

## A Legal Critique of the Taliban’s Judicial Charter From “Law” to a “Charter of Barbarism” in Afghanistan

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The Taliban have issued on 4<sup>th</sup> of January 2026 a document entitled “*Criminal Procedure Code for Courts*” which is claimed to have entered into force and to be binding following its signature by Hibatullah Akhundzada as the Taliban leader. On its face, the document is presented as a framework for regulating the judicial and administrative affairs of the courts. However, a careful examination shows that it is incompatible with the fundamental standards of public law, the principles of fair trial, and the accepted rules of international law. In reality, the main problem with this document is not limited merely to its content, but lies in its legal nature itself; because both formally and substantively, the text lacks the essential elements required to be recognised as a *law* or a valid legal norm.

In the philosophy of law and norm theory, a rule is considered law only when it is produced within a coherent legal system, enjoys social and political legitimacy, is compatible with principles of justice and human dignity, and is expressed through proper legal language and structure. Accordingly, not every signed text or decree issued by a ruling power necessarily creates law; rather, it acquires legal validity only when it embodies fundamental criteria such as clarity, certainty, predictability, general applicability, non-discrimination, proportionality, and accountability. When a document lacks these criteria, at best it is a political directive, and at worst, an instrument for consolidating domination and legitimising structural violence. In other words, such a text does not limit power; instead, it absolutizes power and strips rights of their civilising function.

The Taliban’s charter faces a profound crisis precisely at this point. A document intended to regulate the judicial system must clearly define the jurisdiction of courts, procedural principles, the right to defence, standards of proof, judicial independence, mechanisms of appeal and review, and guarantees of a fair trial. These elements are essential not only in modern civil law, but in any acceptable judicial order—even within jurisprudential and traditional frameworks. Yet in the Taliban’s charter, instead of designing a measurable legal structure, one finds ambiguity and an expansion of discretion that reinforces judicial arbitrariness and subjective decision-making. From the perspective of public law and fair trial standards, this amounts to the emptying of justice of its substance, because justice has meaning only when its rules are transparent, predictable, and subject to oversight. Otherwise, the judicial system

becomes an instrument of legalised repression, and courts, instead of serving as forums for dispute resolution and justice, are transformed into institutions for consolidating domination and obedience.

Even if this document is examined from the standpoint of Islamic jurisprudence and Sharia, it still faces a fundamental problem, because adjudication in Islamic logic must be based on justice, the prohibition of oppression, and respect for the rights of the parties, with the judge acting as an arbiter of justice rather than an executor of political will. When adjudication is reduced to obedience to political command, not only are the principles of civil law violated, but the spirit of justice in jurisprudence itself is destroyed, leaving only the outward form of adjudication devoid of its ethical and legal substance.

Another highly dangerous dimension of this document is the creation or reinforcement of mechanisms that directly or indirectly classify the citizens of Afghanistan. In modern law, the fundamental principle is that all citizens are equal before the law, and the state is obliged to guarantee equal access to justice. Equality before the law and the principle of non-discrimination are among the core pillars of the rule of law, without which legality is reduced to privilege. When a judicial system differentiates individuals based on identity, gender, belief, social status, or political affiliation and assigns them different rights, it effectively removes justice from the realm of a *public right* and turns it into a *political and ideological privilege*.

From the perspective of the sociology of law, such a structure recalls pre-modern systems and slave-like arrangements in political history—systems in which law was designed to protect the ruling class, elites enjoyed relative immunity, and subordinate groups were essentially deemed devoid of rights and legal dignity. In those systems, justice was not a shared social value but an instrument for maintaining class order. The resemblance between this logic and what is observable in the Taliban's charter heightens the concern that the purpose of drafting such a document is not to establish justice, but to institutionalise a domination-based and discriminatory order—an order that produces graded human beings instead of equal citizens, and reproduces relations of master and subject rather than justice.

Alongside social and legal classification, one of the most alarming aspects of this document is the acceptance or legitimisation of distinguishing citizens on the basis of religion and belief, such that the Taliban leader assigns himself the authority to create legal distinctions between Muslims and non-Muslims. From the perspective of international law and human rights, this constitutes a clear violation of human dignity and fundamental rights. Human rights are grounded in the principle that every human being, by virtue of being human, possesses rights that are inherent, innate, inalienable, and non-transferable—rights that no political authority may distribute as privileges or strip from any group. Legal differentiation based on religion, if it leads to restrictions on access to justice, the right to a fair

trial, the right to security, or the right to social participation, not only violates the principle of non-discrimination, but transforms justice into a tool of social control and ideological domination. In such circumstances, law no longer expresses the general will or a shared social order; instead, it becomes a mechanism for exclusion and repression of “undesirable” groups, thereby fundamentally undermining the moral and legal legitimacy of any judicial system.

The consequences of such a document cannot be analysed merely at the administrative or judicial level, because texts of this nature directly affect the philosophy of law, the structure of the state, and the position of the human being in society. The first consequence is the collapse of the philosophy of law in Afghanistan. Law can play a civilising role only when it limits power and protects individuals from arbitrariness. But if the judicial system becomes subordinate to the will of an absolute and unaccountable leader, and rules turn into instruments of obedience rather than standards of justice, law is emptied of meaning and society enters a stage of fear, distrust, and the breakdown of social relations. In such conditions, people come to see law not as a refuge of justice, but as an instrument of threat and humiliation—undermining the foundation of any sustainable social order.

The second consequence is the weakening and even destruction of the concept of the state. Even in its minimal sense, the state must function as a public regulatory institution and a political coordinator of society, governed by general rules. When fundamental decisions are reduced to the will of an ideological group and a dogmatic leader, the state gives way to a tribal–ideological structure that is neither accountable nor subject to standards of governance. In such a situation, domination replaces the state, and society is pushed off the path of state-building and public order.

The third consequence is the dissolution of the human being’s legal personality as a social being. Individuals in society must enjoy psychological security, freedom of thought, and the ability to participate. When rights are turned into tools of repression, human beings are reduced to a silent, exhausted mass deprived of social autonomy, and society becomes a vast prison—one in which people may be alive, but are stripped of the possibility of a dignified human life and social development.

Ultimately, it can be said that the Taliban’s judicial charter not only fails to meet the formal and substantive criteria of a valid legal document, but at a deeper level carries an anti-legal project that consolidates domination and discrimination instead of establishing a legal order. Rather than institutionalising justice, it formalises barbarism; instead of steering the state toward accountability and legality, it turns it into an instrument of absolute will; and instead of recognising the human being as a legal subject, it reduces the person to a graded entity devoid of legal dignity. From the perspective of

international law and the philosophy of law, such a text is neither law nor a valid norm, but an instrument for legitimising structural violence, systematic discrimination, and a historical regression in Afghanistan—a regression whose consequences are social collapse, legal decay, and the gradual destruction of the possibility of humane life in a society founded on justice.

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