tend to act based on their own interests, without following a clear, consistent legal framework. This observation suggests that while the Taliban’s stated legal foundation is rooted in Islamic law, there may be significant discrepancies between the theory and the practice of justice under their regime.

Syal’s critique highlights a key challenge in understanding the Taliban’s legal system: the disconnect between the formal structure of Islamic law and the realities of its application. The idealized view, as expressed by Haqqani, emphasizes a clear adherence to Islamic legal principles, whereas Syal’s assessment reveals a more flexible, sometimes arbitrary application of those principles in practice. This gap raises important questions about the consistency and fairness of the judicial system under the Taliban. It suggests that the legal system may not be as transparent or predictable as it is presented, with decisions often shaped by the preferences and political considerations of the authorities in power, rather than by established legal norms.

#### **Structure of the legal system:**

When asked to evaluate the structure of the judicial system under the Taliban, respondents provided valuable insights into how the legal system is organized from the national level down to local districts and villages. Khyber Dawodzai, a local official of the EIA said that “The structure of the current system’s judiciary is such that, with the Supreme Court as the highest authority, there are appeal courts in each province, and primary courts in cities and districts.” Khyber Dawodzai, a local official of the Islamic Emirate of Afghanistan (EIA), offered a general overview of the judicial structure, describing a hierarchical system with clear divisions of authority. According to Dawodzai, the highest judicial authority is the Supreme Court, which oversees the overall functioning of the judicial system. Below the Supreme Court, there are appellate courts in each province, which serve to handle appeals and review decisions made by lower courts. At the local level, primary courts are established in cities and districts to address a wide range of legal cases. This structure, according to Dawodzai, ensures a system of checks and balances, with each level of the judiciary performing its specific function in the administration of justice.

Ikram Hamdard, a high level official said that “In every district, from the capital Kabul to the provinces and remote areas and districts, judicial administrations or courts are present and available to resolve people's cases. No district is left without a judicial organization or courts.” Ikram Hamdard, a high-level official within the EIA, provided further clarification on the presence and accessibility of the judicial system throughout the country. He emphasized that judicial administrations and courts are available in every district, from the capital city of Kabul to remote provinces and districts. According to Hamdard, no district is left without a judicial organization or court, which suggests that the Taliban has made efforts to establish a judicial presence across the entire country, even in more isolated areas. This indicates a broad commitment to ensuring that people in both urban and rural areas have access to legal services and the opportunity to resolve their cases through the judicial system.

These responses highlight the Taliban’s efforts to create a nationwide judicial framework with multiple levels of authority. The structure is designed to provide access to justice at every administrative level, ensuring that people can seek legal redress regardless of their location. However, while the system appears well-structured in theory, its effectiveness and accessibility in practice are areas that would require further scrutiny, especially in terms of the quality of justice provided and whether it adheres to international standards.

Qadir Shinwari, a university professor was of the opinion that “There is a hierarchy of courts in it, but they generally do not accept the review of decisions and say that there is no criticism of Sharia and that our decisions are Sharia.” Qadir Shinwari, a university professor, offered a critical perspective on the judicial system under the Taliban, particularly regarding the issue of reviewing judicial decisions. According to Shinwari, the court system does have a hierarchical structure, suggesting that there are different levels of courts that handle legal cases. However, he pointed out a significant limitation in the functioning of the judicial system. He explained that, despite the existence of this hierarchy, the courts generally do not accept the review of their decisions.

Shinwari emphasized that the Taliban's judiciary often claims that its decisions are based on Sharia law, and as a result, they consider such decisions beyond critique or review. In this view, since the decisions are grounded in Islamic law, there is no room for questioning or challenging them. This stance reflects a rigid interpretation of Sharia, where the courts assert that their rulings are final and cannot be disputed, even within the judicial system. This lack of willingness to accept reviews or challenges to decisions could be seen as a limitation on the fairness and transparency of the judicial system, potentially undermining the right to a fair trial and the protection of legal rights for those involved in legal proceedings under the Taliban regime.

