
| RESEARCH ARTICLE

Sources of Media Rights in Afghanistan: A Review

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| ABSTRACT

The Media Law was established to preserve social order, unity, and continuity, to defend truth and justice to protect the rights of the disadvantaged in the media sphere. The Media Law categorizes the functions of all media and reporters within a specific framework and takes steps to maintain regularity in media works. Today, media plays a significant role in leadership and control, and therefore, its social responsibility is constantly expanding. In every country, for the stability and proper functioning of any activity, it is necessary to establish rules, and since media work is a social activity, Media Law is essential for the development and progress of media work and activities. The Afghan Public Media Law was drafted and approved taking into account both domestic and international sources. The Afghan Public Media Law was drafted and approved in light of domestic sources (law, custom, Islamic law, judicial precedent) and external sources (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration of Human Rights of Islamic Countries, and international agreements) to ensure the proper functioning of the media.

| KEYWORDS

Afghanistan, Media Rights, Journalist Challenges, and Solutions

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1. Introduction

Media law is a set of rules and regulations established by lawmakers to govern media activities. It outlines the legal boundaries, responsibilities, and rights of media outlets, journalists, and media personnel (Ansari, 2011). This law also defines the legal framework for the work of journalists, ensuring its alignment with constitutional principles and the needs of both journalists and the public. It provides clear definitions of key media concepts to help journalists better understand their roles and responsibilities. At the same time, media law sets out methods for assessing and evaluating media by the government and responsible institutions, violations of which are considered unlawful. This law essentially defines the authorities of the government and other relevant bodies about the media (Bakhtari, 2008). Today, media has transformed the world into a global village, and this village is connected through the media's relationship with its audience. The strength of this relationship depends on the nature of media activities. Media should operate according to the wishes of its audience and the accepted norms of a society, as well as under the framework of the constitution and public media laws, which regulate social order. This approach can increase audience trust and attention towards media (Sadat, 2017).

In the development of legislation, both domestic and international sources are used at the national level. Domestic sources include laws, Sharia law, and judicial precedent, custom, and legal doctrine. Among the important international sources that contain specific provisions regarding media and their rights are international treaties (Rahmani, 2013). International treaties are agreements between states that are concluded in writing, and are subject to international law, regardless of their specific title, and whether they are contained in a single document or two or more related documents. Media law worldwide regulates media activities for

journalists. Countries use both domestic and international sources when drafting and developing media laws (Reza, 2012). Afghanistan is one such country that has considered both of these factors when developing its media law. Afghanistan is a country where media activities began in 1873, but the drafting and enactment of laws took place in 1922 during the reign of Amir Amanullah Khan (Rahin, 2007). The domestic sources of Afghan media are (laws, Sharia law, judicial precedent, custom, and legal doctrine), and its international sources are (the Universal Declaration of Human Rights, the Islamic Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant) (Mohammadi, 2011).

Media rights are of paramount importance for journalists, media outlets, legal experts, media support organizations, and law enforcement agencies. When developing Afghanistan's media laws, all aspects of journalists' work were considered. Adherence to national and international laws and regulations is a fundamental condition in drafting media laws. Understanding media rights brings order to journalists' work, enabling them to perform their media activities efficiently and effectively. Afghanistan's media law has been drafted and approved taking into account both domestic and international laws. This article explores the sources of media rights in Afghanistan (Rahin, 2007).

2. The history of media law in Afghanistan

The history of media activity and the establishment of the first newspaper, "Shams al-Nahar," in Afghanistan dates back to 1873. For half a century, media activity in Afghanistan took place without a constitution or media law (Rahin, 2007). The year 1922 marks the beginning of the development and enactment of laws and regulations. This year, the first draft of the Afghan Constitution, titled "The Basic Regulations of the Government against Afghanistan," was prepared and approved in 73 articles. The Public Media Law was drafted and approved in 1924 in 18 articles under the title "Press Regulations" (Rahmani, 2013; Qutbal-Arifin, 2019). From the establishment of the first publication, "Shams al-Nahar," to the present day, Afghanistan has experienced various systems, including authoritarian, socially liberal, and communist systems. The current system governing media activity in Afghanistan is a system of social responsibility. In such a system, media outlets must be accountable to the needs of their audiences while also being responsible for their activities. They should not limit their social responsibilities to the recipients of the message or the media owners (Biabani et al., 2015).

3. Media: Definition and its Role in Society

Regarding the definition of "media," scholars have come to a consensus that it is a means for disseminating information, education, and entertainment (Roya, 2016). Andrew Podolny defines media as a container for information and ideas that facilitates communication between citizens. Media plays a role in socialization, empowering people, and fostering good governance. Media is both a structure and a representation that enables people to exercise their rights and provides a space for expressing and resolving social conflicts (Rahmani, 2013).

