



Afghanistan Independent Human Rights Commission

Causes and Consequences Of Bachabazi in Afghanistan

(National Inquiry Report)

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Message of Dr. Sima Samar

It is a matter of great pleasure for us to inform you that the AIHRC's second National Inquiry Report on the "Causes and Consequences of Bachabazi in Afghanistan", is prepared and published.



One of the objectives of the AIHRC is to address the most acute and most serious human rights violations in the country. The AIHRC, by launching this national inquiry and conducting of advocacy, wants to investigate and analyze the most serious cases of human rights violation and recommend certain strategies to the government and other stakeholders. This study is dealing with the problem of Bachabazi in Afghanistan, which, in some areas, has turned into a normal and customary practice.

The present report, which is prepared as a result of the implementation of a national inquiry on the causes and consequences of Bachabazi in Afghanistan, is of great importance. This report is important because a lot of children in this country who constitute the country's next generation are deprived of their rights and a large number of them are under the most severe hazards such as kidnapping, trafficking, Bachabazi, rape, hard labor and drug addiction. Given such deprivations and dangers that threaten children, the AIHRC decided to launch a national inquiry on Bachabazi, which is a serious violations of human rights.

This report, which is accomplished as a result of a comprehensive research on the causes and consequences of Bachabazi has tried present a clear picture of the causes and grounds of Bachabazi as well as its harmful Psychological and social consequences on the victims as well as their families. The study found that most often the victims are children coming from poor and vulnerable families, and more importantly, its devastating psychological and social consequences stays for a long time. In addition, the study found that the custom of Bachabazi widely prevalent in some areas of the country expanding in other areas too.

Since the custom of Bachabazi is increasingly and by every passing day sacrificing more children, this study considers it as a national problem and a gross violation of human rights of children. Thus, I would like to urge all relevant organizations and authorities in the Afghan government as well as civil society organizations and international organizations to fight for the elimination of this harmful custom in close coordination with each other. Surely, only our coordinated, systematic and continued efforts and struggles can help save our children.

At the end, I would like to convey my gratitude and sincere appreciation to all people who have helped the AIHRC in launching this National Inquiry. I also extend my thanks to the government organs, civil society organizations, the media, provincial councils, religious scholars and experts, representatives of international organizations and other people participated in the programs of public hearings and focus group meetings. I express my heartfelt admiration to my committed colleagues, in particular the leadership team of this National Inquiry who worked hard to implement and prepare this report.

With Regards
Dr. Sima Samar
The Chairperson of the AIHRC

Preface

Children are one of the most vulnerable groups of society, but the children of Afghanistan are more vulnerable than other children due to various reasons such as lack of support mechanisms, extreme poverty, low level of public education and other social, economic and cultural causes.

Afghan children are faced with serious threats like kidnapping, trafficking, sexual abuse and sexual exploitation, drug addiction, murder, beatings because of continued armed conflict, insecurity, hard labor and forced recruitment into armed groups, exclusion and deprivation of the right to education, health and recreation.¹

According to the Ministry of Labor, Social Affairs Martyrs and Disabled, about six and a half million children are at risk. A lot of children are working under difficult and risky conditions on the streets, brick kilns, factories and transportation of heavy loads at the border.² More than 65 thousand children work in Kabul and many others are involved in begging³, and about 300 thousand children are addict and hundreds of other children have been trafficked and dozens of them have been raped⁴.

In addition to all these challenges and widespread violations of human rights of children, in recent years the number of cases of sexual abuse against children and women has increased⁵. Sexual assault and sexual exploitation of children is the most serious human rights violations that severely damage the personality and soul of children, so that its psychologically damaging effects remain for a long time.

It must be said that attempts are made for the protection and promotion of children's rights, but these efforts have not been effective enough in any way. More importantly,

¹ - AIHRC report on the situation of children in Afghanistan, page 8,1392-

² - Ibid

³ -UNAMA, International Children's Day and Child situation in Afghanistan", 12 Jawza 1392, Retrieved Saratan 17, 1393: "<http://www.unamanews.org/dari/index.php/news/articles/275>

⁴ - Afghanistan Independent Human Rights Commission, Report on the Situation of Children in Afghanistan, page 32, 1392

⁵ - AIHRC, and causes and contexts of rape and honor killings in Afghanistan, page 38, 1392

that no effective efforts are made for the implementation of laws and policies in the country. For this reason, the AIHRC launched its second national inquiry on causes and consequences of Bachabazi in Afghanistan. This report is part of the national inquiry resulted from the discussions made during the public hearings, meetings, focus groups, interviews with victims, perpetrators, witnesses, experts and officials of the State.

The first chapter of this report briefly introduces the AIHRC and explains the AIHRC's responsibilities and frameworks. In the second chapter, the national inquiry is introduced and the goals and objectives of this inquiry are discussed and its methodology is described. Subsequently, the third chapter of this report discusses and analyzes the costume of Bachabazi from the legal perspective. The fourth is dedicated to the national and international commitments of Afghanistan in supporting of children's rights. In the fifth chapter the statistical findings about the costume of Bachabazi in Afghanistan are discussed. Chapter six deals with the causes and consequences of Bachabazi. Finally, in the seventh chapter is a brief conclusion of the process of National Inquiry and specific recommendations presented by the AIHRC how to combat Bachabazi and protect children in the country.

The AIHRC would like to extend its gratitude to all government departments and NGOs, particularly civil society organizations, the media, social activists, provincial councils and elders who contributed in conducting of this national inquiry, and appreciate the Research team's efforts and the efforts made by the authors of this report:

Najibullah Babrkzai, Mohammad Hossain Saramad, Mohammad Jawad Alavi, Bismillah Waziri, Mohammad Ali Mohabati, Abdullah Abed, Shamsullah Ahmadzai, Latifa Sultani, Ahmad Shaheen Bashardost, Afifa Maroof, Spojmai Saeed in National Inquiry team, and the Commissioners of the AIHRC and Executives Director as members, and the team leader Dr. Soraya Sobhrang. Likewise, we express our thanks to the staff at the AIHRC's regional and provincial offices for the efforts they made in the implementation of the National Inquiry Program.

Report Summary

Based on its legal mandates, the AIHRC launched a national inquiry on causes and negative consequences of Bachabazi (pederasty) in Afghanistan. The findings of this National Inquiry are obtained through interviews with perpetrators as well as with victims of this phenomena, local elites and witnesses of this practice. This National Inquiry was conducted through holding of 71 focus group sessions and 14 public hearing sessions in 14 provinces of our country. These sessions were attended by almost 1900 persons, including members of the provincial councils, representatives of justice and judicial organs, local elders, specialists, university lecturers, representatives of the civil society institutions, media, security organs, religious Ulama and local influential figures to exchange views about the consequences of Bachabazi. For enrichment of this report, other reports and researches conducted in this area have been used as secondary sources.

The findings by the AIHRC about the causes and consequences of Bachabazi in Afghanistan, attained through National Inquiry, are summarized as follows:

What is Bachabazi?

In some parts of the country, a number of local powerful individuals keep with them one or more boys typically aging between 10 to 18 years for the purpose of Bachabazi generally associated with sexual exploitation and other forms of sexual harassments. These children are usually coming from poor families who are kept by some rich individuals as bodyguard, apprentice, servants at home, shop, bakery, workshop, hotels, restaurants and other paid jobs or through coercion, threat, deception, intimidation and enticement. They often fall victims to sexual abuses. In some parts of the country, these children while wearing female clothes are used as dancers in parties and wedding ceremonies. At the end of ceremonies, they are usually taken to private houses or hotels and raped; sometimes they are even gang raped. As sex slaves, these children continually suffer from sexual exploitation or other forms of sexual harassments.

Bachabazi as a Crime and Human Right Violation

Bachabazi is not clearly defined in the Afghan laws and there is no specific provision about it. Since this practice is a kind of child sexual exploitation and abuse, it is contrary to the spirit of the Constitution and other enforced laws in our country. Under the custom of Bachabazi, children are used as sex slaves and are sexually abused. Therefore, their right to human dignity is violated. Bach Bazi is prohibited, based on provisions of the Universal Declaration of Human Rights, International Convention on Civil and Political Rights, the Convention on the Rights of Childs and other human rights conventions. According to these conventions, the state party is obliged to fight against

sexual exploitation of children and protect children from any kind of exploitation. Based on the Convention on the Rights of Child, the member states should take necessary measures to prevent kidnapping, trafficking in and sale of children in any form.

According to the definition of trafficking in person in Palermo Protocol and the Law against kidnapping and trafficking in persons, Bachabazi is a kind of trafficking in person. The Palermo Protocol reads, "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having influence or control over another person, for the purpose of exploitation, According to this definition Bachabazi is counted as trafficking in persons. Therefore, it is a criminal action and human rights violation.

Criminalization of Bachabazi

Although there is not any clear provision on Bachabazi in the criminal laws of Afghanistan, article 427 of the Criminal Law prohibits rape and pederasty (with male and female) and states that the perpetrators shall be sentenced to long term imprisonment. In addition, this law defines the aggravating condition of this crime and clarifies that in case the victim is a child or the perpetrator is a third degree relative of the victim or the perpetrator is the tutor, teacher or servant of the victim or has authority or influence over the victim in any way, it is considered an aggravating condition. Therefore, this article of the law considers Bachabazi as a serious crime of pederasty.

Article 427 of the Criminal Law is particularly about crimes of rape, pederasty and degradation. It does not specifically address the crime of Bachabazi, because Bachabazi does not cover only sodomy and sexual assaults, it includes other forms of sexual harassments such as touching massaging, forced dance in private and public ceremonies and practiced continually. It means that Bachabazi is not only committing of sodomy once, but it is a continual action and makes the victim known in the society. For this reason there is a gap and ambiguity in the laws of Afghanistan regarding Bachabazi and the existing laws do not address the problem sufficiently.

Analysis of the Statistical Data:

During this inquiry, interviews were conducted with three categories of people, including 36 perpetrators, 31 victims of Bachabazi and a number of elites and local witnesses. The findings of these interviews are presented as follows:

I. Demographic Specifications of the Perpetrators:

- 25% of Bachabazi perpetrators were aged between 21 to 30, 28% of them were aged between 31 to 40, the other 28% were 41 to 50 and 8% were aged between 51 to 40. (In total, 56% of them were between 41 to 50 years of age.)
- Literacy is an important and effective variable in the prevalence rate of Bachabazi. 58% of the perpetrators are illiterate. Level of literacy or illiteracy, however, is not a major factor in the prevalence of Bachabazi. This is because it is quite common among the literate and even those with higher education.
- Bachabazi does not have a direct link with the individuals' marital status; 78% of the perpetrators are married and only 22% are unmarried. 18% of the married ones have more than one wife. More than 46% of the married people got married when they were 18 to 25 years old. 46% of the married people are completely satisfied with their marriage. 43% are, however, partially satisfied with their marriage.
- In terms of social status, 64% of the perpetrators constitute normal people in the society. The rich, the commanders and the elderly also constitute the perpetrators - 8% each.

II. Demographic Specifications of the Victims:

- Most of the victims are children under the age of 18. However, the youth above the age of 18 may also fall victims of Bachabazi. 42% of the victims are aged between 13 to 15. 45% of them are aged between 16 to 18 years of age. The other 13% constitute victims aged 18 to 25.
- Literacy and awareness have a very strong effect; the literate is less vulnerable. The majority of the victims are illiterate constituting 48%. 87% of the children who are victims of Bachabazi cannot attend school.