Muhaymin Sarwari, a law professional and expert was of the view that “Whenever a system or law is created, it should be shared with the public first. The first step is to get a vote from the people and

explain its positive and negative points to the people. But unfortunately, the judicial system of the emirate is created solely and exclusively by the personal orders of a few individuals inside a room, which also does not respect any professionalism. So what I mean is that no vote or consultation has been taken from the citizens of the country regarding this judicial system, nor does anyone have complete knowledge of it.” Muhaymin Sarwari, a law professional and expert, provided a critical evaluation of the judicial system under the Taliban, particularly with regard to its development and lack of public involvement. According to Sarwari, when any legal system or framework is created, it should be shared with the public as a first step. He emphasized that it is essential for the people to be informed about the system, including both its positive and negative aspects, and for their input to be sought through a public vote or consultation process. This approach, in Sarwari’s view, ensures that the system is not only legitimate but also aligned with the needs and values of the citizens it aims to serve.

However, Sarwari criticized the way the Taliban’s judicial system was established. He argued that the current system was created solely through the personal orders of a few individuals in a closed setting, with little or no transparency. According to him, this process lacked public consultation and failed to involve the broader population in any meaningful way. Sarwari pointed out that, as a result, there has been no opportunity for the citizens of Afghanistan to provide input on the judicial system or to express their concerns or support for it.

Additionally, Sarwari noted that the lack of professionalism in the creation of the judicial system is a significant concern. Without proper consultation or involvement of experts, the system may be ineffective and fail to address the needs of the people. He suggested that the absence of public participation and the top-down, closed nature of the system undermine its credibility and legitimacy. Furthermore, the lack of transparency and public awareness about how the judicial system functions or its guiding principles contributes to confusion and distrust among the population. Sarwari’s evaluation highlights the lack of inclusiveness and professionalism in the

creation of the Taliban’s judicial system. His concerns underscore the importance of public participation and transparency in building a legal system that is not only effective but also seen as legitimate by the people it serves.

### **Dispensing Justice in Civil and Criminal Cases**

When asked about the procedure through which people are given their rights within the Taliban’s judicial system, he, explained the process in two main steps. Jameel Akhund a local professional said that “In the first step, attempts are made to resolve cases informally. When the informal case is not resolved, they then submit it to the court procedure and protect the rights of the people.” He emphasized that the first step in resolving legal cases involves informal attempts to reach a resolution. This means that before a case is formally submitted to the court system, efforts are made to settle disputes through informal channels, which may include mediation or discussions between the parties involved, often facilitated by local leaders or community figures. This approach reflects a preference for resolving issues outside of formal legal procedures, which can be more time-consuming and complex. However, Akhund noted that if the case is not resolved informally, it then progresses to the formal court system. In this stage, the judicial process takes over, and the rights of the people involved are protected through legal proceedings. At this point, the case is handled according to the court procedures, ensuring that the rights of the individuals are considered and upheld in accordance with the legal framework in place. This two-step process, starting with informal resolution and followed by formal legal action if necessary, outlines how the judicial system attempts to address the rights of individuals in Afghanistan under the Taliban’s regime.

Ahmed was of the view that “There is no such thing as a procedure within the system in the Emirate. The personal nature and will of the officials of the competent bodies are both the law and the procedure.” Ahmed offered a critical perspective on the judicial system under the Taliban, stating that there is no formal procedure in place. According to him, the system lacks a structured or standardized process for handling



legal cases. Instead, decisions are based on the personal nature and will of the officials in charge of the competent bodies. This suggests that the actions and rulings within the system are not governed by established rules or procedures but are instead influenced by the individual preferences and decisions of those in power. Ahmed's view highlights a significant flaw in the judicial system, where the unpredictability and inconsistency of decisions can undermine the fairness and reliability of legal proceedings. If officials have the authority to act based on personal judgment rather than a clear legal framework, it can lead to arbitrary decisions, favoritism, and a lack of accountability. This situation also diminishes the possibility of justice being administered uniformly, as individuals' rights may be decided by the whims of those in power, rather than by a transparent, rule-based process. Overall, Ahmed's assessment underscores the absence of formal procedures and the reliance on personal discretion in the Taliban's judicial system.

Sarwari was of the opinion that "In the mentioned judicial system, the specific procedure for people to obtain their rights is the legal administration and courts, which can claim and submit petitions to obtain their rights." Sarwari provided a more structured view of the judicial system under the Taliban, highlighting the specific procedure through which people can obtain their rights. According to him, the primary route for individuals to seek justice is through the legal administration and courts. In this system, people have the option to submit petitions, formally requesting the protection or enforcement of their rights. This process emphasizes the role of the legal institutions in addressing grievances and claims, allowing citizens to engage with the judicial system to resolve disputes.