The term "media" is defined in Article 3 of the Public Media Law, under the section defining terms, as follows: "Media is a means of transmitting messages, knowledge, and information using the following means: 1) Electronic Media: Radio, Television, Cable Network, and the Internet. 2) Print Media: Newspaper, Journal (weekly, bi-weekly, monthly, quarterly, annual, poster, and newsletter) (PML, 2009).

Since media law is a combination of "rights" and "media," based on the above definitions of these two concepts, media law can be defined as follows: "Media law is a set of rules and regulations that govern the behavior of media and journalists in the field of journalism and media (Ansari, 2011) .

4. Sources of Media Law in Afghanistan

To understand the concept of media law, it is essential to first define both "rights" and "media." Providing a comprehensive and universal definition of "rights" is challenging. A scientific definition that is accepted by all scholars does not exist. This is because of differences in worldviews, ideologies, and political, governmental, cultural, social, and economic systems (Ansari, 2005). As German philosopher Immanuel Kant (1724-1804) said, "Jurists are still in search of a definition of the concept of law" (Vahed, 2001).

5. Domestic and International Law

Domestic law refers to the rules that govern only citizens and residents of a country. As a result, there is no external influence involved. In contrast, international law governs the relationships between states, international organizations, and the citizens of different states. Therefore, international law always involves at least one external factor(Ansari, 2011).

International law, similar to domestic law, is also divided into public and private branches. Public international law deals with the relationships between states, while private international law concerns the relationships of individuals within the global community. For example, rules governing treaties between states (from their formation to their conflict, termination, or cancellation) are

examined in public international law. However, rules governing the marriage of citizens from two different countries are examined in private international law (Esmaili, 2004)

6. The Independence of Media Law and its Benefits

Law is broadly divided into two main branches, each containing various sub-branches and fields. However, it's important to recognize that these sub-branches are constantly evolving and expanding. The advancement of human life and its economic and industrial development have necessitated the addition of new branches or the expansion of existing ones. For example, civil law, the most significant branch of private law, initially encompassed all its sub-branches, covering all aspects of individuals' relationships with each other. However, with the evolution of social life, commercial law, labor law, maritime law, and others emerged, carving out their paths and achieving independence (Ansari, 2011). This quest for independence, which has proven beneficial, has extended to encompass specific professions, groups, or objects. Today, terms like medical law, nursing law, child law, women's law, registration law, ship law, and others are commonly accepted and widely used. Media, particularly the press, has also followed this trend. Due to its significant role in today's world, it has developed its independent legal system. This independence, which has primarily emerged and developed in the Western world, is sometimes referred to as media law or mass communication law (Esmaili, 2004). In any case, the independence of this branch of law is crucial. Among its benefits, we can highlight the following.

Importance of the Press and Media: The importance of the press and the crucial role of media in people's daily lives require no explanation. This profession, due to its connection to various aspects of social and individual life, is entangled with numerous regulations and laws. Familiarity with these rules enhances professional responsibility (Kalher and Jangholian 2023).

Clear and Independent Laws: The establishment of clear and independent laws and familiarity with them will enable media professionals to be aware of their legal duties and responsibilities, and understand the boundaries of their legitimate activities. This ensures journalists remain within their jurisdiction and, due to their awareness of prohibitions and consequences, avoid common offenses and mistakes (Ansari, 2011).

Importance of Legal Knowledge: The importance of this point becomes more evident when we recognize that ignorance of the law is not a defense. For instance, if a journalist knows that the "right to gather and publish news" extends only to the point where it doesn't lead to "disclosure and publication of confidential documents, orders, and matters, including military secrets, military maps and fortifications, non-public court proceedings, and investigations by judicial authorities without legal authorization," they will be mindful of these limitations when disseminating news and information.

Preventing Abuse of Power: Another benefit gained from familiarity with regulations is the prevention of arbitrary actions and illegal pressure. Certain authorities or individuals might impose restrictions on media activities beyond the law, based on their perspectives, hindering the free performance of duties in this field.

Professional Independence and Recognition: Independent discussions about media law and achieving the goals mentioned above will ultimately lead to another significant benefit: professional independence and rightful recognition (Esmaili, 2004).

7. The Place of Media Law in Afghanistan

It has been said that law is divided into various branches and categories. Recognizing where each branch of law, including media law, fits into these categories is essential because it helps us understand its importance, enforcement mechanisms, and governing rules. It also facilitates legal analysis and interpretation. For example, criminal law is based on imperative rules, and expansive interpretation is not possible. The victim's forgiveness is only effective if the crime is a private one, whereas civil law, especially its property section, often consists of supplementary rules. It allows for expansive interpretation and can be settled by agreement between the parties or through the victim's forgiveness (Ansari, 2011).