III. Main Findings

- 75% of the perpetrators have stated that they keep one boy. 14% have said that they have two boys. Two of them said, however, that they each have 3 boys in possession. 81.6% of the perpetrators stated the boys aged be between 13 to 16 years old. 78% of the perpetrators said that they take more interest in the ones aged between 13 to 16, 14% show interest in the boys aged 17-18.
- The most significant motive for Bachabazi has been stated to be recreation, lust and personal interests, to which 69.5% of the perpetrators have

agreed. Lust includes bedding, satisfying sexual desires, feeling merriment through making boys dance at parties or even touching their bodies. Some other perpetrators have said that they have pursued the act because it is either quite prevalent in their areas or considered natural; or they do it simply to compete their rivals.

- 29% of the perpetrators have said that they acquire the boys through paying money and buying exploiting their poverty. 13% have said that they have access to the boy through their friends. 9% have conceded to using force and threats for possession of the boys. The other 24% mentioned other means, which are not very clear.

- Poverty is the major cause for the emergence and prevalence of Bachabazi. 68% of the victims have conceded that they have received money for the act.

- 86% of the perpetrators have stated that they are attracted to fair looks of the boys. This, however, is not important to the other 14%.

- 39% of the perpetrators have said that the victims are in their possession 24 hours a day; they live together. 14% have said that their boys are available to them 12 hours a day, 8% have stated 6 hours of possession, 14% and 25% have stated 3 hours and 1 hour of possession respectively.

- The most common form of exploiting the victims is bedding with them and using them sexually. 39% of the exploitation reveals the same. Dancing and having fun are the second most common form of exploitation constituting 36%. However, 33% of the victims have conceded to being used sexually and 31% have said that they dance before the perpetrators and amuse them.

- 53% of the perpetrators have conceded to hold drinking parties with other perpetrators of Bachabazi; they make their boys dance there. The other 47% have denied doing this.

- 86% the perpetrators have claimed that the boys are happy with the act; 14% have denied it, though.

- The victims' responses, however, are opposite to the above statements. 87% have stated that they have not willingly been trapped. Only 13% conceded to having had consent.

- 81% of the victims have said that they want to quit this job. 19% of them, however, replied in negative. 58% of the victims have said that they have been subjected to violence. Based on their statements, battering, confinement and threat of killing are the most common forms of violence against them.
- 69% of the perpetrators have agreed to have faced opposition and reactions, with respect to their deeds, by other people. 31% of them, however, had not faced any such reactions.
- 89% of the perpetrators have stated that the security authorities have not prosecuted them for their acts of Bachabazi. 90% of the local elites and witnesses have said that the perpetrators have not been prosecuted legally.

The Factors and Grounds of (Bachabazi):

The spread and expansion of Bachabazi in Afghanistan has several factors and causes, such as lack of rule of law and corruption, ambiguity and gaps in the law, limited access to justice, poverty, insecurity, and existence of irresponsible armed groups has contributed to the spread of these phenomena which is discussed briefly as follows:

Lack of rule of law and corruption in the security, justice and judicial organs have made it difficult to prosecute the perpetrators of Bachabazi, and they freely continue their law breaking acts and wantonness. Most of them have connection with the security organs and by using power and giving bribes, they get exempted from punishment. On the other hand the justice and judicial organs due to corruption and lack of strong will to implement justice, or due to lack of clarity in the Penal Code on Bachabazi do not want to prosecute the perpetrators. On the other hand, lack of courts and prosecutors in some districts specifically in insecure areas and districts has caused the victims not to have access to the justice and judicial mechanisms. Likewise, these factors have helped the perpetrators to continue practicing their acts with no fear of the law.

Poverty plays an important role in the expansion of Bachabazi. Most of the victims of Bachabazi come from the poor families who try to earn their livelihood in the service of other people who later on engage in sexual or other forms of abuse. Most of the families don't know that their children are raped. The perpetrators of Bachabazi taking advantage of their poverty, and entice the children against money.

Insecurity in many parts of the country and presence of irresponsible armed groups has also contributed to the spread of Bachabazi. It is mentionable that many of those who engage in Bachabazi are in contact with the irresponsible armed groups or they themselves are armed and have armed groups. They engage in Bachabazi using such powerful powers, including security organs and to make sure that they are free and safe from prosecution.

Lack of guardianship, illiteracy, and domestic violence has also laid the grounds for expansion of Bachabazi. The past long lasting wars caused many families to lose their guardian and children under 18 become the breadwinners of their family. Due to lack of or bad guardianship, such families are ready to put their children at risk to find a piece of bread. From the other end, low levels of literacy and awareness of families also cause their families not to well protect and look after them. Due to lack of awareness their children face serious harms and risks of trafficking in children and kidnapping. Moreover, domestic violence is considered as a common act in most of the families. Those children subjected to domestic violence in the family attempt to flee from home and consequently fall into the trap of kidnappers, abductors, and perpetrators of Bachabazi.

The Outcomes of Bachabazi (Pederasty)

Bachabazi is regarded a nasty and offensive practice, a taboo. Therefore, the perpetrators of Bachabazi and the victims get isolated from the society, because the victims of Bachabazi often come from poor families and do not enjoy a high social status, as a result they get more isolated. The social isolation of such children and their families increase when the victims become famous after dancing in general events and parties. People not only end their relationship with the victim, but also with his family and relatives as well and try not to deal with them.

The victims of Bachabazi suffer from serious psychological harms whereas they often get raped. The victims' psychological harms remain for long times even till their adulthood when they quit this act. One of the symptoms and negative impacts of sexual abuse is that the children are isolated and their confidence fades away. On the top of all these, such victims suffer from psychological trauma and stress and a sort of distrust, hopelessness and pessimist feeling happens to them. Bachabazi results in fear among the children and a feeling of revenge and hostility develop in their mind. As a result of the

continuity of the Bachabazi most of the families are concerned about their children and live a life full of fear and anxiety, because the perpetrators are very powerful people. In some incidents it has been reported that Bachabazi had led into a big hostility and revenge and has been followed by casualties in some incidents as well. The reports show that sometimes as a result of rivalry and jealousy regarding Bachabazi the perpetrators of Bachabazi have engaged in fighting with each other and consequently several people involved in the case were killed from both sides of the conflict.

Chapter One

About the AIHRC and its Legal Mandates Concerning Children's Rights

1.1 Mandates and Working Framework of the AIHRC

The AIHRC as a national human rights institution was established and started its work on 16.03.1381 in accordance with the Presidential Decree and the provisions of the Bonn Agreement. According to the Constitution, the State shall establish the Independent Human Rights Commission of Afghanistan to monitor respect for human rights in Afghanistan as well as to foster and protect it. Every individual shall complain to this Commission about the violation of personal human rights. The Commission shall refer human rights violations of individuals to legal authorities and assist them in defense of their rights.⁶ In Sawr 22, 1384, the Law on the Structure, Duties and Mandates of the AIHRC, based on Article 58 of the Constitution, was approved by the President⁷ and the basis of action, structure and mandated of the AIHRC was defined. The Law states that the Commission shall carry out its activities for the achievement of the following five objectives:

1. Monitoring the observance of human rights,
2. Promotion and protection of human rights,
3. Monitoring the situation and people's access to human rights and freedoms,
4. Investigation of violations and abuses of human rights, and
5. Taking measures in order to improve the human rights situation in the country.⁸

Article 21 of the law on the structure, duties and mandates of the AIHRC clearly explains its mandates on monitoring the human rights situation, investigation of cases of human rights violation. This article reads that the Commission is mandated to monitor human rights situation, the implementation of the Constitution, other laws, regulations

⁶-Government of the Islamic Republic of Afghanistan, Ministry of Justice, constitution, Article 58, Official Gazette, No. 818,1382

⁷- Government of the Islamic Republic of Afghanistan, the president Decree on the Law of Structure Duties and Mandates of the AIHRC, No. 16, 1384

⁸ The ISA, Ministry of Justice, the Law on structure, Duties and Mandates of the AIHRC, article 5, 1384

and the State commitments regarding human rights. Similarly, according to this article, the AIHRC is authorized to monitor the performances of administration, justice and judicial systems, profitable and non-profitable national and international institutions in the country effective on the human rights situation. Specifically, in paragraph 16 of this Article in relation to scientific research it is provided: "Scientific research is carried out in order to find out effective ways to coordinate international human rights principles and mechanisms with the belief, culture and national traditions, and develop relevant plans and programs."⁹ Likewise, paragraph 21 of this article provides that: "Conducting public consultations and surveys to find practical ways of promoting and protecting human rights and develop relevant programs;"

In order to carry out its activities and implement its duties and mandates, the AIHRC has established 14 regional and provincial offices to facilitate people's access to refer their complaints. At the moment, 8 regional and 6 provincial offices are active. One regional office covers many adjacent provinces.

The AIHRC has 5 program units and each of them is active in all regional and provincial offices. These units include Monitoring and Investigation Unit, Women's rights Unit, Child Rights Unit, Persons with Disability Rights Unit, and Human Rights Education Unit. It is worth mentioning that already there was another unit worked as transitional justice, its work was terminated in 2011 upon the completion of this project.

In 1388, the AIHRC designed a strategic plan in consultation with all the staff of the AIHRC, and more than 500 stakeholders of human rights issues all over the country, including civil society institutions, international organizations, state organs, elders, and public councils. This strategic plan covered four years activities, 1389-1392 (2010- 2013). Based on this strategic plan, the vision of the AIHRC for a just, democratic and developed society where human rights are observed and respected is determined. Moreover, a series of values for the AIHRC such as human dignity, justice, equality, non-discrimination, freedom, commitment, transparency and accountability, consultation and participation, mutual respect and understanding, tolerance and acceptance of criticism was specified for the AIHRC¹⁰. Based on this strategic plan, the AIHRC has set 5 major objectives and all its activities are directed and organized towards achievement of these five major objectives. These five objectives are: Leadership, education, empowerment, advocacy, monitoring and investigation.

⁹ Ibid , article 21

¹⁰ The AIHRC, strategic plan, page 13, 1388

According to the AIHRC's strategic plan, protection of women's rights is one of the main objectives and many activities are predicated for the protection of women's rights, advocacy for the rights of female victims, and attraction of public attention to ensure women's rights in the country.¹¹

1.2. Programs of the AIHRC for the Protection of Children's Rights

For further coordination and effectiveness of its activities towards children's rights, the AIHRC has established a special working unit, and all programs related to the children's rights are carried out by this unit in cooperation with other units. This unit is active in all 14 offices of the AIHRC and carries out its activities according to the strategic and action plans of the AIHRC. The most important activities predicated in the strategic and action plan for protection of children's rights are advocacy and protection of the rights of victims, advocacy for amendment and ratification of laws consistent with international human rights values and norms and monitoring children's rights situation.

One of the most important activities of this unit is monitoring the children's rights situation. Children's Rights Protection Unit and Monitoring and Investigation Unit in all regional and provincial offices identify and record cases of violence against children. To protect the rights of victims through justice and judicial organs, they follow up the cases till the last stage. Taking into consideration the types of cases, complainants and both parties to the case, the AIHRC renders legal consultation and if necessary, endeavors to settle the cases through mediation. In addition, the AIHRC accelerates activities for public awareness on children's rights through the holding of workshops, seminars, conferences, radio and televised messages as well as publication of posters and brochures.

Besides promotion of the rights of other strata in the society, the AIHRC endeavors to disseminate children's rights at schools, universities, teacher training colleges, and military training centers to change public behavior and views about children's rights and ultimately decrease the level of violence against children. In addition, The Children's Rights Protection Unit has made efforts to establish joint advocacy networks with the State and civil Society Institutions and participate in the legislative process through presenting views and consultations.