The key element in Sarwari's perspective is the formal legal process that enables individuals to claim their rights through the courts. This implies that the judicial system, at least in theory, provides a mechanism through which people can pursue legal action and seek remedies for any wrongs they have suffered. By submitting petitions, individuals can present their cases to the courts, where their rights are to be examined and

upheld according to the legal framework in place. However, Sarwari's view also suggests that while the legal administration and courts are supposed to facilitate the protection of rights, the actual effectiveness and accessibility of this process may depend on various factors, including the transparency and fairness of the judicial system itself.

Jamshed Qadir provided an explanation of how criminal and civil cases are handled within the Taliban's judicial system. Jamshed Qadir was of the view that "To handle criminal cases, there is a department called the Criminal Management Department at the city-level police headquarters that investigates suspects after their arrest. Criminal staff also prepares lawsuits in cases of Haququllah (the rights of Allah). In criminal cases where the Haqoq al-Ebad party is dominant, the Haqoq al-Ebad plaintiff prepares a lawsuit and files it in court. In civil cases, the Haqoq al-Ebad plaintiffs file their lawsuits themselves or through their Sharia lawyers, which is a relatively long and time-consuming procedure." For criminal cases, Qadir outlined the role of the Criminal Management Department, which is located at the city-level police headquarters. This department is responsible for investigating suspects after their arrest. The criminal staff within this department also prepare lawsuits, especially in cases involving Haququllah, which refers to offenses related to the rights of Allah, such as theft or other religiously defined crimes. In cases where Haqoq al-Ebad, or the rights of people, are involved, the plaintiff—the person bringing the case—prepares and files the lawsuit in court. This suggests that the process in criminal cases depends on whether the offense is categorized under religious law or involves a human rights violation. For civil cases, Qadir explained that plaintiffs typically file lawsuits either on their own or with the help of a Sharia lawyer. This process tends to be more time-consuming and lengthy compared to criminal cases. Civil lawsuits, which could involve property disputes or personal grievances, require the plaintiffs to follow a more formal legal procedure, making it a slower and more intricate process than criminal cases, which are typically handled by the police department at the city level.

Ajmal Khkoly, a local law professional, provided insights into how cases are handled within the Taliban's judicial system, particularly in terms of criminal proceedings. Ajmal Khkoly, a local law professional was of the view that “When a case occurs, the police arrive at the scene, arrest the suspects, and bring them with them. Since there is no prosecutor's office, the police also conduct the investigation and hand them over to the judges for prosecution and trial.” According to Khkoly, when a case occurs, the police are the first to respond by arriving at the scene. They immediately arrest the suspects and bring them in for further processing. This marks the beginning of the legal procedure, where the police take on a significant role in the early stages of the case. Khkoly further explained that, due to the absence of a prosecutor's office, the police are also responsible for conducting investigations. This places a heavy burden on the police, as they not only enforce the law but also gather evidence and determine the validity of the case. After completing the investigation, the police hand over the suspects to the judges for prosecution and trial. This system reflects a significant consolidation of power within the police, as they are involved in multiple stages of the legal process, from arrest to investigation and eventually trial. This process highlights the lack of separation between law enforcement and judicial functions under the Taliban’s legal framework, where police officers perform tasks typically handled by prosecutors in other legal systems. This could raise concerns about the fairness and impartiality of the proceedings.

Bakhtawar Khan had provided full view of the process. He said that the process starts as the following,

**Filing a lawsuit:** If a person has a civil lawsuit against another person, he must file his lawsuit with the relevant court. The subject of the lawsuit is often related to debt, property, contract, or other personal rights. **Submission to court:** To file a lawsuit, documents and evidence related to the lawsuit must be submitted to the court. If the court is convinced of the evidence and documents related to the lawsuit, the lawsuit will be examined based on the evidence.

Bakhtawar Khan provided a detailed overview of the process for handling civil lawsuits under the Taliban's judicial system. According to Khan, the process begins when an individual has a civil lawsuit against another person. The plaintiff must file their case with the relevant court, which typically involves issues related to debt, property disputes, contracts, or other personal rights. Once the lawsuit is filed, the next step is the submission of relevant documents and evidence to the court. The plaintiff must provide proof to support their claims, which may include contracts, receipts, or other forms of documentation. If the court finds the evidence convincing and sufficient, it proceeds to examine the case based on the submitted materials. After reviewing the evidence, the court makes a judgment decision. If the plaintiff or defendant disagrees with the decision, they have the option to appeal the ruling. In such cases, the individual can take the case to a higher court, specifically an appellate court, for a review of the decision. This structure ensures that there is a process for challenging court rulings, although the availability and accessibility of the appellate system may depend on various factors within the local judicial environment.

