

## **Section 3: Private Law**

### **Mohammad Hashim Kamali: Matrimony and Women's Rights in the Afghan Civil Code 1976: A Critical Appraisal**

This article is presented in three Parts and two appendices. Part One is introductory, reflecting on the Bonn Agreement 2001, CEDAW 2003 and other international instruments Afghanistan has signed, and then the 2004 constitution. This is followed by a birds-eye-view of the various marriage laws Afghanistan has had in the course of twentieth century. Part Two advances a critical analysis and appraisal of the Civil Code 1976 (*qanun-e madani* 1355) sections on matrimonial law, including preliminaries of marriage (solicitation - *khastgari* and engagement - *namzadi*), issues pertaining to marriageable age, child marriage, the marriage contract itself, polygamy and divorce. Part Three provides additional information on the problem of law enforcement in Afghanistan, and an opinion survey among Afghan intellectuals on women's equality that lay in the background to 2004 constitution. An overview is also provided of issues over the Shia Personal Status Law 2009, and the 2012 Ulama Council of Afghanistan

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resolution on women's travel. The article concludes with advancing a perspective on political developments and challenges Afghanistan is currently facing that also affect the prospects of family law reform in the country. The first of the two appendices at the end provides a background note on the Civil Code 1976 - how it came about, its immediate background, aftermath and amendments. Appendix two consists of excerpts from Moroccan Family Law (the Mudawana) 2004, for comparative purposes. The 2,416-article Civil Code 1976 is the most extensive legislation Afghanistan has ever had. This article is limited to addressing only some aspects of the matrimonial law, and advances reform proposals that seek to bring this law in line with the egalitarian objectives of the 2004 constitution and other instruments Afghanistan has signed in the ensuing decade following the introduction of the Civil Code.