¹¹ Ibid

Another task of the Children's Rights Unit is monitoring the situation of children's rights. This unit systematically monitors children correction centers, orphanages and other children centers to evaluate observance and protection of child rights in these centers. In order to elevate the level of accountability of the related State organs and to raise public awareness on the situation of children's rights, the AIHRC consistently publishes the results of its monitoring and evaluations through research and thematic reports and holding press conferences. It is worth mentioning that during the previous years the Research Unit in cooperation with Children's Rights Unit has prepared and published more than 11 research reports on children's rights, each containing specific suggestions and recommendations to the State, national and international organizations.

A number of these published research reports are as follows: Justice for Children, Situation of Addicted Children in Afghanistan, Assessment of General Situation of Children in Afghanistan, a Research Report on the Situation of Children in Afghanistan, Situation of Education in Afghanistan, Fair Access of Children to Education in Afghanistan and Evaluation of Physical Punishment of Children at Schools. The present report is the outcome of efforts made by the AIHRC in the area of children's rights protection and promotion. This report is based on the National Inquiry which was carried out in the second half of the year 1392 on the causes and negative consequences of Bachabazi in Afghanistan.

1.3 Legal Basis of the AIHRC's Mandate in Conducting National Inquiries

A national inquiry has different aspects including evaluation of cases, analysis of information, fact finding, rendering consultations and recommendations.¹² Similarly, training and raising awareness is one of its important aspects and sensitization of public views about the cases of human rights violation is its main objective.

Each of these aspects and objectives are part of the legal mandates of the AIHRC. As mentioned earlier, based on the Constitution and the Law on its Structure, Duties and Mandates of the AIHRC, the main objectives of the AIHRC are monitoring the observance of human rights, the situation of human rights and public access to their human rights

¹²APF, Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights, Sep 2012

and freedoms, investigation of cases of human rights violation and taking measures for the improvement and promotion of the human rights situation in the country.¹³

Likewise, various paragraphs of article 21 of the Law on Structure, Duties and Mandates of the AIHRC emphasize on carrying out protection, research, advocacy and awareness programs at the national level. Some of the paragraphs which refer to various aspects of the national inquiry are mentioned here.

Para 7: Investigation of cases of human rights violation

Para 8: Collection of documents, evidences and information about cases of human rights violation

Para 10: Designing and implementation of human rights training and raising awareness national program

Para 16: Carrying out scientific research to find out effective methods for the coordination of human rights international principles and mechanisms consistent with our national beliefs, culture and traditions and designing a program in this regard.

Para 21: Conducting national consultations and plebiscites to find out practical ways for protection and promotion of human rights and drafting plans in this regard.

Para 22: Presenting views, recommendations and reports to related sources, Parliament, provincial, district and village councils for the improvement, protection and promotion of human rights.

Para 28: Presenting reports on the human rights situation¹⁴

Although, national inquiry has not been mentioned specifically in these items, but, the aim of national inquiry as a method of investigation and research about cases of human rights violation, advocacy and giving awareness at the national level has been considered in various paragraphs of article 21 of the Law on Structure, Duties and Mandates of the AIHRC and counted as part of the duties and mandate of the AIHRC.

¹³ Ibid , article 5

¹⁴ Ibid article 21

Chapter Two

Concept and Methodology of National Inquiry

2.1. What is National Inquiry?

According to the training documents of Asia Pacific Forum for human rights national institutions (APF), during the last 20 years an innovative mechanism initiated by human rights national institutions came into being in Asia Pacific region that is now recognized as National Inquiry¹⁵. Asia Pacific Forum defines national inquiry as: A National Inquiry is an inquiry on a basic human rights issue and it demands from everyone to participate in the process of this inquiry. National inquiry is conducted in a general and transparent way. In a national inquiry all common evidences, witnesses and experienced individuals are included and directed towards an inquiry about basic human rights issues. All findings by this inquiry, and recommendations for the improvement of the situation will be identified. National inquiry needs specialists, experienced persons, including researchers, instructors and individuals who are experienced in policy development areas.¹⁶

National inquiry is a very effective method for dealing with human rights issues, because the national inquiry has various aspects and this process includes investigation of the cases, analysis of the data, fact finding, presenting consultations and recommendations.¹⁷ In a national inquiry, the important human rights issues are investigated and analyzed from various points of view, the factors and causes of human rights violation as well as its social, political and cultural roots are sought. In a broad sense, national inquiry has learning aspects too, and one of its objectives is sensitization of public opinion about cases of human rights violation. Another characteristic of

¹⁵-APF, Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation, Sep 2012

¹⁶ Ibid

¹⁷ Ibid

national inquiry is that through launching of this mechanism generally human rights issues are investigated at larger scope, rather than individual and routine cases.¹⁸

National inquiry has some particularities and advantages which give more effectiveness to this mechanism. One of the particularities of this mechanism is that involved persons broadly participate in the process of investigation; views and various perspectives are considered and come under evaluation. On the other hand, in the process of national inquiry mostly the basic causes of human rights issues are dealt with and different angles of the subjects come under evaluation.

There are many reasons for launching a national inquiry to investigate serious cases of human rights violations. Prof. Brian Burdekin, a forerunner of designing and development of national inquiry and ex-member of Australian National Human Rights Commission has listed a large number of reasons for launching a national inquiry. He stated that through the launching of national inquiry a large number of individual human rights violation cases can be followed up and addressed actively and with a relatively lower cost. The second reason is that during preparation for launching a national inquiry, it is necessary to consult with other stakeholders and civil society institutions. In this stage, the stakeholders become aware about the role of national human rights commissions and they also can realize their own role and responsibility regarding these issues. The third reason is that by launching of a national inquiry not only the root causes of the issues can be sought through investigation of evidences and witnesses of human rights violations, but the laws, policies and programs as well as the lack of them which are effective on the situation, can be considered.¹⁹

Moreover, holding of public sessions as an important process in the national inquiry program, has a strong educational aspect. Holding of public hearing sessions and their reflection through the media with a lower cost can both elevate public awareness of responsibilities and roles of the national human rights commissions and give awareness to special organizations and groups in the society including politicians, employees of the state officials about their responsibilities.²⁰ For these reasons, the AIHRC also considers launching of a national inquiry on the causes and consequences of Bachabazi in Afghanistan very effective and has carried out this program.

¹⁸ -APF, Manual on Conducting a National Inquiry, 2012

¹⁹ -APF, Manual on Conducting a Nation Inquiry into Systemic Patterns of Human Rights Violation, Sep 2012

²⁰ -ibid

2.2 Goals of a National Inquiry

The draft of this national inquiry was put forward to a leadership board of the AIHRC in the month of Asad 1392. The leadership board considered the importance of launching this national inquiry and ratified its objectives. Through the implementation of this national inquiry, the AIHRC emphasizes on five main objectives regarding Bachabazi:

1. Identification of the causes and consequences, systematic addressing and investigation of the cases of Bachabazi at the country level.
2. Assessment of the child victim's situation, collection and analysis of information in this regard,
3. Investigation of public awareness and public sensitization toward costume of Bachabazi and making the state accountable to take necessary measures for its prevention,
4. Research on the national laws to find out legal gaps for protection and advocacy for the rights of children,
5. Modification of the laws and policies and prioritizing protection of those children who are victims of Bachabazi as well as presentation of specific recommendations and following them up through related organs,

Although, the AIHRC investigate and monitors on human rights violations as a routine, this national inquiry focuses special attention on the cases of sexual abuse of children and investigates its broad dimensions. Similarly, during this national inquiry attempts have been made to identify and investigate the causes and reasons for the expansion of Bachabazi and to analyze them.

The AIHRC believes that creation of public sensitivities against human rights violations and giving awareness about norms and values of human rights can decrease the number of human rights violations in the future. Another objective of this national inquiry is to increase accountability and responsibilities of judiciary and justice organs toward such violations through involving them in the process of national inquiry. Participation and involvement of judiciary and justice organs in the process of national inquiry elevates the level of their understanding of this situation and highlights their legal responsibilities.

There are not sufficient and strong legal mechanisms for the protection of the victims and children at risk or there are visible legal gaps regarding cases of Bachabazi.

Therefore, one objective of the AIHRC is to review and study the State laws, policies and programs in this regard. The AIHRC presents specific recommendations to the State of Afghanistan, especially to justice and judicial organs for drafting and ratification of laws, policies and mechanisms in protection of the victims and investigation of such cases.

2.3 Methodology of the National Inquiry

The implementation methodology of national inquiry about Bachabazi is similar to the methods predicated in Asia Pacific Forum's training manual for launching of a national inquiry. The AIHRC has followed the process established in Asia Pacific Forum's manual to implement this national inquiry.

Based on its Strategic and Action plans, the AIHRC launched the national inquiry about the causes and consequences of Bachabazi. The Executive Directorate of AIHRC established a team for this purpose and presented its primary draft to the session of the commissioners on the first of Asad 1392. The national inquiry team prepared a plan for carrying out the national inquiry and handed it over to related authority. According to this plan, the national inquiry team held a three- day workshop with of staff of the Children's Rights Unit in Kabul. Then, the staff of the Children's Rights Unit at regional and provincial offices held three - day training workshops for the staff of other units at the regional and provincial offices.

After the completion of these training workshops at the regional and provincial offices consultative sessions were held with stakeholders to discuss and investigate issues related to this national inquiry. Then, focus group sessions were held to discuss on related subjects. A total of 71 focus group sessions attended by 852 persons were held in different provinces. The participants of these focus groups included representatives of civil society institutions, representatives of the state offices, associations, unions, and members of provincial councils, religious scholars, university instructors, psychologists, social specialists and some local elders. Based on the information and recommendations of the focus groups, the AIHRC acquired reliable information about Bachabazi and identified the relevant causes and motives.



In the later stage, public hearings were conducted. A total of fourteen public hearing sessions attended by 1050 persons were held in 14 provinces of our country. These sessions were attended by the representatives of related state organs, including justice and judicial organs, representatives of civil society institutions, media,

members of provincial councils, Parliament members, representatives of forensic medicine, police, heads of children's correction centers, in charges of safe shelters, representatives of Defense Lawyers Association, religious scholars, psychologists, social specialists, human rights activists, and program staff of the AIHRC. In addition, reporters of press, audio, video (radio and television) as well as photojournalists had also participated in these sessions. During these sessions in each province, topics related to this national inquiry were thoroughly discussed for one day and the participants shared their views with the national inquiry team about Bachabazi. Serious discussions were made on factors, causes and motives of Bachabazi, emphasize was made on legal gaps, state policies and programs and motivations of Bachabazi. Specific mechanisms to fight against costume of Bachabazi were presented at the end of each session.

It is worth mentioning that all of these public hearing sessions were reflected through print, audio-visual media, and most of the local and national media and some of the international media broadcast reports about these sessions. Similarly, two members of the national inquiry team prepared photos and press reports about these public hearing sessions in the center and in the provinces in Dari and Pashto languages and presented them to the AIHRC's website, Human Rights Monthly Magazine and Facebook of the AIHRC.

While holding of public hearing sessions, individual interviews were made with the victims, perpetrators and witnesses of the Bachabazi at children's correction centers, jails, police custodies and other places by using three separate questionnaires. These questionnaires were sent to the HQ for analysis and evaluation and for being entered into the database of the AIHRC.

This report is made on the basis of the information collected from focus group sessions, public hearing sessions, interviews with victims, family members of victims, eyewitnesses and perpetrators (accused and convicted persons) as well as recorded information from the database of the AIHRC. It means that this report is obtained not only from the AIHRC's sources, but the information, views and ideas obtained as a result of broad consultations and talks with involved organizations, institutions and various strata in the society have been used in this report. The AIHRC believes that the findings of this report are indicators of existing realities in our society and present a rather clear picture of the existing situation. Ultimately, it should be mentioned that this national inquiry will not end up with the preparation and publishing of this report, but the recommendations of this report and implementation of them need advocacy and follow up activities with the related organs.