Ajmal said that the last phase is to “decide the case by the Mufti or Qazi, judge. Once the court has heard the lawsuit and evaluated the evidence, it makes a judgment decision based on it. If a person does not agree with the decision, he can go to the court of appeal.” Ajmal explained that the final phase in the judicial process under the Taliban’s system involves the decision-making by a Mufti or Qazi, who is the judge responsible for delivering the verdict. After the court has heard the lawsuit and reviewed the evidence presented by both parties, the judge evaluates all the information to make a decision based on the facts and the legal framework, which is rooted in Sharia law. The role of the Mufti or Qazi is crucial, as they are the individuals tasked with interpreting and applying the law to the specific case at hand. Their decision is considered final in the lower court, as they are seen as authorities on legal matters within the Islamic legal system. However, if a party disagrees with the decision made by the judge, they have the right to appeal the ruling. In such cases, the individual can take the case to a



higher court, known as the court of appeal, where the decision may be reviewed. This appeals process provides an opportunity for a case to be re-examined and potentially overturned, depending on the circumstances and the judicial review conducted by the higher court.

Ahmed was of the view that criminal cases are dealt the following way as the process starts with

**Initiation of a criminal case:** Criminal lawsuits are usually initiated based on a complaint or report by the police or security agencies. When a criminal incident occurs, the parties involved must file a complaint or report to the police. **Investigation:** The police investigate a criminal case. If they find evidence of a crime, they file a case against the accused and send it to the court.

Ahmed described the process for handling criminal cases under the Taliban's judicial system, outlining the steps from the initiation of the case to the court proceedings. The process begins with the initiation of a criminal case, which is typically triggered by a complaint or report made by the police or security agencies. When a criminal incident occurs, the individuals involved, whether victims or witnesses, must file a complaint or report to the police, which serves as the starting point for legal action.

Once the complaint is received, the police take on the responsibility of investigating the case. They gather evidence, interview witnesses, and assess the situation to determine if a crime has occurred. If the police find sufficient evidence to support the claim, they proceed by formally filing a case against the accused. This marks the transition from an investigation to an official legal case.

After the case is filed, the police send the case to the court for further legal proceedings. At this stage, the case is evaluated by a judge, who will consider the evidence and make a ruling based on the findings. This process reflects the crucial role the police play in initiating and investigating criminal cases before they are formally brought to trial under the Taliban's judicial system.

Akbar Syal was of the view that "the process proceed on as the investigation is followed by the prosecution. In a criminal case, the accused are tried, and a judge determines the punishment for the crime according to the criminal law. It is

followed by sentencing. If the accused is found guilty, the court determines his punishment. The punishment may be a fine, imprisonment, or other punitive measures. If a person does not agree with the court's decision, he can appeal." Akbar Syal provided an explanation of the process that follows the investigation in a criminal case under the Taliban's judicial system. According to Syal, after the investigation is completed, the next step is the prosecution. In this phase, the accused individuals are formally tried in court, where the case is presented to a judge. The judge's role is to evaluate the evidence, determine the guilt or innocence of the accused, and decide on an appropriate punishment based on the criminal law in place.

Once the judge has made a determination of guilt, the sentencing phase follows. If the accused is found guilty, the court decides on the punishment. The punishment can vary, including fines, imprisonment, or other forms of punitive measures, depending on the severity of the crime and the legal framework applied by the judge. This step is crucial, as it serves to ensure that the individual is held accountable for their actions according to the law. If the accused disagrees with the court's decision, they have the option to appeal. This gives the individual an opportunity to challenge the verdict in a higher court. The appeals process allows for a review of the case, providing a chance for the decision to be reconsidered if necessary.

### **Appointment of Judges**

**We asked our respondents "Tell me who and under what conditions can someone become a judge in Afghanistan?"**

Khybery shared his perspective on the process of selecting judges in Afghanistan under the Taliban's regime. Khybery, a high level professional, was of the view that "Currently, with the establishment of the Islamic Emirate, there is no specific policy for selecting judges. Rather, it is seen that judges and courts are appointed from the above." He noted that, at present, there is no specific, transparent policy for appointing judges. Instead, the appointment of judges and the establishment of courts are carried out in a top-down manner. This means that judges are

appointed by higher authorities within the Islamic Emirate, rather than through an open, standardized process that would allow for broader participation or selection based on specific qualifications. The lack of a clear, formalized selection process for judges raises concerns about the transparency and fairness of the judicial system. In such a system, the appointment of judges is more likely to be influenced by the preferences and decisions of those in power, rather than by established criteria such as legal expertise, experience, or merit. This could lead to a situation where judges are selected based on loyalty to the ruling authorities, rather than on their qualifications or ability to administer justice impartially.