Now, we need to determine where media law stands. Like other branches, it is difficult, if not impossible, to place it in a specific and limited category within the existing classifications. Any branch of law can be categorized differently depending on the perspective. Similarly, media law, which is a type of domestic (or national) law, connects to aspects of both public and private law. For instance, many fundamental principles of media law, such as freedom of expression and freedom of the press, are fundamental rights (Stanekzai, 2008). The crimes committed in this realm, to a certain extent, fall under the criminal law of the country. On the other hand, media laws are often brief and concise, leaving many issues unaddressed. Therefore, in such instances, they must adhere to general laws, such as civil or commercial law. For example, if someone suffers damage through the media, the case will be tried based on general rules of civil liability (Esmaili, 2004). Therefore, each part of media law is governed by the specific rules and regulations of its respective branches. Consequently, some provisions in this field are imperative, while others are general, private, and so on.

8. Sources of Media Law

Every branch of law has its sources. These sources vary depending on the characteristics of the specific field. When discussing the sources of media law, we are looking at what constitutes the principles of media law, where they originate from, and whether any source is considered superior to others (Rahmani, 2013).

Broadly speaking, sources of media law are divided into two categories, domestic and international. Each category is examined below: Domestic Sources: Domestic sources of media law include religious law (Sharia), legislation, judicial precedent, custom, and doctrine, which are examined in detail below:

1. **Legislation:** Legislation is considered the primary source of law in Afghanistan. It refers to clear and mandatory orders written and formulated by competent authorities, aiming to guide the future of society (Stanekzai, 2008). The Constitution, as the fundamental law, is the source of all other laws. No law can contradict the Constitution. Regarding media rights, Article 34 of the Afghan Constitution states:

Freedom of expression is inviolable. Every Afghan has the right to express their thoughts through speech, writing, pictures, or other means while complying with the provisions of this Constitution.

Every Afghan has the right, according to the provisions of the law, to print and publish materials without prior submission to government authorities. Provisions regarding newspapers, radio, and television, publication of materials, and other mass media are regulated by law." (Constitution, 2003)

2. **Custom:** The word "custom" in Persian refers to "knowledge" or "awareness" of something accepted by common sense. It also refers to habits, traditions, and what is considered acceptable among people (Moein, 1983). In legal terms, custom refers to a rule that has gradually and spontaneously become binding among all people or a group of people. Every profession and field has its customs and traditions, which are followed by people in that field and used in their activities and interactions. Journalism is no exception. Therefore, these customs and traditions are used in courts and during law-making (Rahmani, 2013).
3. **Judicial Precedent:** Judicial precedent refers to the collective decisions of courts regarding a specific case that has been confirmed by the country's final court (Stanekzai and Naseh, 2019; Madani, 2009). In countries with common law systems, judicial precedent is the primary source of law. In these countries, judicial precedent is binding, and courts rely on previous judgments to resolve cases. Afghanistan, with its hierarchical system of legal sources influenced by the Romano-Germanic legal system, considers legislation as the primary source. Judicial precedent is not considered a binding source, and courts and judges are not obligated to follow previous rulings. Instead, they are free to decide based on the law and the specific case. However, judicial precedent is still considered in the process of law-making (Rahmani, 2013).
4. **Doctrine:** Doctrine refers to the collection of opinions, theories, and ideas presented by legal scholars and experts in the form of publications, articles, and treatises. These opinions and ideas are sometimes presented as proposals or legislative projects. Legal scholars, recognizing the objective needs and necessities to address problems in a legal field, formulate legislative projects and publish them. This allows competent authorities to become aware of these projects and consider them when creating new laws. In short, the importance of doctrine is evident both during the formulation of law and its implementation (Stanekzai, 2008).
5. **Sharia:** Sources of Sharia, like religious scriptures, Islamic legal rulings (Fiqh), and authoritative Fatwas (religious pronouncements), are crucial in systems that emphasize the integration of "religion and politics." Therefore, it is necessary to seek guidance from Sharia when formulating and enacting laws to ensure that laws are not contradictory to Islam and Sharia (Ghasemi, 2018).

9. International Sources

International sources are utilized in the development and implementation of national laws. Among the most important international sources that contain specific provisions regarding media and their rights are international treaties. International treaties are agreements between states that are concluded in writing and governed by international law, regardless of their specific title and whether they are embodied in a single instrument or two or more related instruments (Reza, 2012).

According to Article 7 of the Afghan Constitution, the government is obligated to respect and abide by international treaties. It is noteworthy that international treaties have inspired a majority of countries to develop freedom of expression, and they have extensively utilized these treaties, incorporating their provisions into their laws following their societal needs (Rahmani, 2013). Among these significant international sources, the following treaties can be mentioned:

Universal Declaration of Human Rights (adopted December 10, 1948, UN General Assembly)

International Covenant on Civil and Political Rights (adopted December 16, 1966, UN General Assembly)

Islamic Declaration of Human Rights (adopted August 15, 1990)

International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications (adopted September 12, 1923)

International Convention for the Suppression of the Circulation of Obscene Publications (adopted May 10, 1949, Lake Success) (Mohammadi, 2011)

Afghanistan is one of the countries that has signed three of these documents (Universal Declaration of Human Rights and International Covenant on Civil and Political Rights), committing itself to respecting and upholding their values .