State Obligations towards Children's Rights

The state parties are responsible for the observance, protection and implementation of human rights international norms, especially regarding the UN Charter and international conventions. The state parties are obliged to observe and implement every items of the law. The UN state parties are obliged to report of the implementation of the international conventions to related committee of the UN.

The state of Afghanistan above all is obliged to observe and implement the Constitution²¹. The basic duty of the State is to respect and observe all rights of the citizens enshrined in the Constitutions through the implementation of the Constitutions and other laws.²² Therefore, the Constitution clearly says that the State protects children's rights: "Family is the fundamental pillar of the society, and shall be protected by the state. The state shall adopt necessary measures to attain the physical and spiritual health of the family, especially of the child and mother, upbringing of children, as well as the elimination of related traditions contrary to the principles of the sacred religion of Islam"²³

Afghanistan has signed the Convention on Children's Rights on 28 March 1994. According to this Convention, the state parties are obliged to ensure and respect the rights of children enshrined in this Convention without any discrimination.²⁴ Similarly, according to this Convention the state parties are obliged to ensure necessary protection

²¹ The ISA, Ministry of Justice, the Constitution, article 5, Official Gazette, No 818, 1382

²² Ibid

²³ Ibid article 54

²⁴ The UN General Assembly, Child Rights Convention, ratified in 1939

and care for the welfare of children and for the achieving this goal should take all legal measures.²⁵ In particular, related to harassment and sexual abuse of children, this Convention emphasizes: "States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."²⁶

Article 34 of the Convention on Children's Rights emphasizes that the state parties to this Convention are committed to protect children against any kind of exploitations including sexual exploitation and sexual abuses. For this reason, the states should take necessary measures to prevent the following points: A) Persuasion or forcing children to enter any illegal sexual activities. B) Exploitation of children for prostitution and other sexual activities. C) Exploitation of children for pornographic exhibitions.²⁷

Afghanistan adhered to the optional protocol to the Children's Rights Convention on the Sale, Prostitution and Pornography on 19 Sept. 2002.²⁸ This protocol emphasizes on the elimination of sale, prostitution and pornography through an inclusive and effective mechanism and demands from the state parties to take serious measures in this regard.²⁹ According to this protocol, each state party shall ensure complete coverage of the following activities at least in their criminal laws, either these crimes are at national or trans-national or conducted individually or in a systematic way.

- a. Regarding the sale of children as defined in article (2) of this protocol:
 1. Offering, delivery or receiving of children by any means, for the purpose of:
 - a) Sexual exploitation
 - b) Delivery of body organs of children for making profit
 - c) Employing children in forced labor³⁰

The State of Afghanistan has designed and ratified some strategies and mechanisms for the protection of children during the last decade. One of these strategies is the National

²⁵ Ibid article 3

²⁶ Ibid article 19

²⁷ Ibid article 34

²⁸ The ISA, Ministry of Justice, website:

²⁹ The UN General Assembly, Optional protocol of Child Rights Convention on children sale, prostitution and pornography, introduction, ratified in 2000

³⁰ Ibid article 3

Strategy for Children at Risk which was drafted in 2004.³¹ The National Strategy for Children at Risk has categorized the children as the children who are trafficked and those children who have experienced sexual abuse.³² The first goal of this strategy is the establishment of a society where children are free from any kinds of exploitations, abuses and violence, and to enable them to participate as a normal citizen of Afghanistan.³³ Another goal of this strategy is preparation of a working framework for the development of a service network, a program which protects children and their families. In addition, promoting the capacity of families and society for the protection of children at Risk is another aim of the strategy.³⁴

³¹ The ISA, Ministry of Labor, National Strategy on Children at Risk, p.6, 2004

³² Ibid

³³ Ibid , page 5

³⁴ Ibid

Chapter three

Legal Analysis of Bachabazi

3.1 What is Bachabazi

Probably the costume of Bachabazi has existed in Afghanistan since long times ago, but during three decades of war this tradition expanded. During the years of armed conflicts, some commanders had one or more bodyguards. Among them were attractive boys. Being away from home and due to sexual deprivation, these commanders sexually exploited their young bodyguards who were used to call "Bacha Berish" (a boy without beard). Now, after three decades of war, Bachabazi exists in another form and changed to a common tradition in some parts.



Some individuals, including local powerful people keep with them one, two or more young boys aging less than 18 years old in some parts of our country and they are called "Bacha". While wearing female

outfits, these young boys are made to dance for men and they are usually abused sexually.³⁵ At the end of dancing parties, these children are taken to private houses or hotel rooms to be sexually abused. As an exchange for the sexual abuse they give some money to these children and sometimes they are sexually abused by a group of men³⁶.

³⁵ -BBC Persian website, "Bachabazi, sexual abuse of Afghan children", th th September 2010, Retrieved on 04/21/1393 from: http://www.bbc.co.uk/persian/afghanistan/2010/09/100908_k01_afg_dancing_boys.shtml

³⁶ -ibid

Most of these boys due to poor economy are sexually abused by the rich and powerful people as sex slaves³⁷

Bachabazi is practiced in different parts of Afghanistan in various ways and it is not the same everywhere. According to the findings by the AIHRC from public hearing sessions and focus group sessions, in some areas, attractive children are used only for sexual abuse, not for dancing. In other areas these people keep children not for sexual abuse, but for showing off their power and money. In some cases, these powerful and rich persons do not directly make sexual abuse of these children, but through acts of touching and other forms of sexual harassments. According to the findings by the AIHRC, in most cases the main motive for Bachabazi is sexual abuse.

The people who keep children for sexual abuse are called " Bacha Baz" . They mostly employ attractive boys as their bodyguards, house servants, shop apprentices or waiters at their hotels. In addition to carry out house chores or working at their shops or hotels, these children are sexually abused and are forced to dance at the parties. During the dancing and joy parties, these men resort to competition against one another which sometimes ends up in armed conflicts. The findings by the AIHRC show that most of these children are 10 to 18 years old and from poor families or with no guardians. It is worth mentioning that the perpetrators take advantage of the vulnerability of these children and sexually abuse them.

3.2 Bachabazi as a Crime and Human Rights Violation

Bachabazi has not been defined as a crime in the national laws of Afghanistan, though it is a sexual exploitation of children, and considered contrary to the spirit of the Constitution and other enforced laws in the country. The Constitution considers freedom and human dignity as natural rights and free from infringement.³⁸ Since Bachabazi is a kind of child sexual slavery, their rights to human dignity and freedom is violated. Therefore, Bachabazi is contrary to the provisions of our Constitution and it is considered human rights violation.

³⁷ -The Guardian, "The Dancing Boys of Afghanistan", Giath Abdul-Ahad, Sept 12, 2009, Available at: <http://www.theguardian.com/world/2009/sep/12/dancing-boys-afghanistan> (July 12, 2014)

³⁸ The ISA, Ministry of Justice, the Constitution, article 34, Official Gazette, No. 818, 1382

Bachabazi is against international human rights principles. The Universal Declaration of Human Rights³⁹ and International Convention on Civil and Political Rights⁴⁰ also emphasizes on the rights to human dignity and freedom and prohibit the keeping of persons in slavery. The Convention on Child Rights more clearly emphasizes on children's rights and particularly prohibits and condemns child sexual abuse. This Convention clearly states, " States Parties undertake to protect the children from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials. ⁴¹

Likewise, the Convention on Children's Rights provides that "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."⁴² This Convention demands from the state parties to protect children from any forms of exploitations which are harmful to the wellbeing of children.⁴³ Furthermore, the Children's Rights Optional Protocol on Sale, Prostitution and Pornography prohibits sexual exploitation of children and demands from state parties to include it in their criminal law.⁴⁴

According to the definition of trafficking in persons "Preventive Protocol", prevention and punishment of trafficking in person, especially trafficking in women and children, known as Palermo Protocol, as well as the definition presented in " the Law on Combating against Abduction and Trafficking in Persons," Bachabazi is considered a kind of trafficking in children. Because in the definition of human trafficking in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime is mentioned that recruitment, harboring or receipt of persons, by means of force or payment or other benefits intending exploitation is considered trafficking in person⁴⁵. Article III of the Protocol defines trafficking in persons as such (a) Trafficking in persons"

³⁹ The UN General Assembly, Universal Declaration on Human Rights, articles 3, 4 ratified in 1948

⁴⁰ The UN General Assembly, the Convention on Civil and Political Rights, articles 8 and 9, ratified in 1966

⁴¹ - The UN General Assembly, Optional Protocol on Child Rights Convention, article 34, ratified in 1989

⁴² Ibid article 35

⁴³ Ibid article 36

⁴⁴ The UN General Assembly, Optional Protocol on Child Rights Convention, on Sales, Prostitution and Pornography, article 3, ratified in 2000

⁴⁵ - protocol to prevent suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Protocol against organized crime ", approved in 2000, adopted on 15 June 2014 Link:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having influence or control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used; (c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article; (d) "Child" shall mean any person under 18 years of age.⁴⁶

The Law on Combating Abduction and Human Trafficking has provided almost for the same definition. The law defines human trafficking as such: "Human trafficking is transferring, transiting, employment, keeping of a person for the purpose of



exploitation by taking advantage of poor economic and desperate condition of the victim through paying and receiving money, interest or using other deceiving means in order to obtain the consent of the victim or his/her guardian.⁴⁷ It is seen that the common components in the Palermo Protocol definition of trafficking and the Law on Combating Abduction and Human Trafficking are the act of transferring, employment and keeping of a person for the purpose of exploitation. But the law on Combating Abduction and Human Trafficking has not stated about sexual exploitation in particular, as it has been noted in the Palermo Protocol, but in general the term exploitation has been mentioned

⁴⁶ - ibid

⁴⁷ .Government of the Islamic Republic of Afghanistan, Ministry of Justice, the law on combating abduction and human trafficking, Article III, 1387۱۳۸۷

in the context of this law. Another difference is taking advantage of poor economic and desperate condition that is referred to in the Law on Combating Abduction and Human Trafficking, while in the Palermo Protocol other issues such as force, threats and other forms and means of coercion, abduction, fraud and deception are also mentioned.

Another important issue in the definition of human trafficking in both documents is the victim's consent or lack of consent. Palermo Protocol states that if one of the above mentioned methods is used, the victim's consent is invalid. From the spirit of the definition of the Law on Combating Abduction and Human Trafficking also can be deduced that if the poor economic or desperate condition through the payment of money or benefits or other deceptive practices are used for obtaining the consent of the victim, the act is considered as trafficking in person. According to the definition given in the Palermo Protocol and the Law on Combating Abduction and Human Trafficking it can be said that the act of Bachabazi is trafficking in person, even if the victims shows consent or don't show consent. Because the majority of children who are victims of Bachabazi are exploited, including sexual exploitation by some people through various ways such as force, threat, deception, enticement, abuse of poor economic and vulnerability of the victim's family, or payment of money fall. Thus, Bachbazi is a crime and gross violation of human rights.

3.3 Criminalization of Bachabazi

In order to criminalize an act and punish the perpetrators, in addition to the specific elements of the offense, determining of the three constituent elements is necessary, because, the absence of any one of these components will removal of criminal liability of the perpetrator of the said act. Legal element, material element and spiritual element of the crime is considered as the general elements of all crimes. The Constitution has clearly provided for the legality of the crime and punishment that is the statutory elements of the offense. "No act is considered a crime except by a law promulgated before the commission. No person shall be prosecuted, arrested, detained, except in accordance with law. No person can be punished except by order of a

competent court and in accordance with the law before the alleged offense is committed⁴⁸.