Mufti Tariq, a local judge, was of the view that “A person is appointed as a judge who is a mufti and has stayed in the emirate.” Mufti Tariq, a local judge, provided insight into the criteria for becoming a judge under the Taliban’s judicial system. According to him, the key qualifications for an individual to be appointed as a judge are that they must be a mufti, a religious scholar with expertise in Islamic law, and have had experience within the Emirate. This means that individuals who are selected for judicial positions are expected to have a deep understanding of Sharia law and to be well-versed in its application. Additionally, Mufti Tariq emphasized that candidates for judicial roles must have been involved in the Emirate for a significant period. This suggests that loyalty to the ruling regime and experience within the system are important factors in the appointment process. It implies that the judicial system is not solely based on legal qualifications, but also on one’s adherence to the principles and policies of the Islamic Emirate. This approach to selecting judges reflects the central role of religious authority in the Taliban’s legal system, where decisions are heavily influenced by Islamic jurisprudence. However, it also highlights a potential limitation, as it prioritizes religious credentials and experience in the Emirate over broader legal qualifications or training.

Azam Noorzai, a judge himself, was of the view that a person with professional experience can become a judge. He said that “To become a judge,

a person must have at least several years of experience in the field of law. This experience is usually provided in the field of law teaching or legal services.” Azam Noorzai, a judge himself, offered a perspective on the qualifications required to become a judge under the Taliban’s judicial system. According to Noorzai, one of the key requirements for becoming a judge is having several years of professional experience in the field of law. This experience is typically gained through teaching law or providing legal services, indicating that practical legal knowledge and expertise are essential for a judicial role.

Noorzai’s view highlights the importance of experience in ensuring that a judge is well-equipped to handle legal cases. The experience gained through legal teaching or practicing law allows an individual to develop a deep understanding of legal principles, as well as the practical application of the law in various cases. This professional background helps to ensure that judges are capable of making informed, fair decisions based on legal precedents and principles. However, Noorzai’s emphasis on professional experience also suggests that legal education and practice are central to judicial appointments. While the role of religious scholars or muftis in the judicial system is crucial, Noorzai’s view points to the value of having judges with a broader legal background, combining both religious and secular knowledge in the administration of justice.

Kamal Dawoodzai, an official in Emirate was of the opinion that “A person must be impartial and fair, and must make decisions without personal interests or favors, if he wants to be a judge or qazi. He must have high ethical principles and a serious stance against corruption in the performance of his work.” Kamal Dawoodzai, an official in the Emirate, emphasized the importance of impartiality and fairness in selecting judges or qazis under the Taliban’s judicial system. According to Dawoodzai, a judge must be free from personal biases or interests, making decisions purely based on the law and evidence, without favoring any party. This impartial approach ensures that justice is administered fairly, without being influenced by external pressures or personal connections. In addition to

impartiality, Dawoodzai highlighted the necessity for judges to uphold high ethical standards. A judge must possess strong moral principles and demonstrate integrity in their actions, ensuring that their decisions reflect the values of justice. This ethical framework is crucial in maintaining the credibility of the judicial system and ensuring that legal rulings are trusted by the public. Dawoodzai stressed the importance of a firm stance against corruption. Judges must avoid any corrupt practices that could undermine the fairness of the legal process. Corruption within the judicial system erodes public confidence and can lead to unjust outcomes. Thus, a judge must not only be fair and impartial but also committed to preventing corruption in their duties, ensuring the integrity of the legal process.

Amjad, a local law expert, was of the view that “A person must have a strong character, good understanding, strong intellectual abilities, and good communication skills.” Amjad, a local law expert, shared his perspective on the qualities required for someone to become a judge under the Taliban’s judicial system. According to Amjad, a person aspiring to be a judge must possess a strong character. This implies that a judge should have integrity, be ethical, and be able to resist external pressures that may influence their decision-making. Strong character is essential for ensuring that judges remain fair and just in their rulings. Amjad emphasized the importance of having a good understanding of the law. A judge must be well-versed in legal principles, particularly in Islamic law, to interpret and apply it correctly in different cases. This understanding helps in making informed decisions that are consistent with legal precedents and justice. Intellectual abilities are also crucial. A judge must possess strong analytical skills, the ability to think critically, and a capacity to assess complex situations. These intellectual traits enable judges to evaluate cases thoroughly and make sound judgments. Amjad highlighted the significance of good communication skills. Effective communication is vital for explaining legal decisions clearly to those involved in the case and ensuring transparency in the judicial process. A judge must be able to articulate their reasoning

and maintain an open line of communication with all parties in the court.

