

Afghanistan

National Child Protection Legislation

National Legislation¹

- Age of Consent: **Same as age of marriage** (18 for males, 16 for females)
All sexual acts outside of marriage are illegal.

- Age of Marriage: **18 for males, 16 for females**
[Civil Code](#)
Art. 70
Marriage shall not be considered adequate until the male reaches the age of 18 and the female the age of 16.

Art. 71
(1) Where the girl does not complete the age provided under Article 70 of this law, the marriage may be concluded only through her father or the competent court.
(2) The marriage of a minor girl whose age is less than 15 shall never be permissible.

- Age of Criminal Responsibility: **7 years old; 12 years old**
[Penal Code](#)
Art. 72
Penal claim cannot be filed against a child who has not completed seven years of age.

[Juvenile Code](#)
Art. 10
 1. Children who have not completed the age of 12 are not criminally responsible.
 2. To those who are in between 7 and 12 years of age and have committed a crime the measure indicated in paragraph 2 of article 45 can be applied in place of penal punishment.
 3. Legal representatives of children are liable according to the civil law for the harms produced by children if they have not exercised their duties of education and control.

- **Extraterritoriality**

- [Penal Code](#)

- Applicability of the Law from the point of view of place and persons**

- Art. 14**

- (1) Provisions of this Law shall be applied to persons who commit crime within the area of the Republican Government of Afghanistan. The area of the Republican Government of Afghanistan encompasses any place under its jurisdiction.
 - (2) Afghan air planes and ships, whether inside or outside Afghanistan, are considered from the area of Afghanistan, unless they are, according to general principles of international law, subject (to authority) of a foreign state.

¹ This legislation encompasses Afghani Civil Law only and does not directly examine Sharia Law.

Art. 15

Provisions of this Law are also applicable to the following persons:

1. Any person who commits an act outside Afghanistan as a result of which he is considered the performer of or accomplice in a crime which has taken place in whole or in part in Afghanistan.
2. Any person who commits one of the following crimes outside Afghanistan:
 - a. Crime against internal or external security of the state of Afghanistan;
 - b. Crime of forgery as contained in articles 302 and 303 of this Law;
 - c. Crime of counterfeiting as contained in article 310 of this Law or import or forged or counterfeited articles to Afghanistan.

Art. 18

Any Afghan who discharges of an act outside Afghanistan which is considered crime according to the provisions of this Law shall be punished in accordance with the provisions of this Law in case of returning to Afghanistan, provided that the said act is punishable under the laws of the country in which it was committed.

▪ **Dual Criminality**

[Penal Code](#)

Art. 20

The period of arrest and imprisonment that the accused or convict has spent outside Afghanistan as a result of application of punitive verdicts shall be deducted from the duration of the punishment to which the person will be sentenced for commitment of the same crime in Afghanistan or from the punishment that is being implement upon him.

▪ **Mandatory reporting requirements**

[Criminal Procedure Code](#)

Duties of Citizens and Officials When Informed of a Crime

Art. 57:

- (1) The citizens by observing other provisions of this law, when informed of or witness to a crime, are required to inform the police or other judicial officer or prosecutor either verbally or in writing, or with the use of electronic devices.
- (2) Written notification shall contain the identity, signature, date and fingerprint of the reporting individual. Verbal notification shall be recorded in the registry. The reporting individual (if available) and the official who is informed shall sign in the registry.
- (3) Criminal consequences of a false notification shall be communicated to the reporting individual and recorded in the registry.
- (4) A notification without a signature can be a cause for initiating a criminal case only if an accurate investigation is conducted by the relevant authority.

▪ **Obligations of Educational Institutions**

[Education Law](#)

Council of the Parents, Students, Teachers and the Community People

Art. 48

- (1) The council of the representatives of student's parents, teachers and local residents, to achieve the following objectives, shall be established, in the public and private schools and educational institutions:

- 1- Active participation of the students' parents, teachers and the local residents in the process of education and training, in order to resolve educational and training problems, improving educational and training quality, prevention of misuse, legal and disciplinary violations of students, teachers and employees of the ministry of education.
 - 2- Oversee and supervise from education, moral, edification and social interactive of the students' and employees of the ministry of education.
 - 3- Protect the students and educational personnel from violence and destructive activities in the family, inside and outside of the educational institution.
 - 4- Active participation in management and implementation of development programs of the ministry of education for improvement of education and training system in the country.
- (2) Organization and method of activity of the council stated in paragraph (1) of this article shall be set forth in accordance with its related rule.

