REVIEW OF CRIME, PEACE AND SOCIETY
ISSN (O): 3079-6105, ISSN (P): 3079-6091
Vol. 3, No. 3, 2026, 529-535

Counterterrorism laws and national security in Afghanistan: Challenges to Rule of Law and justice

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Abstract

The law of Afghanistan has gone through many problems due to years of conflict, intervention by other countries, and the rise to power of the Taliban in 2021. The most notable of these include the temporary suspension of the 2004 Constitution, no independent judicial system, arbitrary arrests without following legal procedure, and severe limitations on women's rights. Security issues posed by terrorist organizations like ISKP and Afghanistan's lack of international collaboration have contributed to the problem. The research will provide an analysis of the history, concepts, and laws related to counterterrorism in Afghanistan. It will provide recommendations for improving the legal system in light of the national security concerns.

Article History
Received 15 April 2026
Revised 25 June 2026
Accepted 24 June 2026
Published 30 June 2026
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OPEN ACCESS

Keywords
Challenges, historical Context, laws, opportunities, Theoretical context

Introduction

Counterterrorism and national security policies help governments identify threats, deal with violence, and protect their people. Afghanistan has been a country of war and foreign intervention for years and years and bad governance. The country has faced these challenges, impacting security and its government institutions. Since the Taliban retook control of Afghanistan in August 2021, they have suspended the 2004 Constitution and introduced significant changes to the law. These changes have led to concerns for legal rights and accountability.

The Islamic State Khorasan Province (ISKP) persists in forming a significant security issue in Afghanistan. The Taliban have responded to ISKP, with varying responses to other armed groups. Taliban interpretation of Islamic law also impacts their attitude in the field of security and justice. Taliban Courts are shown to be utilized throughout the conflict for conflict resolution and bolstering the influence of the Taliban.

The study describes and analyzes the impact of counter terror policy and existing legal framework on rule of law and justice in Afghanistan. It also considers the problems that women have encountered, as their rights and access to justice have been curtailed. The study outlines the rationale for long-term security and the role of fairness of laws, respect for human rights and accountability in building security, beyond force.

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Research Justification

Security and justice have since become inextricably linked in Afghanistan and it is thus necessary to conduct a thorough analysis of the counterterrorism laws. Arbitrary arrest, access to courts and gender discrimination have a negative impact on the legitimacy of the legal process. Evidence to support the impacts of legal engagement and recognition on accountability of international actors is needed. This research was to fill this research gap between scholars and the policymakers as well as the gap between the concept of terrorism law and the concept of national security and rule of law. Anyone studying, adjudicating and working with Afghanistan in the international arena must have a comprehension of these linkages. In addition, this study contributes to the ongoing discussion on the legal framework for the state to defend itself against the threat of terrorism without breaching legal principles, particularly in fragile and not recognized states.

Literature Review

The study reveals governments' duty to obey the law during an emergency situation to tackle security threats. These powers should be bounded with limits to avoid injustice and abuse of power. A discussion of Islamic legal perspectives on rebellion and how they might be used to understand the Taliban's perspective on security is found in (Verma, 2024). Schroden (2025) analyzes the responses of the Taliban, Pakistan and the U.S. to armed groups since 2021. Taliban's tight central control and religious policies and their impact on provision of government services and economic activities. The studies demonstrate the need to also take legal rights into account in the formulation of security policies (Hamoon et al., 2025).

Other works are dedicated to security and justice during Taliban' period. Armed groups, in particular the Islamic State Khorasan Province (ISKP), remain a threat in Afghanistan today. Cooperation in combating terrorism can be more challenging when there are political differences and accusations between countries (Baruah 2025). Grasse et al. (2024) observed that the Taliban courts facilitated the resolution of intra-community disputes and bolstered the legitimacy of the Taliban among the local community, and in some instances, facilitated intimidation of the local community. Powell and Paldino (2025) cover the history of the Afghan constitution and the relationship between Islamic law and other laws.

In addition, research points to issues of women's rights and the legal authority of the Taliban. Ike et al. (2025) describe how the Taliban have exacerbated inequalities for women and girls in access to education, employment and public life. Hasar (2024) examines questions and concerns regarding Afghanistan's representation before international courts, including in women's rights cases (Akbari & True, 2024). These studies are useful in terms of information on security, governance and justice. This research will, however, examine more closely how counterterrorism policies impact on access to justice, human rights and rule of law in Afghanistan.