Khyber Dawoodzai said that “A person who wants to become a judge must be born to Afghan parents, have Afghan citizenship, and in addition, must be fully familiar with Afghan laws and be familiar with the use of the justice and judicial system. He must make decisions based on knowledge of the laws and the principles of justice.” Khyber Dawoodzai outlined the essential qualifications for someone aspiring to become a judge in Afghanistan under the Taliban’s judicial system. According to Dawoodzai, one of the primary requirements is that the individual must be born to Afghan parents and possess Afghan citizenship. This ensures that the person has a strong connection to the country and a sense of responsibility toward its people and legal system. In addition to nationality, Dawoodzai emphasized the need for the prospective judge to be thoroughly familiar with Afghan laws. This knowledge is essential for interpreting and applying the legal framework accurately in various cases. A judge must understand the principles and specifics of Afghan law, particularly those related to Islamic jurisprudence, to make informed decisions. Furthermore, Dawoodzai pointed out that a judge must also be familiar with the justice and judicial system’s practical functioning. This includes understanding how courts operate, the procedures for handling cases, and how justice is delivered effectively. Ultimately, a judge must base their decisions on a solid understanding of both the laws and the principles of justice, ensuring that their rulings are fair, legal, and in alignment with the country’s legal framework.

Ikram Hamdard was of the view that “A judge must have a good knowledge of the official languages of Afghanistan (Dari and Pashto), and in addition, he must be knowledgeable in other international languages in order to conduct court proceedings properly.” Ikram Hamdard highlighted the importance of linguistic proficiency for judges under the Taliban’s judicial system. According to Hamdard, a judge must possess a strong command of the official languages of Afghanistan, namely Dari and Pashto. This is crucial because court proceedings



are conducted in these languages, and a judge must be able to understand, interpret, and communicate effectively in them to ensure the smooth functioning of the judicial process. Moreover, Hamdard emphasized that judges should also be knowledgeable in other international languages. While Dari and Pashto are the primary languages of the judiciary, an understanding of foreign languages, especially those used in international legal contexts, can be invaluable. It enables judges to understand legal texts, treaties, and precedents from other countries, which may be relevant to certain cases. Additionally, it facilitates communication with foreign diplomats, legal experts, and international organizations that might be involved in cases with cross-border implications.

### Weaknesses and Suggestions

Qadir Shinwari offered an evaluation of the effectiveness of the judicial system in Afghanistan, stating that it is "eighty percent effective." This assessment reflects a generally positive view of the system, suggesting that, while it is functional and achieves many of its objectives, there are still areas in need of improvement.

By describing the system as 80% effective, Shinwari likely indicates that most of the judicial processes, such as the resolution of cases and the application of legal principles, are operating effectively. This could include the enforcement of Sharia law and the administration of justice, particularly in cases involving civil and criminal matters. It implies that, for the most part, people can access justice and that decisions are made with a reasonable level of consistency. However, the remaining 20% suggests there are some significant challenges or inefficiencies. These could include issues such as corruption, lack of transparency, inconsistent application of the law, or barriers to accessing justice for certain populations. While the system has made strides in achieving effectiveness, Shinwari's comment points to ongoing areas that require reform or strengthening in order to fully meet the needs of the Afghan people and ensure comprehensive justice.

Ajmal Khkoly said that "The current judicial system is largely effective, but why does it not

have a legal well-known structure in a written form. It should be given a written constitutional structure or form, not a decree, which is just a person's words and there is nothing written in it." Ajmal Khkoly expressed his concern about the lack of a formal, written structure for the current judicial system in Afghanistan. While he acknowledged that the system is largely effective in its functioning, he emphasized that it lacks a well-established, legally recognized framework in written form. According to Khkoly, this absence of a written constitution or structure undermines the legitimacy and transparency of the system. Khkoly argued that a written legal framework, such as a formal constitution, would provide clear guidelines for how the judicial system operates, ensuring that the rules are not left to the discretion of individuals. In contrast, relying on decrees—oral or written instructions issued by a person in power—creates uncertainty and can lead to inconsistent interpretations and applications of the law. Decrees are often subjective and based on the will of a single authority, rather than grounded in a comprehensive legal framework that is accessible and understood by all. By advocating for a written constitutional structure, Khkoly is calling for a more standardized and transparent system that ensures fairness, consistency, and accountability in the administration of justice. This formalization would help to enhance the credibility and reliability of the judicial system, providing legal clarity to both the public and legal professionals.