▪ **Prohibition to hold certain positions**

[Penal Code](#)

Art. 113

(1) A person who is sentenced to continued or long imprisonment of more than ten years shall also be deprived of the following rights and privileges:

1. State employment.
2. Service in the armed forces.
3. Membership of parliament, municipalities, provincial and local councils.
4. Participation in elections as an elector.
5. Use of State titles and decorations, both domestic and foreign.
6. Membership in boards of directors of companies and banks.
7. Executorship, trusteeship and procuracy in transactions and claims.
8. Acting as witness in contracts and transactions during the period of conviction.
9. Concluding contracts with State departments and/or obtaining concession from the State.
10. Ownership of concession (license), editorship or chief-editorship of magazines and dailies.
11. Administration of goods and estate during the period of conviction, with the exception of dedication and will.

(2) If the convicted person is enjoying any of the above rights and privileges at the time of issuance of the verdict, he shall be deprived of it at the instance of issuance of the verdict.

Art. 129

Debarment from engagement in a profession and trade includes the prohibition of the person from all sorts of professions and trades and industrial, commercial and technical activities, engagement in which is legally dependent upon the permission of an official authority.

Art. 130

(1) If a person, by reason of committing a felony or misdemeanor emanating from his obligations related to his profession or trade, is sentenced to an imprisonment period of not less than six months, in addition to the principal punishment, the court can debar him from his profession or trade; however, the duration of such debarment period cannot be more than one year.

(2) If the said convict, after the expiration of his period of debarment from the relevant profession or trade, commits the same or a similar crime as the first one within five years from

the date of issuance of final verdict, the court can order his debarment from the relevant profession or trade in addition to the principal punishment. This debarment cannot be for a period of more than three years.

▪ **Employment Law**

[Labor Law of Afghanistan No. 790](#)

Art. 13

The employment conditions in an establishment shall be as follows:

- (2) The minimum age for work is 18; and for light type of business, the minimum age of work is 15.
- (3) Completion of 15 years of age for the employees and contractual workers in the field of light industries
- (4) Completion of 14 years of age for apprentices

Contract Suspension

Art. 21

(1) The work contract can be suspended in the event of the reasons mentioned hereunder, and will be in force when the suspension is lifted.

1. Performing Military Services.
2. Engagement in the Election task.
3. Temporary stoppage of work.
4. Impeachment or being under custody or investigation.
5. Unforeseen disasters.
6. Engagement in education.

(2.) The days that the worker during the suspension time of his contract, spends for military services, is under investigation and is engaged in education, can be added up on the total period of his service only if after completing them, he returns to the organization in one months' time.

(3) However, suspension situations for clause 1, 2 and 6 in the private sector; mutual agreement of the both sides is essential to add up on the total period of the service of the worker

Termination of the Contract

Art. 23

(1) The essential instances for the termination of the work contract are as follows:

- (1) Agreement of the both parties.
- (2) Completing the particular employment contract by applying clause (2) of article 14 of this code.
- (3) Retirement.
- (4) Death.
- (5) Disability and incapability that will hinder to perform the jobs.
- (6) Long cessation of work, which will be more than six months.
- (7) Dissolution of the organization or reduction in the number of the staff.
- (8) Final conviction to prevent work continuation.
- (9) Repeated breach of work after disciplinary warnings.
- (10) If the worker refuses his assignment to his previous job.
- (11) If the probationary period has not been satisfactory.

(2) In case the employment contract is terminated, this is the organization's responsibility to pay rest of the worker salary and other allowances. If he/she passes away, it should be paid to his/her legal inheritor.

(3) Abrogation of the work contract, by virtue of part (1) clause (1) of this article is permissible only when it is not feasible to transfer the person concerned, subject to his agreement, to a similar job.

(4) However, in case the contract is to be abrogated on the basis of reason described in clause (1) of this article, this is the responsibility of the organization to inform the worker within a month.