Historical Context

The politics of counterterrorism in Afghanistan has a Cold war and Soviet Afghanistan origin and was influenced by the armed movements, which later became transnational threats. In the wake of the 11 September 2001 attacks that toppled the Taliban government in Afghanistan and led to the formation of a new government backed by the United States, the 2004 Constitution was established. Domestic legal institutions had less influence on counterterrorism, as it was mainly motivated by military operations and external priorities.

Effective law and order was missing and space was afforded for war to define security and justice.

As the insurgency went on, the Taliban courts were introduced alongside state courts to settle conflicts rapidly and increase their influence on the conflict. The Republic and its legal system was suspended by the Doha Agreement of 2020, and the takeover in August 2021. The attacks by Islamic State Khorasan Province (IS-KP) since then have garnered the attention of security discourse. The fragility of the present legality is caused by this past.

Theoretical Context

Securitization, legality and proportionality are the theoretical elements of counterterrorism law. Securitization theory helps with this insight into the question why events which are seen as existential threats to the Taliban can result in more extreme responses than events which are interpreted as mere threats.Securitization theory helps answer this question in the Taliban's reaction to rebellion and extremism: why do issues perceived as threatening the very survival of the Taliban elicits more extreme responses than issues perceived as only threatening? The Rule of Law theory is that the use of power should be on the basis of clear, public and independently reviewed rules, which means that the security agencies should not only be accountable to courts but also citizens. To get the full sense of the concepts' embeddability in the national security systems.

These two are the concepts of proportionality and linkage to the Islamic principles of law that stipulate that any restriction in the rights must be necessary, lawful and proportionate. Furthermore, the term of legal pluralism may be used to discuss about the nature of justice in the context of Afghanistan in which state, religious and customary law exist side by side. These perspectives feed into a debate on detention, surveillance and punishment in counter-terrorism and further emphasize the necessity for strong institutions and a strong right protection in order to achieve effective security. This type of policies will form the foundation for the study and will guide notions of legality, necessity and accountability throughout the study.

Relevant Laws

1. The Constitution of Afghanistan, 2004: Separation of powers, independence of judiciary, fundamental rights and that law is not against the Islamic principles. It was suspended in 2021, thus removing the formal constitutional limitations on security measures.

2. The Penal Code, 2017: The criminal offences have been codified, including those of acts of violence, terrorism, according to international standards. Its status is not defined after 2021 as courts today are based on Islamic jurisprudence and leadership decrees and offences are not consistently defined with penalties.

3. UN Security Council Resolutions 1267 (1999) and 1988 (2011): Travel restrictions and asset freezes under the sanctions of the UN Security Council Resolutions 1267 (1999) and 1988 (2011) have an impact on international counterterrorism cooperation and legitimacy discussions.

4. The Doha Agreement, 2020: The US and the Taliban signed an agreement that Afghanistan will not be used for threatening other states, but there were no provisions in this agreement for the citizens or the suspects to be protected with local legislation.

5. Taliban Decrees and the Vice and Virtue Law, 2024: which confer vast powers of discretion and limit women's rights. Together these sources provide a picture of a complex, uncertain and in some respects unchecked and unchecked legal environment.

Challenges

One of the main obstacles is the lack of a constitutional framework. Lack of clear applicable law, lack of judicial independence and the exclusion of women from the bench undermine the rule of law. Taliban courts are available, speedy and yet they are political as well as judicial, facilitating intimidation. With weak systems of oversight, the process of imprisonment and punishment is possible to conduct without having any processes, evidence and independent oversight. Such weaknesses will lead the people to uncertainty in the fact that there is some evidence and not the power that is the basis for outcomes.

All the above problems can be intensified because of the security threats. The Islamic State Khorasan Province attack, displacement and ethnic marginalization make the authority take repressive actions; the blame shifting game among the different geopolitical actors makes collaboration impossible. The institutions and the centralization can also negatively influence accountability to the response of the militancy as they are theocratic. Intelligence-led activities will be harsh and, perhaps, beyond judicial control and can result in arbitrary arrest and collective punishment. Such actions will only add more fuel to existing inter-communal tension in conflicting communities.

Women do not have any access to courts, no access to education, no access to legal professions and no international cooperation and oversight because of isolation. Inadequate availability of resources, qualified lawyers and judges continue depriving the institutions of resources and reducing their professionalism.

Opportunities

Despite all this, there are some possibilities. In the constitutional history of Afghanistan, there are some elements of both Islamic and secular laws. There are some local grounds to codify some rules that are predictable. It is possible to do something in order to keep running Taliban courts, such as writing down some reasons, and giving appeals. It may be possible to create a training program for Judicial/Prosecutorial/Religious Scholars, which will improve their Legal skills and consistency. It will reduce the diversity of the system and increase its confidence, but not its local character.