Jamshed Qadir said

If a systematic system is established for the appointment of judges, and such that judges and courts are appointed to their duties after a specific judicial course and internship, it would be better. Also, written laws should be passed for the resolution of cases so that the resolution of cases can be done effectively and a specific time is given for the resolution and investigation of cases and if they are followed and implemented, it will be very effective in the implementation of justice. Jamshed Qadir shared several suggestions for improving the legal system in Afghanistan. One of his key recommendations was the establishment of a systematic process for appointing judges. According to Qadir, judges

should undergo a specific judicial course followed by an internship before being appointed to their positions. This would ensure that judges are well-prepared and adequately trained, improving the overall quality of justice administered. Additionally, Qadir emphasized the importance of passing written laws for the resolution of cases. He argued that having clear, codified laws would provide a solid legal foundation for handling cases, ensuring consistency and fairness in judgments. Written laws would also help reduce the ambiguity that can arise from relying on informal practices or unwritten decrees. Another important suggestion from Qadir was the establishment of specific timelines for the resolution and investigation of cases. By setting clear timeframes, the legal process would become more efficient, reducing delays and ensuring that cases are addressed promptly. This structured approach would contribute to a more effective and timely justice system.

Bakhtawar Khan suggested that “In the appointment of judges, expertise should be taken into account, and those who are experts should be appointed to the position of judge, regardless of their membership in the Emirate.” Bakhtawar Khan suggested that the appointment of judges in Afghanistan should prioritize expertise over political or organizational affiliation. He argued that individuals with proven legal knowledge and experience should be appointed to judicial positions, irrespective of their membership in the Islamic Emirate. This approach would ensure that judges are selected based on their competence and qualifications, rather than their loyalty to the ruling regime. By emphasizing expertise, Khan highlighted the importance of having skilled professionals who are well-versed in legal principles, particularly Islamic law, to effectively administer justice. Judges who possess a deep understanding of legal concepts and practical experience in handling cases are more likely to make fair and informed decisions, thus contributing to the credibility and legitimacy of the judicial system. Khan's suggestion also underscores the need for a more merit-based and professional judicial system. In a well-functioning legal system, judges should be chosen for their qualifications and abilities, rather than their

political connections. This would help to ensure the impartiality and integrity of the judiciary, fostering public trust and confidence in the administration of justice. Overall, Khan's proposal advocates for a more professionalized and transparent judicial appointment process in Afghanistan.

Ahmed Norzai said “Work should be done to restore the rule of law. Similarly, arbitrary detention, harassment, and torture should be stopped.” Ahmed Norzai emphasized the urgent need to restore the rule of law in Afghanistan under the Taliban's regime. He stressed that a functional legal system relies on consistent and transparent enforcement of the law, where justice is applied fairly and impartially. Norzai's call for the restoration of the rule of law highlights the importance of ensuring that all individuals, regardless of their status or affiliation, are subject to the same legal standards. This would help to promote justice and create a sense of security for the Afghan people. In addition to advocating for the rule of law, Norzai specifically pointed out the need to halt practices such as arbitrary detention, harassment, and torture. These actions, which undermine human rights and the principles of justice, have been significant concerns under the Taliban's governance. Arbitrary detention, where individuals are imprisoned without due process, and harassment, where individuals face undue pressure, erode trust in the judicial system and violate basic freedoms. Norzai's statement underscores the importance of upholding human rights and ensuring that the legal process is fair, transparent, and accountable. Stopping these unlawful practices would be a critical step toward restoring public confidence in Afghanistan's judicial system and guaranteeing justice for all citizens.