As mentioned earlier, the act of "Bachabazi" has not been referred to as a crime in the Afghan Criminal Procedure Code, but other crimes such as rape and sodomy, which is linked to Bachabazi is dealt with in the said law, and specific punished has been provided for the perpetrators. According to Article 427 of the penal code, adultery and sodomy with a female and male are prohibited and the perpetrators are subject to long term prison..⁴⁹ The Penal Code has also defined the intensified condition of the crime and has stated that practicing of the above mentioned act in one of the following cases is considered intensified condition of the crime.

- a. In case the victim has not completed the age of eighteen .
- b. In cases where the perpetrator is the victim's relatives to the third degree .
- c. In the case where the perpetrator is the victim's mentor, teacher, employer or has influence or control over him in some way or another..⁵⁰

Although, the crime of sodomy has not been defined in the Criminal Code, but it can be said that the act is considered to be a crime, if the victim is sexually exploited along with sodomy, and the perpetrator is supposed to be punished according to Article 427 of the Penal Code. Under this Article of the Penal Code Bachabazi is considered to be an intensified condition of the crime, because, the majority of children are kept as students, employees with Bachabaz.

In this case, the perpetrator has influence or control over the victim and by abusing its dominance, tries to sexually abuse the victim. On the other hand, the majority of male victims aged less than 18 years and in accordance with Article 427 of the Criminal Code, if the victim has not completed the age of 18, the crime is considered to be committed an intensified condition.

⁴⁸ - Government of the Islamic Republic of Afghanistan, Ministry of Justice, Constitution Article 27

⁴⁹ - Government of the Islamic Republic of Afghanistan, Ministry of Justice, Criminal Code, Article 427, Official Gazette No. 347, 1355

ibid⁵⁰

The Courts can sentence the perpetrators of Bachabazi to punishment under Article 427 of the Penal Code, but provision of this Article of the law which is peculiar to the crime of adultery, sodomy and the degradation is not adequate enough to address the act of Bachabazi. Because, in the act of Bachabazi it is not only the act of sodomy and rape that is taking place, but other forms of sexual abuse, such as touching, massaging, dancing in the private and public parties are also experienced by the victims. In some cases, Bachabazi may not lead to rape or sodomy, but the keeping of child as dancers or for other shameful purposes by Bachabaz will spoil the future of the victims and marginalize them from the society. This means that in the act of Bachabazi the victim child may be raped or may not. However, other forms of sexual abuse are committed. It seems that Article 427 of the Criminal Code does not cover all aspects and forms of Bachabazi. And this is one of the deficits in the criminal law.

Act of Bachabazi can be considered rape since this act is often combined with sexual assault against boys. Although it is possible that in some cases, sexual assault against children is not committed, but other types of sexual harassment occur. Children under the age of 18 that are kept by Bachabaz, according to the findings of the AIHRCare , are often raped.

However, earlier in the Afghan Criminal Code sexual assault as "rape" has been prohibited and the punishment for it is legally determined, but the term itself has not been defined. For the first time the term sexual assault is defined as "violence against women" in the Law on Elimination of Violence against Women. However, there is ambiguity in this definition too, but it is still to some extent useful and can cover various dimensions of this crime. Sexual assault is defined in the Law on Elimination of Violence against Women as such as such: "Rape is committing the act of adultery or sodomy with a mature woman with force and coercion or with an immature female or attack to the chastity and honor of women⁵¹".

It is clear that the act of rape in the Law on Elimination of Violence against Women is defined with regard to the protection of women. According to this law, sexual assault is committing the act of adultery or sodomy with a woman. This means that this definition is specified to women and does not include men. Thus, the definition provided in this Act

⁵¹ - Government of the Islamic Republic of Afghanistan, Ministry of Justice, the Law on Elimination of Violence against Women, Article 3, 1388

cannot be fully extended to men and boys. But with regard to the context of this definition, we can say that sexual assault is a crime and violence against boys, and perpetrators are to be punished. According to the definition of sexual assault in the Law on Elimination of Violence against Women, the term force and coercion in the act of committing adultery or sodomy with a girl is not mentioned. So we can conclude that the act of committing adultery or sodomy with a girl, despite the absence of force and compulsion, is considered as rape or sexual assault. Thus, the act of sodomy with a child under the age of 18 years is considered sexual assault, despite the absence of compulsion and force.

Given the nature of sexual assault and its negative effects on the victim's mind and personality, this definition can be extended to boys too, because, the vulnerability of women and children is not very different culturally and socially. In other words, sexual assault, whether against women or against boys is to some extent identical in terms of the nature and severity of the effects. The major difference between sexual assault against women and sexual assault against boys is that in the first case, the perpetrator rapes the opposite sex (male - female), while in the second case the rapist rapes the same sex (male - male). Another difference is that in conservative and traditional societies sexual assault against women has more negative effects and its adverse physical, psychological and social consequences may be higher.

For example, one of the horrible consequences of sexual assault against the women victim is the unwanted pregnancy, which is not applied in sexual assault against boys. It should be said that in the custom of Bachabazi, male children are often raped and faced with other forms of sexual harassment, while in the case of women this act mostly occurs once.

With the above analysis, we can say that sexual assault against women and sexual assault against boys as well its negative effects on the victims of this practice are somehow different. However, considering the nature of rape and the same effect on the mind and character of the victims we can generalize the definition of sexual assault against women to boys, with slight differences. However, it seems that in connection with sexual assault against boys, and the tradition of Bachabazi that is an act beyond sexual assault, there are serious gaps shortcomings in the existing laws. In other words,

if the sexual assault against women is generalized to sexual assault against boys and both cases are dealt alike, this generalization is still incomplete, because, the act of Bachabazi has many other aspects than sexual assault and it goes beyond sexual assault. For example, in addition to sexual assault against boys, in the tradition of Bachabazi there are other forms of sexual abuse such as keeping of children as sex slaves, the performance of hard work and the type of influence their masters have over them, and the issue of coercion, threat and use of money, deception and different kind of temptation has changed the condition, and has put this act under intensified condition.

There is no specific provision about Bachabazi in Afghanistan's Penal Code, but there are similar cases in it. As there is an Article in the Criminal Code under the title of "incitement to vice and debauchery and aggravated condition" that indirectly refer to the act of Bachabazi, but this Article of the Criminal Code is not devoid of shortcomings and problems, because it does not provide any definition of the term "vice and debauchery". Criminal Code has considered an average prison sentence of not less than three years for the facilitator and motivator of children to vice and debauchery, or those who accept a vice and debauchery as a career.⁵² In the case of paragraph 2 of Article 427 of the Criminal Code, or if the motivator of vice and debauchery intends to get the benefit of this practice, he/she will be sentenced to long term imprisonment that does not exceed ten years.⁵³ However, no punishment is considered for those vicious and dissolute persons who sexually exploit children. Thus, as the term of vice and debauchery is not defined in the Criminal Code, and furthermore, no punishment is predicted in the law for the perpetrators of debauchery, only for the instigators of debauchery a punishment is determined. So, it can be concluded that there is a legal gap in here, and this Article of the Criminal Code cannot be fully applied to the practice

In conclusion, this result can be obtained that there are serious gaps and deficiencies concerning Bachabazi in the laws of Afghanistan, but despite these gaps and according to the spirit of the Constitution and other laws of Afghanistan such as the Criminal Code, the Law on Elimination of Violence against Women, the Law on Combating Abducting and Human Trafficking, Bachabazi is considered a crime and its perpetrators are

⁵² - Government of the Islamic Republic of Afghanistan, Ministry of Justice, Criminal Code, Article 427, Official Gazette No. 13, 1355

⁵³ -Ibid ,Article 427.

prosecuted and punished. Also, according to international human rights instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Palermo Protocol it can be concluded that the act of Bachabazi is a pattern of Trafficking in person and a gross violation of human rights.

Chapter Four

Analysis of the Statistical Findings

Statistical findings of this research are based on the result of the analysis obtained from three separate forms- first the form of “perpetrators of Bachabazi”, second the form of “victims of Bachabazi” and third the form of “witnesses of Bachabazi. In the form of perpetrators, interviews were made with those who have been involved with the act of Bachabazi and it was demanded from them to express their views about their practices. In the form of victims, the victims talked about Bachabazi. In the form of witnesses interviews were made with those who were witnesses to Bachabazi or they had information about Bachabazi and their views and information are recorded in this form.

This way, interviews have been made with specific individuals in each category of these forms and their outputs are classified and organized separately. Therefore, it is natural that the findings of these three forms are not absolutely consistent, but their outputs are meaningfully related to



each other and can lead to a unified result. Efforts have been made to evaluate and analyze these outputs together in order to reach common results. For the better organization of this report, data of the form of perpetrators and the form of victims are considered as basic information, because these two forms contain more precise information while the outputs of the form of witness has been used for completion and precise verification of the results.

Another important point is that the number of the forms specially the forms related to the perpetrators and victims was limited, because Bachabazi due to its traditional sensitivities is considered as a taboo and most cases of Bachabazi are kept secret. For

this reason, finding of the perpetrators and victims of Bachabazi and also collecting information about them or making interview with them is a very difficult task. Since in many cases, Bachabazi has been practiced by powerful people and local commanders, therefore collecting information about the cases is risky. In order to save their prestige in the society, they may react against collection of information in this regard.

In spite of that, the AIHRC has been able to carry out interviews with 36 perpetrators, 31 victims and 121 witnesses of Bachabazi, and collect information in this regard during the process of current national inquiry. On the whole, the statistical analysis of this report is based on the information recorded as a result of 188 interviews conducted with different categories of people.

Demographic Particularities:

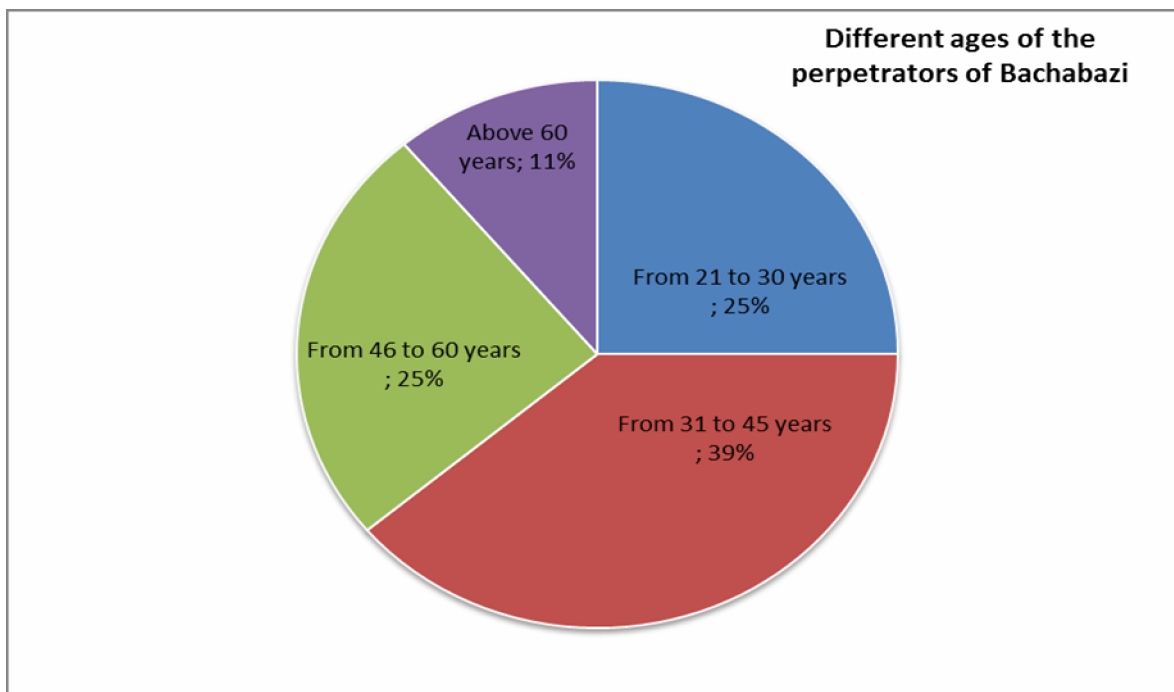
As mentioned earlier, interviews were carried out with three categories of people during this inquiry. One of these categories was the perpetrators. During this inquiry, the AIHRC has been able to conduct interviews with 36 persons who kept the boys of less than 18 years old for dancing and gaiety. Their views and motivations about Bachabazi were collected. First, we present demographic particularities of the perpetrators and victims of Bachabazi and then the main questions would be analyzed.