Criminal Law - Defamation

[Penal Code](#)

Art. 436

(1) Defamation is the attribution of a certain incidence to someone else by one of the "public" means, such that if it were true, the accused would have been punished or degraded in the eyes of the people.

(2) If the conditions necessary for filing of "Had" claim are not present in a crime of defamation, or the claim of "Had" is dropped due to doubt or one way or another, the offender shall be sentenced to medium imprisonment of not more than two years and cash fine of not less than ten thousand and not more than twenty thousand Afghanis, or one of these two punishments.

Art. 437

If defamation is an accusation to other than adultery or denial of parentage, such that the defamer should attribute to the defamed matters which, if true, would have made the latter liable to legal punishment or degraded in the eyes of the people, the offender shall be sentenced in accordance with article 384 of this Law.

Art. 438

If the defamer proves the truth of the act or incident which he has attributed to the defamed, he shall not be sentenced to any punishment.

Art. 439

If the defamer is sentenced for any crime to which the defamer has accused the defamed, the said defamer shall be sentenced to short imprisonment of not less than three months or cash fine of not less than three thousand and not more than twelve thousand Afghanis.

Art. 440

In a case of defamation, no investigation, prosecution or filing of claim can take place without the complaint of the defamed.

Sexual Offenses Against Children

Penal Code

Chapter 22 – Crimes Related to Childhood, Incapacity, Endangering Minors and the Feeble

Art. 358 (1)

A person who himself or through someone else endangers the life of a person who has not completed the age of 15 or due to health, mental or psychological state is incapable of protecting himself, shall be sentenced to medium imprisonment of not more than 3 years or cash fine of not more than 36,000 Afghanis.

Art. 425

A person who carries off a girl, who is sixteen years or over, at her own will from her parents' residence for the purpose of lawfully marrying her, shall not be deemed as having committed an act of kidnapping.

Art. 427

(1) A person who commits adultery or pederasty shall be sentenced to long imprisonment.

(2) In one of the following cases commitment of the acts, specified above, is considered to be aggravating conditions:

- a) In the case where the person against whom the crime has been committed is not yet eighteen years old.
- b) In the case where the person against whom the crime has been committed is a third degree relative of the offender.
- c) In the case where the offender is a tutor, teacher, or servant of the person against whom the crime has been committed or the latter has, one way or another, has authority or influence over the former.
- d) In the case where the person against whom the crime has been committed is a married woman.
- e) In the case where the offender deflowers a maiden.
- f) In the case where two or more persons have assisted each other in committing the crime or that the offenders have committed the act one after another.
- g) In the case where the person against whom the crime has been committed is affected by genital disease.
- h) In the case where the person against whom the crime has been committed becomes pregnant.

Art. 428

If commitment of the act, specified under paragraph 1 of Article 427 of this Law, results in the death of the person against whom the crime has been committed, the offender in view of the circumstances shall be sentenced to continued imprisonment or death.

Art. 429

(1) A person who, through violence, threat, or deceit, violates the chastity of another (whether male or female), or initiates the act, shall be sentenced to long imprisonment, not exceeding seven years.

(2) In the case where the person against whom the crime is committed is not eighteen years old, or the person who commits the crime is one of the persons specified under paragraph 2 of Article 427 of this Law, the offender shall be sentenced to long imprisonment, not exceeding ten years.

[Law on The Campaign Against Abduction and Human Trafficking](#)

Aggravating Circumstances of Abduction Crime

Art. 7 (1)

If the victim of abduction is a child or a female or the crime is committed by the servant of the victim or by a person that the victim is under his/her guardianship or authority, the perpetrator shall be sentenced to maximum imprisonment anticipated.

Human Trafficking

Art. 8

(1) Any person who commits human trafficking offence, in accordance with circumstances shall be sentenced to long imprisonment not more than 8 years.

(2) If the victim is a child or a female, the perpetrator shall be sentenced to long imprisonment not less than 12 years.

(3) If adultery or pederasty is taken place against victim, the perpetrator in addition to punishment prescribed for the human trafficking crime shall be also convicted to the punishment of adultery or pederasty crime.

Prohibition of Prosecution

Art. 17

The victim of abduction and human trafficking shall not be prosecuted.