Muhayman Sarwari said that “I have the following suggestions for reforming the judicial system; Judges should be professional individuals, Laws should be formulated in the field of justice, Prosecution bodies should be re-established and The role of defense lawyers should be strengthened.” Muhayman Sarwari offered several key suggestions for reforming Afghanistan's judicial system, focusing on the need for professionalism, legal development, and the

strengthening of legal institutions. Firstly, Sarwari emphasized that judges should be professional individuals, with the necessary qualifications, expertise, and experience to effectively administer justice. This would ensure that judges are capable of making informed and impartial decisions, improving the overall quality of the judicial process. Secondly, Sarwari called for the formulation of laws in the field of justice. Having clear, codified laws would provide a solid foundation for legal proceedings, ensuring consistency, fairness, and transparency in the judicial system. These laws would help eliminate ambiguities and arbitrary decisions, creating a more predictable legal environment for all citizens. Furthermore, Sarwari suggested the re-establishment of prosecution bodies. Prosecutors play a vital role in investigating and prosecuting criminal cases, ensuring that offenders are held accountable under the law. The absence of such bodies weakens the justice system and leads to gaps in law enforcement. Finally, Sarwari emphasized the need to strengthen the role of defense lawyers. A robust defense ensures that all individuals have access to fair representation, which is essential for upholding justice and human rights. Together, these reforms would contribute to a more efficient, transparent, and fair judicial system in Afghanistan.

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## Conclusion

The paper's primary goal was to understand the structure and functioning of the legal system, from its upper echelons down to local practices. It sought to answer several key questions regarding the dispensation of justice under Taliban rule, including how civil and criminal cases are handled, the accessibility of justice for citizens, and the legal framework that guides these processes. Additionally, the study explores the selection and procedure for becoming a judge, shedding light on the inner workings of the legal system. The study explores the major shift in Afghanistan's legal system after the Taliban's return to power. Following the collapse of the former democratic government, the Taliban dismantled the previous legal framework and instituted their own judicial system, deeply rooted in their interpretation of Islamic law, particularly

following the Deobandi-Hanafi school of jurisprudence. This approach emphasizes the application of Sharia law as the foundation of the legal system. The findings of the study suggest that the Taliban are imposing a system where religious principles are central to justice, and judicial processes are directly aligned with their strict interpretation of Islamic teachings.

In this new system, the role of the Qazi, or judge, is pivotal. The Qazi acts as both the investigator and the decision-maker. When a dispute arises, the judge listens to the parties involved, investigates the issue through local police forces, and collects witnesses. Once this information is gathered, the Qazi makes a unilateral decision, often immediately, without necessarily adhering to a formalized process or providing a detailed rationale. This practice limits the opportunity for transparency and formal judicial reasoning. In most cases, decisions are rendered swiftly, with little room for appeal. If the right to appeal exists, it is extremely rare for individuals to challenge a decision, as the local level courts operate with considerable authority and are often seen as untouchable. The lack of an effective appeals process severely limits the ability of the public to seek justice through higher courts, creating an environment where judicial decisions are effectively final.

The structure of the legal system is organized from the national level down to the local levels, with a clear hierarchy in place. However, the study reveals that this structure does not provide much recourse for citizens. The local courts and judges are the most influential in this system, with decisions largely based on the personal judgment of the Qazi. This local-centric system underscores the informal nature of justice under the Taliban, where the absence of formal institutions like a functioning prosecutor's office or defense lawyer support system further weakens the rule of law.

Judges hold a primary and influential role in this system, and their selection process, as per the study, is based largely on their ability, experience, and allegiance to the Taliban. Judges are typically chosen for their long-standing connection to the Emirate, reflecting the political nature of judicial appointments. Unlike a formal, merit-based judicial selection process, judges' qualifications



are often linked to their alignment with the Taliban's ideological and political objectives. This system emphasizes loyalty over professional competence in many cases, which can undermine the independence and impartiality of the judiciary. Despite these structural elements, many respondents in the study expressed concerns over the current state of the legal system and called for reforms. The primary demand was the restoration of the rule of law, with many advocating for a more formalized and transparent judicial process. One major suggestion was the establishment of written laws to govern the resolution of cases, which could provide clarity and consistency in legal proceedings. There was also a strong desire for a more structured and professional system for the selection and appointment of judges, with many respondents stressing the importance of judicial training and experience to improve decision-making. The lack of a functioning prosecutor's office and a robust defense system was also identified as a key gap that needs addressing for a more balanced and just system. The need for reform was a common theme among those interviewed in the study. They advocated for a shift toward a judicial system that adheres more strictly to legal standards and offers a clear, written framework for resolving disputes. This reform would ideally include creating a more professionalized judiciary with clear rules for appointing judges, improving access to legal resources, and ensuring that citizens' rights are respected. Such changes are seen as crucial steps to restore confidence in the legal system and ensure that justice is dispensed fairly and transparently across Afghanistan.

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