First- Demographic Particularities of the Perpetrators:

1. Age:

Evaluation of the form of perpetrators during this inquiry shows that the age of perpetrators is ranging from 21 to 73 years old. Age classification of the perpetrators in this inquiry shows that, practicing of Bachabazi exists among different age categories, but it is more common among young and medium age persons. As the following table shows, 25 percent of the perpetrators are between 21 to 30 years of age, and 28 percent of the perpetrators are between 31 to 40 even 50 years of age. Similarly, 8 percent of them are between 51 to 60 years of age.

It is worth mentioning that Bachabazi exists among elderly people too, and 11 percent of the perpetrators are over 60 years old.

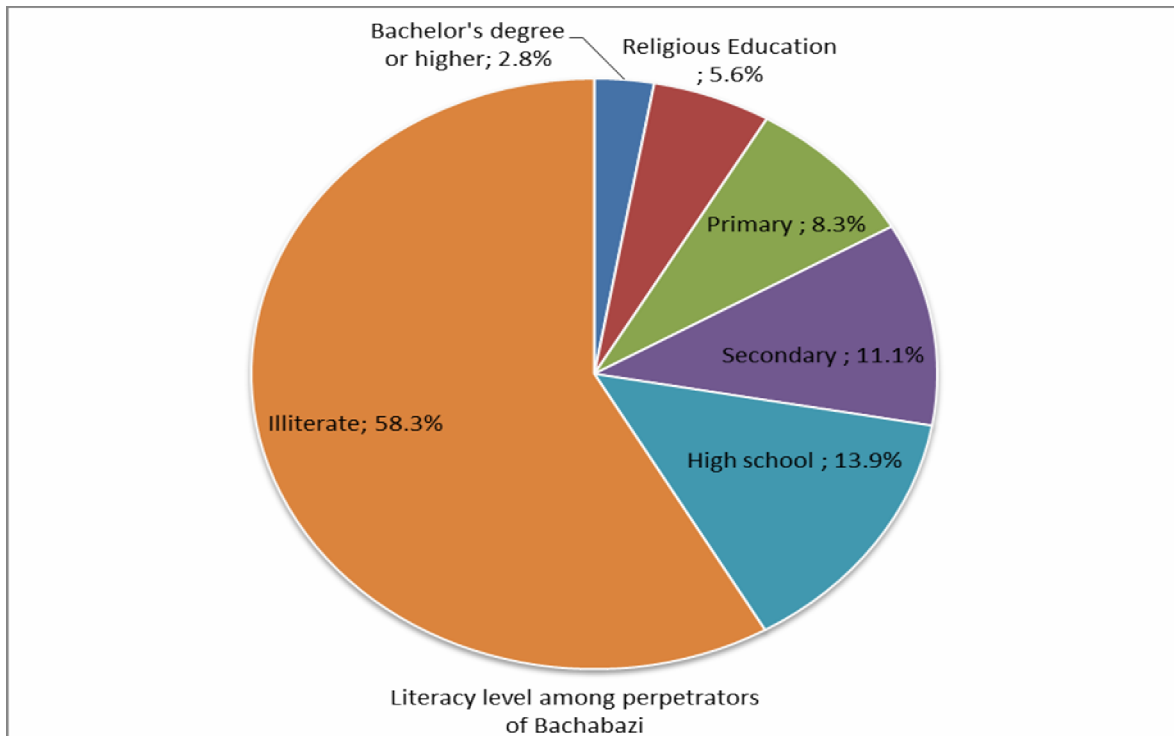


Statements made by the victims of Bachabazi affirms that 23 percent of those who had kept them were between 22 to 30 years of age, and 48 percent of them were between 31 to 40 years of age while the remaining 29 percent of the perpetrators were between 41 to 50 years of age.

2. Literacy Level

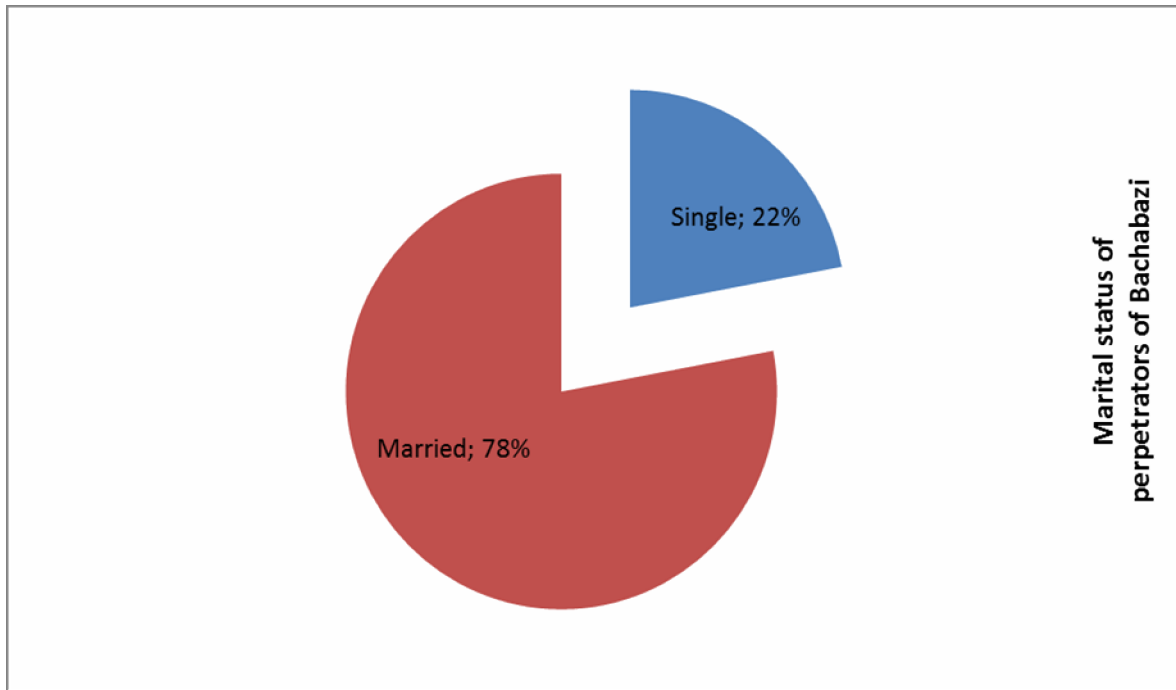
The data of this report show that literacy is one of the important and effective variables in the spread of Bachabazi. According to the results of these data, more than 58 percent of the perpetrators of Bachabazi interviewed are illiterate people. Of course, the level of literacy is not the absolute factor in spread of Bachabazi. Findings of this report show that Bachabazi exists among literate persons too. Those who have primary, intermediate, high or even BA levels of education have seen to resort to Bachabazi.

More interesting is that some individuals who have religious studies, in spite of tremendous emphasis on its prohibition in religion, they still resort to Bachabazi. Almost 5.6 percent of the perpetrators have religious studies. The following graph shows details of this issue:



3. Marital Status:

At the first glance it is imagined that those who resort to Bachabazi are not married and they do it because of sexual deprivation and through this they are going to satiate their sexual desires. The data of this research show that Bachabazi has no direct relation with the marital status of individuals, because most of the perpetrators interviewed are married and have a spouse. Around 78 percent of the interviewed perpetrators stated that they were married and only 22 percent of them were singles. Out of the married perpetrators, only one of them had separated from his wife, the remaining perpetrators still were living together with their spouses. Out of the married perpetrators, 18 percent of them had more than one wife. The unmarried perpetrators were single because of poverty and economic problems, not because of that they preferred Bacha instead of a wife.

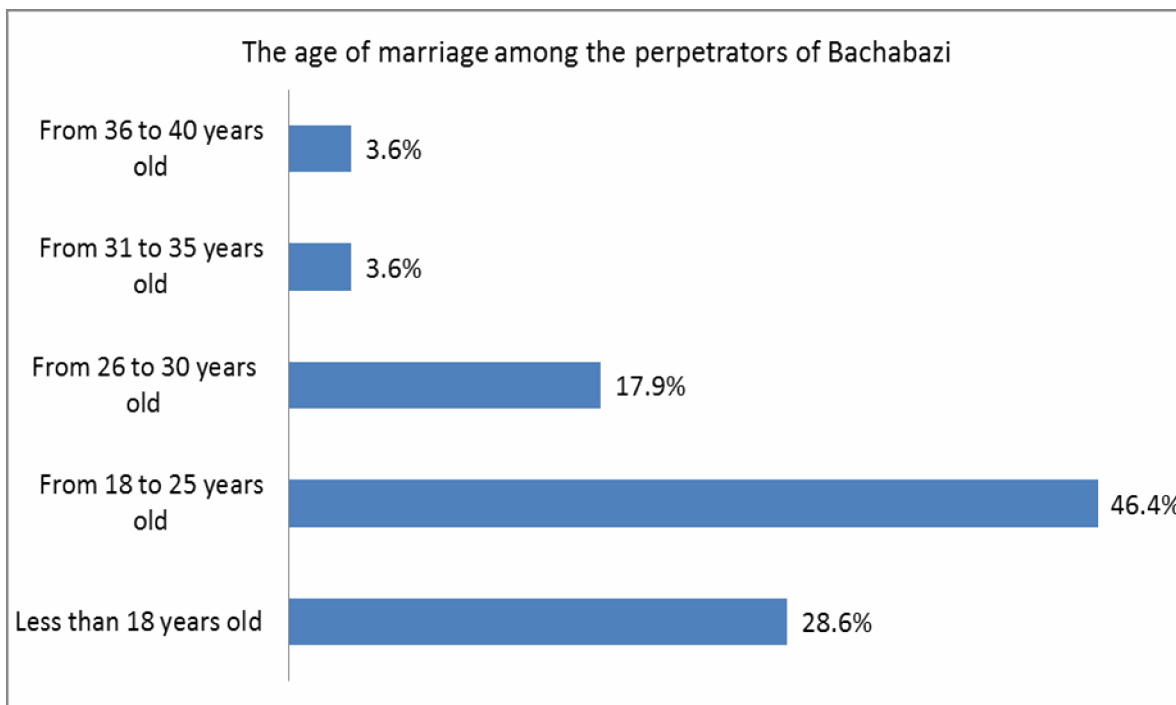


The victims of Bachabazi were asked about marital status of the perpetrators. More than 77 of them stated that the men who abuse them are married and the remaining 13 percent stated these men were single.