10. Challenges and Solutions for Journalists in Afghanistan

10.1 Challenges

1. Lack of Professional and Skilled Personnel: Journalism involves producing and delivering news and information to audiences. In today's world where media has become increasingly specialized and standardized, successful journalists must possess the necessary journalistic knowledge and skills to effectively engage the public (Kamath, 2008).

2. Neutrality, Fairness, and Truth in Afghan Media: Maintaining neutrality is a fundamental principle of journalism. Journalists can build trust with their audiences by delivering news fairly and impartially (Karl, 2009). This fosters public confidence in the media and enhances its prestige. However, research indicates that while neutrality is somewhat considered in news reporting and discussions, it's impossible to completely rely on even the most independent media's objectivity. Journalists may filter reality, select words, and highlight certain elements when presenting events to audiences (Misbah, 2014)

3. Funding Sources for Media: Typically, every media outlet needs funding to operate. Independent media are funded by individuals, commercial advertisements, etc., while state media receive funding from the government (Kamath, 2008).

Afghanistan's media law states: "Radio Television Afghanistan is a public media belonging to the Afghan people, operating as an independent body within the executive branch, with its budget secured through the government, advertisements, and service provision. The appointment of the Head of Radio Television Afghanistan is made by the President, with the approval of the National Assembly" (APML, 2009).

Afghanistan has various state, party, private, and independent television channels, each funded by specific individuals, organizations, and institutions. National television news tends to be more ceremonial, while other media focus on critical and partisan reporting. However, the persistent influence of funding sources has created significant differences in the editorial direction and red lines of the press.

4. National Interests and Values and Afghan Media: The term "national interests" is often used in Afghanistan to evade issues or create problems. National interests in each country serve as a boundary to define red lines in media operations, ensuring journalists remain within the boundaries of journalism. National interests refer to the objectives that a state strives to protect on the international stage, encompassing vital, important, and peripheral interests. However, this term is a general concept in the political, military, and media literature of Afghanistan, as there is no consensus on what constitutes "national interests" that benefit everyone, from powerful individuals to the disadvantaged, from rulers to subjects (Misbah, 2014).

Similarly, other terms such as "national values," "national security," etc., have entered the political and media discourse in Afghanistan without clear definitions, creating a fertile ground for corruption, irregularities, and breaches of law. For example, Afghanistan's media law states: "Private radio and television stations are obliged to adhere to the principles and tenets of the holy religion of Islam and national, moral, and ethical values, as well as the psychological security of the Afghan people in their broadcasts" (APML, 2009). However, these national and moral values are broadly defined, leading to inequalities in media broadcasts.

5. Lack of Access to Information: Access to information is a fundamental democratic right that the government should guarantee. Without access to information, people cannot effectively monitor mistakes, lawbreaking, corruption, injustice, and the abuse of power by individuals that threaten democratic governance (Paltiz, 2013).

10.2 Solutions

1. Attracting Professional Personnel to Media: Attracting professional and educated individuals to media organizations can improve the quality and vibrancy of media content.

2. Transformation in Academic Institutions, Transformations in methods, education, and resources in academic institutions can positively impact the long-term, advanced development of journalism in Afghanistan (Rahmani, 2013). One writer states: "Based on the needs of the era we live in, journalism training centers must consider future-oriented journalism as a new vision for journalism education" (Kharazi , 2006).
3. Clarifying Ambiguous National Terms: If terms like "national interests," "national identity," "national security," etc., are clearly defined and analyzed with government support and the efforts of political experts, the scope of journalism in the country will become clear, and journalists will be saved from unnecessary confusion (Rahmani, 2013).
4. Focusing on Audience Needs and Interests: If the purpose of media work is to convey messages for collective promotion, collective dissemination, and collective organization, the audience plays a vital role. Therefore, to maintain this process, it is necessary to consider audience interests (Misbah, 2014).

11. Conclusion

The sources of media law in Afghanistan are derived from both domestic and international sources. This law takes into account globally accepted standards, making it largely adequate for addressing the working activities of journalists. Importantly, this law needs an unambiguous definition of vague national terms to avoid challenging the work of journalists and prevent them from unnecessary confusion. In Afghanistan, the evolution and progress of public media law have experienced setbacks. Looking from the time of King Amanullah Khan to the current regime, the progress of media has been zigzagging and has fluctuated with political system changes.

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