A legitimate approach to cooperation in practice between security needs and legal protections is through pragmatic counterterrorism cooperation. Conditional and principled engagement and recognition of legal reform decisions and external stakeholders may be an approach to ensure the government is held accountable to prevent abuses. Regional cooperation against the Islamic State (IS) Khorasan Province is another possibility. These would be linked to the accountability in the law for security co-operation.

Thirdly, lessons learnt from the experiences of the peace agenda and the gender agenda in the past may be used to guide and inform future efforts at more effective incorporation of women. Additionally, civil society and diaspora legal experts could contribute in the area of documentation and training and legal reform. This would increase the legitimacy and minimize grievances, which can give birth to militancy. These can complement each other and work incrementally towards realization of the rule of law and security.

Discussion

In Afghanistan, the issue of security vs. justice in counterterrorism is always at odds. Legitimacy is low, coercive practices are present and political control of courts; this can aid in reinforcing militant narratives. Gendered exclusion also exacerbates injustice and contributes to a loss of public trust. If there are no accountability courts, the security measures can breed resentment which they are trying to avert. But while this is the case, the history of the constitution and its relationship to the principles of Islamic law demonstrates that reform is possible. Thus, the rule of law is not different from security but the two are complementary. Therefore, Reform should be legalistic and institutional supportive.

Conclusion

Weakening of the constitution, decrees and constant threats of the militants has complicated the situation of counter terrorism in Afghanistan. Each of these conditions has repercussions that impact on the independence of the judiciary, the right to due process and equality of access to the judiciary, especially for women and minorities. History has proven that repressive and under-institutionalized strategies are not a source of security. Institutionalization of national security that is lawful, accountable, and inclusive, with principled international engagement, is key to sustainable national security. It is not just a humanitarian issue, it is also a security issue to restore trust in the justice institutions. This means that establishing the rule of law and providing women's participation and regional cooperation, are key to any viable roadmap.

Recommendations

First, the lawmakers of Afghanistan should enact easily accessible and understandable counterterrorism and criminal laws already in force that define an offence, of course, make limits on detention short and procedures clear. Secondly, written reasoning and defense counsels should be provided in court with the right of appeal. Thirdly, the access of women to the judicial and legal professions should be re-opened. Fourth, training and standards of the judges, prosecutor and investigator should be improved. This would be done so that it becomes more predictable, and fair.

International actors should leverage engagement as a tool of tangible legal standards, foster regional cooperation to address the Islamic State Khorasan Province and influence more inclusive peaceful and justice processes in line with local realities. Current needs and proportionality of security/administrative needs should be monitored independently. Donors should also provide for safe and independent legal assistance and documentation. These would combine into enhanced legitimacy and security.

Research Limitations

There are some Taliban concerns about the learning of counter-terrorism law in Afghanistan. There is limited availability of reliable data: since 2021 there is no transparency and independent monitoring. Secondly, there are security concerns and political sensitivities which do not allow field research to reach courts, detainees and officials. Third, the changes occur rapidly; the legal discussions soon become outdated. In addition, the results of this study may not be representative of each province/ community due to the fact that it is secondary data. Finally, the fact that the practices are not officially published, and not documented by courts, makes it difficult to verify the practices; and some of the reported practices are based on reports that cannot be substantiated independently.

Research Implications

How this research has implications for theory and practice. Its efforts are aimed at reconnecting securitization, rule of law and legal pluralism, all of which are supposed to be 'theoretical concepts', to explain counterterrorism in an unrecognized, decree-based state. It provides guidance to policy makers, donors and human rights committees on how to evaluate conditions for engagement for practice. It also helps lawyers and civil society organizations to record rights abuses and to point to the importance of legal certainty, accountability and inclusive justice institutions to ensure sustainable national security. The findings also provide a foundation for an analysis of counterterrorism efforts in other weak states.

Future Research Directions

Further study is needed on Taliban decrees and court practices – both field and comparative – in the future. Further research could be undertaken to explore the extent to which other Islamic law states safeguard their women and to devise some practical ways to do this in Afghanistan. Research can be done between Afghanistan and Islamic law states to discover mechanisms by which women's protection can be secured. Also, the effects of sanctions, recognition and aid conditionality on legal reform should be assessed.

Further research might be conducted on women, minorities and displaced persons' impact of counterterrorism operations, and on the potential for regional cooperation with regard to the Islamic State Khorasan Province. Some of these changes in the law can be followed up in longitudinal studies. Interviews of legal practitioners, displaced Afghans and community leaders will also help to shed light on the experience of justice in everyday life.

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