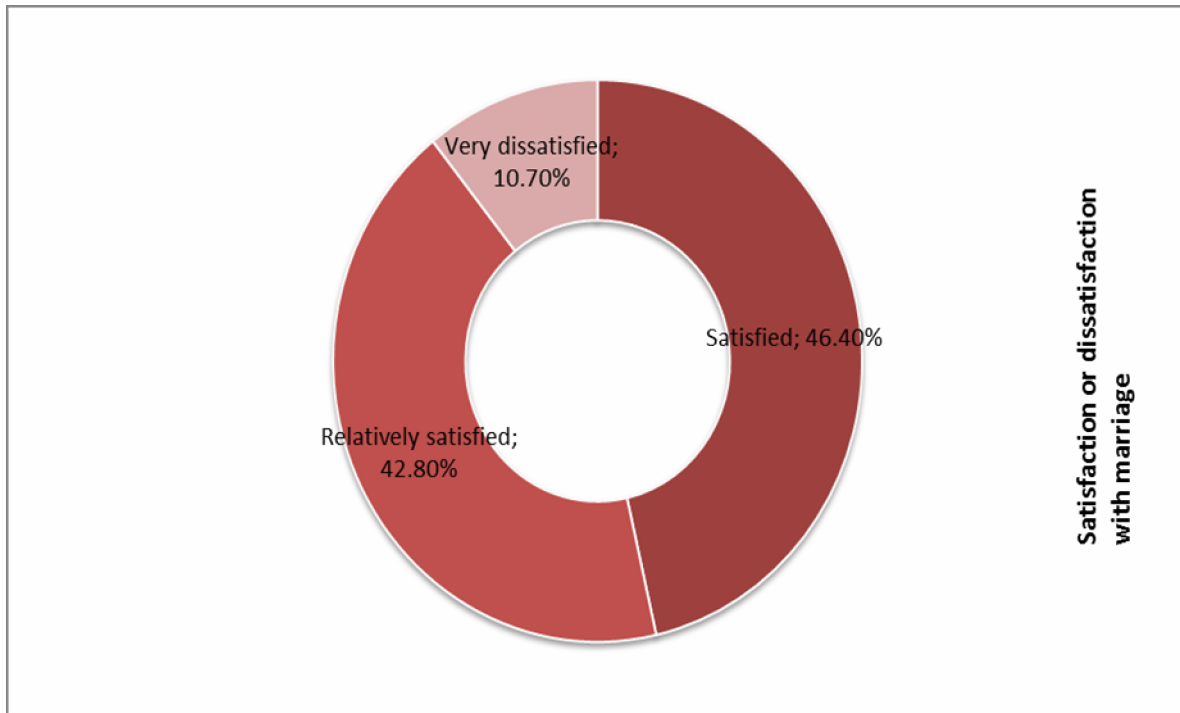
These figures show that the main cause for resorting to Bachabazi is not sexual deprivation. There are some other factors which play an important role in the spread of Bachanbazi which will be pointed out in other chapters of this research⁵⁴

The age of these perpetrators to some extent is the normal age for marriage. It means that there is no delay in their marriage to cause them to resort to Bacah Bazi. For example, 48 percent of them have got married at the age of 18 to 25 years. The following graph clarifies the issue:

⁵⁴- Refer to the topic "Causes and motives in engaging in Bachabazi" in this chapter.



Consent to marriage was another question that was posed to the perpetrators. It is interesting that most of them are satisfied with their marriage. As the following graph shows, 46 percent of them were satisfied with their marriage and almost 43 percent of them were relatively satisfied, but only 10.7 percent of them were not satisfied with their marriage. Those who expressed dissatisfaction about their marriage had not been satisfied with their marriage from the beginning. For example, they expressed that they did not marry on their own consent or later due to the disputes and conflicts with their spouses they became dissatisfied with their spouse. In other words, none of them mentioned marital dissatisfaction as the reason for resorting to Bachabazi.

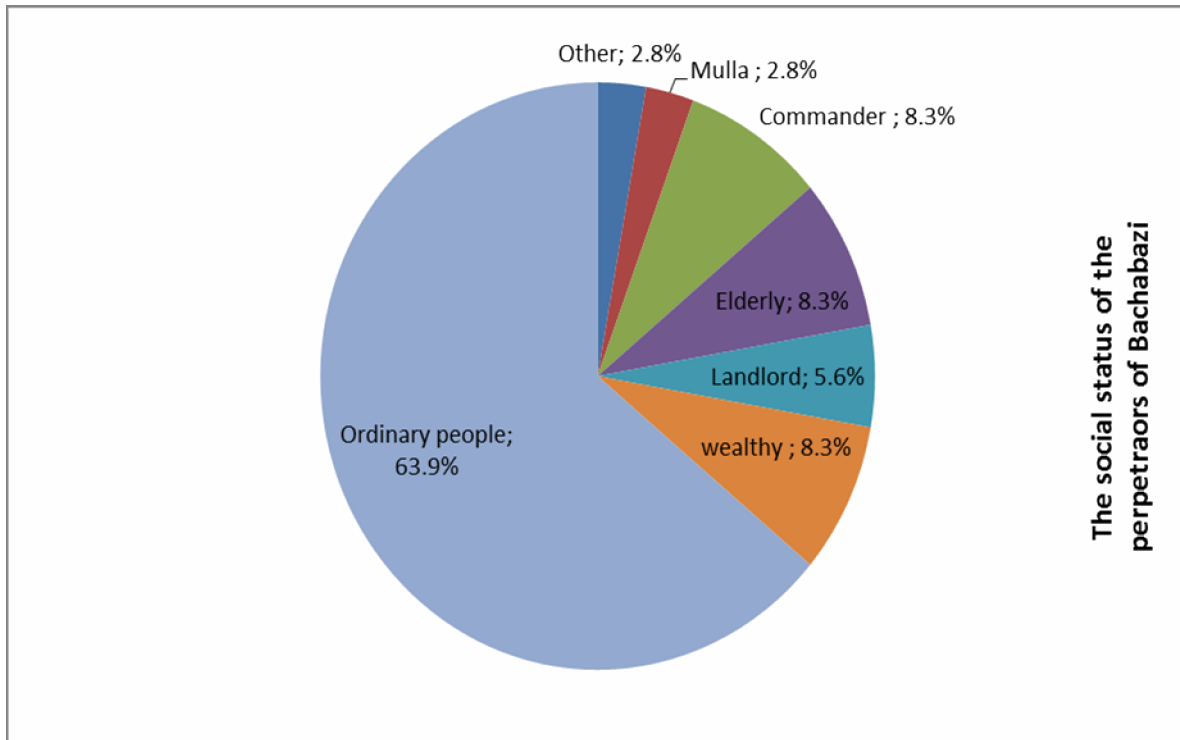


4. Social Status of the Perpetrators:

Who resorts to Bachabazi? The interviews carried with perpetrators of Bachabazi indicate that most of them are ordinary individuals in the society. Ordinary individual means that they have no special status in the society to give them a particular social identity to be distinguished. In this research ordinary people are identified as social groups such as capital holders, landlords, tribal elders, commanders, Mullahs and etc.

The findings of this report indicate that 46 percent of the perpetrators interviewed are ordinary individuals in the society, 8 percent of them are capital holders, commanders, elders and others while 3 percent of the perpetrators are Mullahs.

The following graph shows the details of this issue:



Second- Demographic Particularities of the Victims of Bachabazi:

1. Age:

Most of the victims of Bachabazi are children and teenagers, though there are victims aging over 18 years old. The majority of these victims has served the perpetrators since childhood or juvenile period and after the age of 18 years this condition has continued.

The victims interviewed in this research are individuals aging between 13 to 25 years old, though the target of the form of victims of this national inquiry were children under 18 years old. Those victims interviewed over 18 years old talked about their childhood experience.

Classification of these victims shows that about 42 percent of them were 13 to 15 years old children. Around 45 percent of them were 16 to 18 years old and the remaining 13 percent of these victims were over 18 to 25 years old.

In the forms for witnesses of Bachabazi or those who had information about Bachabazi, it is mentioned that most of the victims are children aging between 12 to 18 years old. In many cases the ages of victims are mentioned as over 18 years to 30 years old. Some forms mention the ages of victims even over 30 years to 40 years old.

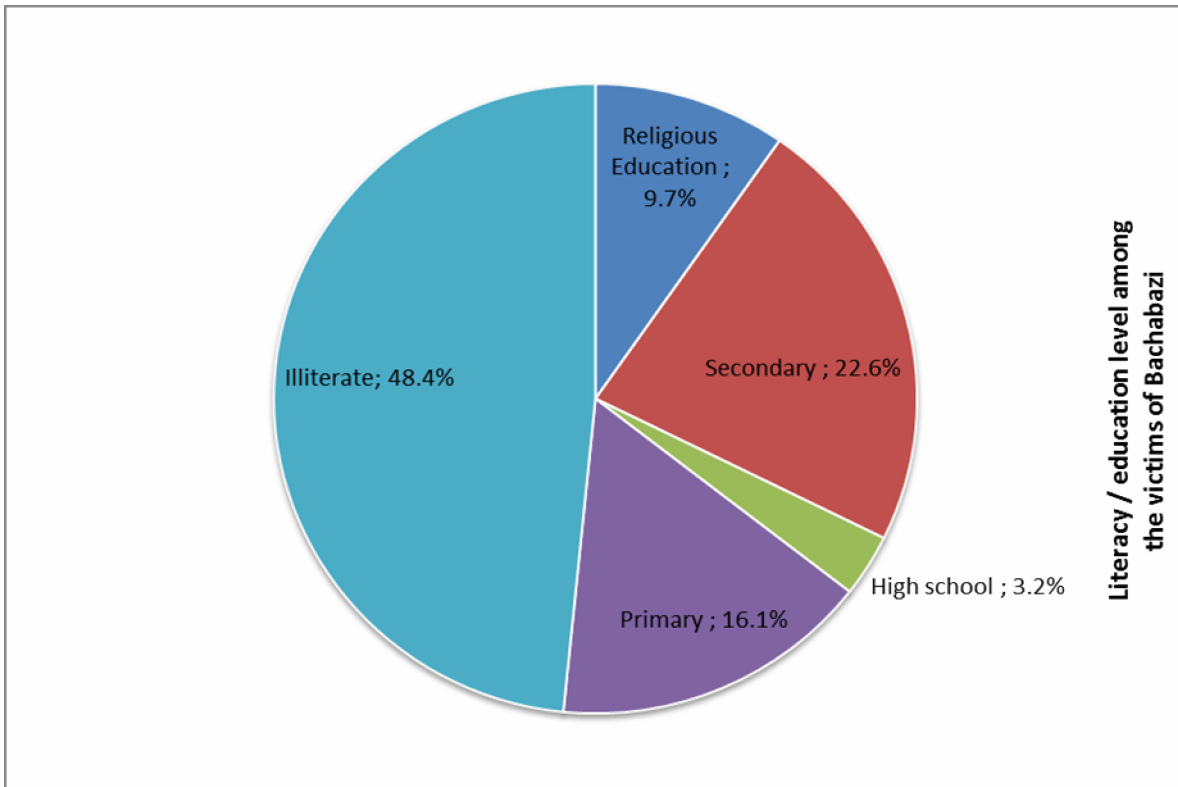
Unfortunately the outcomes of these forms do not cover information about victims of Bachabazi who are under the age of 12 years.

Now it is clear that not only children lower than 18 years of age are victims of Bachabazi, but it victimizes youths and medium age individuals too. It is worth mentioning that the young and medium age individuals, who are victims of Bachabazi, have been victimized during their childhood and the condition continued over the later years. This situation is particularly understandable as these individuals are dependent economically on perpetrators and they even receive an amount of payment.

2. Literacy Level:

The emancipatory role of education and awareness is very strong and literate individuals seldom face such risks. Literacy level is low among children because they are in the process of learning, and findings of this report show that most of the victims are illiterate children. Statistics in this report indicate that 48 percent of the victims are illiterate children/ individuals.

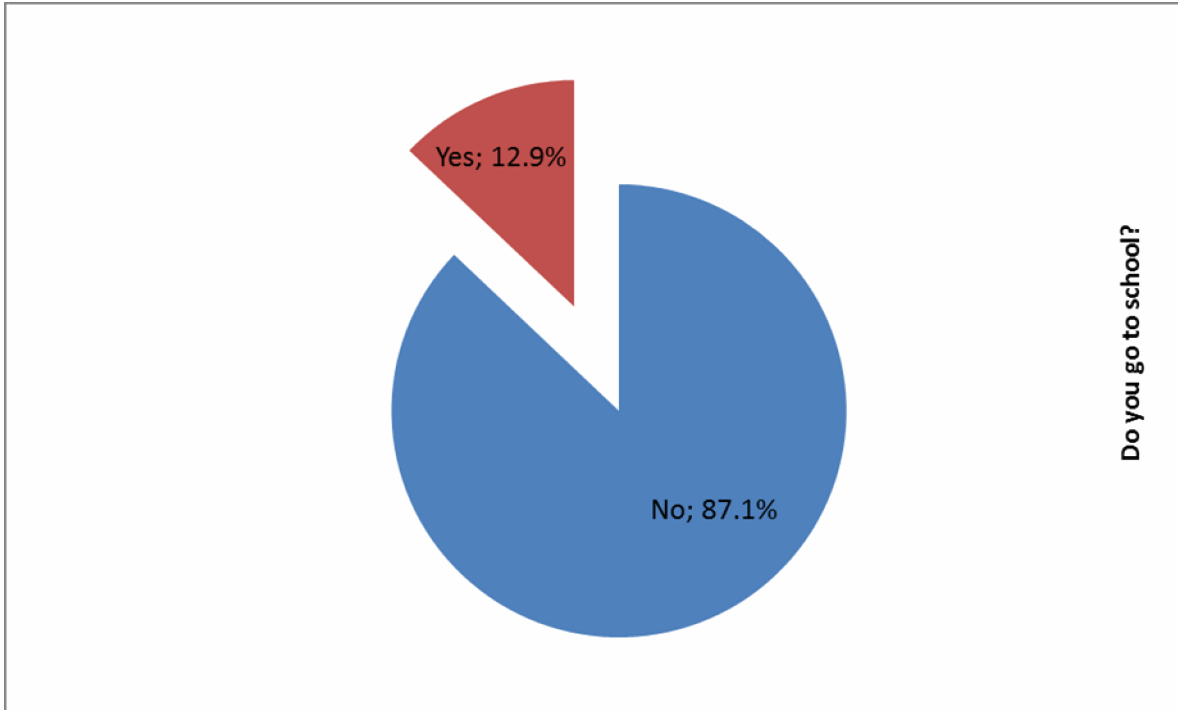
Since the majority of victims of Bachabazi is between 13 to 16 years of age, according to this research, naturally these ages are equivalent to intermediate learning period. Similarly, intermediate level of education is not enough to make a person resistant against temptations and exploitation. The figures in this report show that 16 percent of the victims of Bachabazi have studied to the primary level, 22.6 percent are the children who have studied to a level of intermediate, 3.2 percent of victims are children who have studied to the level of high school and 9.7 percent of them have religious studies.



In fact, Bachabazi is a kind of child slavery, which causes tremendous hazards for the victims of Bachabazi. One of the most serious hazards is deprivation of children from education, because those men, who exploit the children for Bachabazi, employ them to other jobs and prevent them from going to school.

The finding of this report shows that around 87 percent of the victims of Bachabazi cannot go to school. Only 13 percent of the interviewed victims stated that they could go to school.

This figure indicates the climax of vulnerability of children who are victims of Bachabazi.



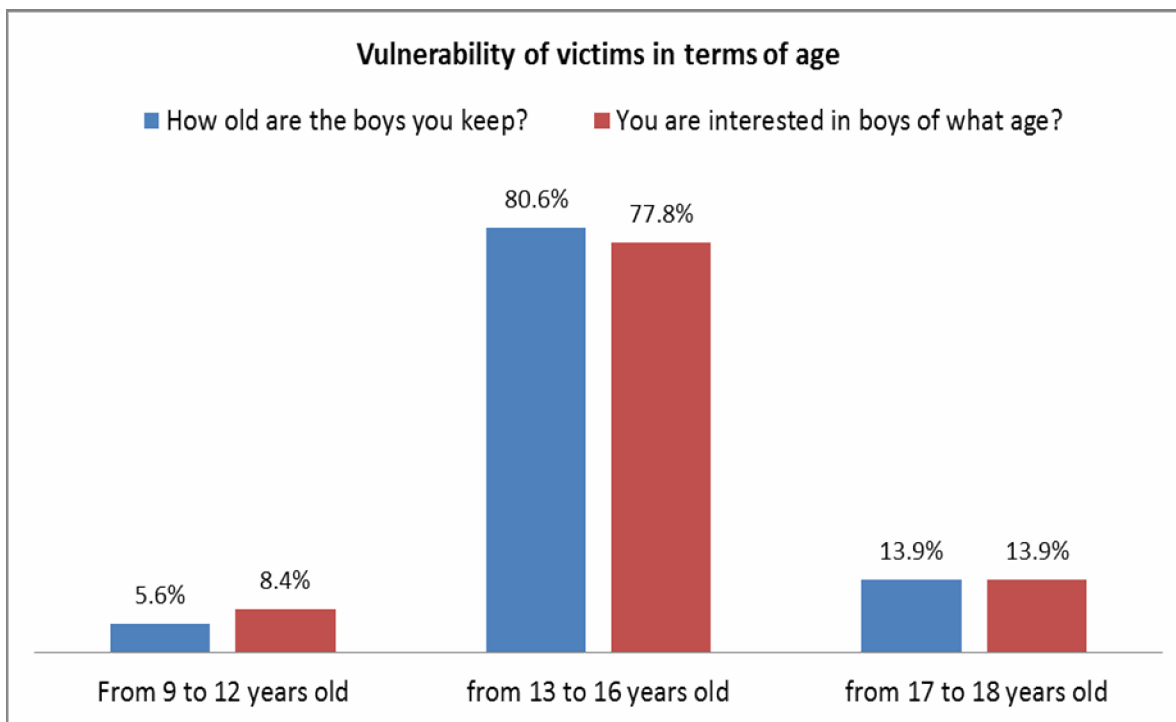
Main Questions:

How many Bacha (boys) live with you? That was the question posed to perpetrators of Bachabazi. Responding to this question during this inquiry, 75 percent of them stated that they had only one boy kept for Bachabazi, while 14 percent stated that they kept two boys with them. Two perpetrators stated that they had three boys kept for Bachabazi and one person had four boys kept for Bachabazi.

Another question was that how old those boys were: 29 persons (81.6 percent) of them stated that these boys were between 13 to 16 years of age. Five other perpetrators stated that their boys were between 17 and 18 years of age. Two men mentioned the age of their boys as 9 to 12 years old.

In response to another question that to which age categories of boys they are more interested in for the purpose of Bachabazi, 28 of them (almost 78 percent) stated that they were more interested in boys aging between 13 to 16 years. Five others (almost 14 percent) showed interest in boys aging 17 to 16 years. The remaining three perpetrators expressed interest in boys aging 9 to 12 for the purpose of Bachabazi. These figures show

that the perpetrators are more interested in juveniles for the purpose of Bachabazi. The age of victims also shows this fact.⁵⁵



The causes and motives behind resorting to Bachabazi

What makes the pederasts resort to sodomy? The answer to this question may not be the same in different regions of the country where Bachabazi is prevalent and even for those who resort to this custom. Bachabazi based on the different causes and motives for different persons are common as a prevalent custom in different regions of the country. But its main motives are entertainment, pleasure and personal interest; whereas, nearly 69.5 percent of the perpetrators that have responded to this inquiry have noted the above mentioned motives have been the main motive for them to resort to Bachabazi. Taking pleasure includes making sex and satisfying sexual pleasure, having fun by making the boys dance in Bachabazi parties or only touching their body. The findings of this inquiry suggest that out of those who are involved in Bachabazi for sexual pleasure, almost 16.7 percent of them stated that they have resorted to Bachabazi due to inability to get married or due to being far from their spouses.

⁵⁵ - refer to : demographic particularities of victims in this chapter.

This was also discussed under the topic of “marital status of the perpetrators” that 78 percent of the perpetrators are reported to be married and only 22 percent of them are said to be single. These statistics are to some extent close to each other and it can be said that most of the perpetrators resort to Bachabazi based on other factors not due to sexual deprivations.

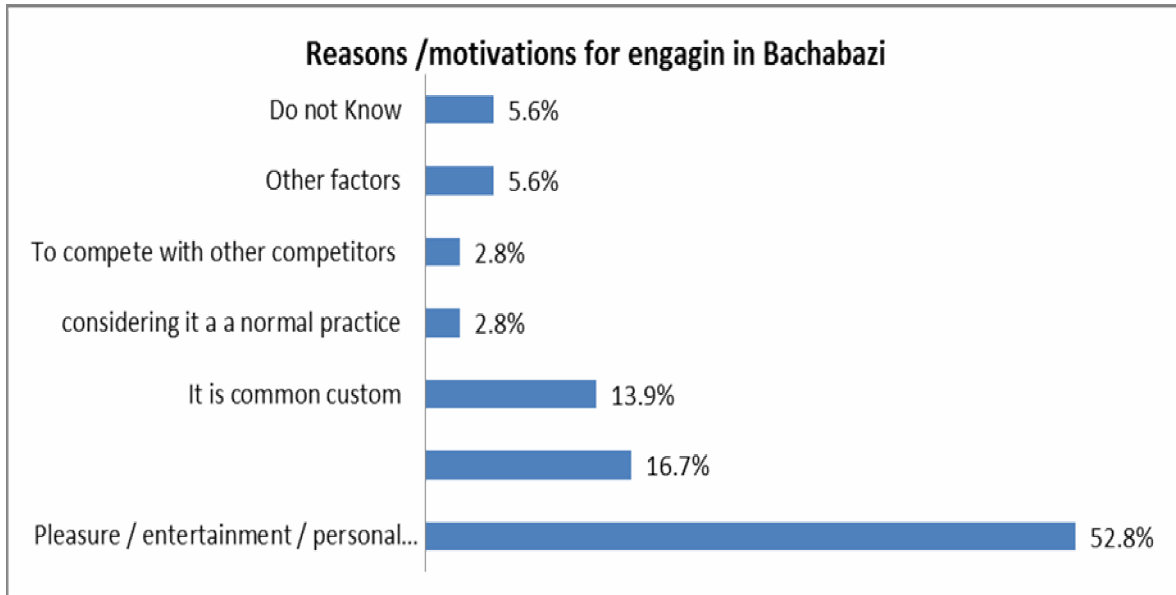
Others have stated that they have resorted to Bachabazi due to the reasons like pervasiveness of this issue in the region/area, considering it as a normal practice or due to competition with other Bachabazan or pederasts and participation in Bachabazi parties. However, these persons may sexually exploit the boys under their control, but what is astonishing is that they view Bachabazi as a prevalent practice and even as a normal issue in the society.

With regard to the phenomena of crime, this issue is one of the major factors in the incidence of crimes in the community, the thing that is labeled as “banality of evil” by Hannah Arendt, the socio-political philosopher⁵⁶. By banality of evil he means banality of any kind of evil, including moral evils, crime, and their prevalence as a normal practice in the society and as a result of which the obscenity of such issues decreases in the human minds and the society also loses its sensitivities and its preventive role against such acts and in this way crimes and evils turn to common and prevalent practice.⁵⁷

The graph below shows the details of the causes and motives based on which the perpetrators of Bachabazi have engaged in Bachabazi practice:

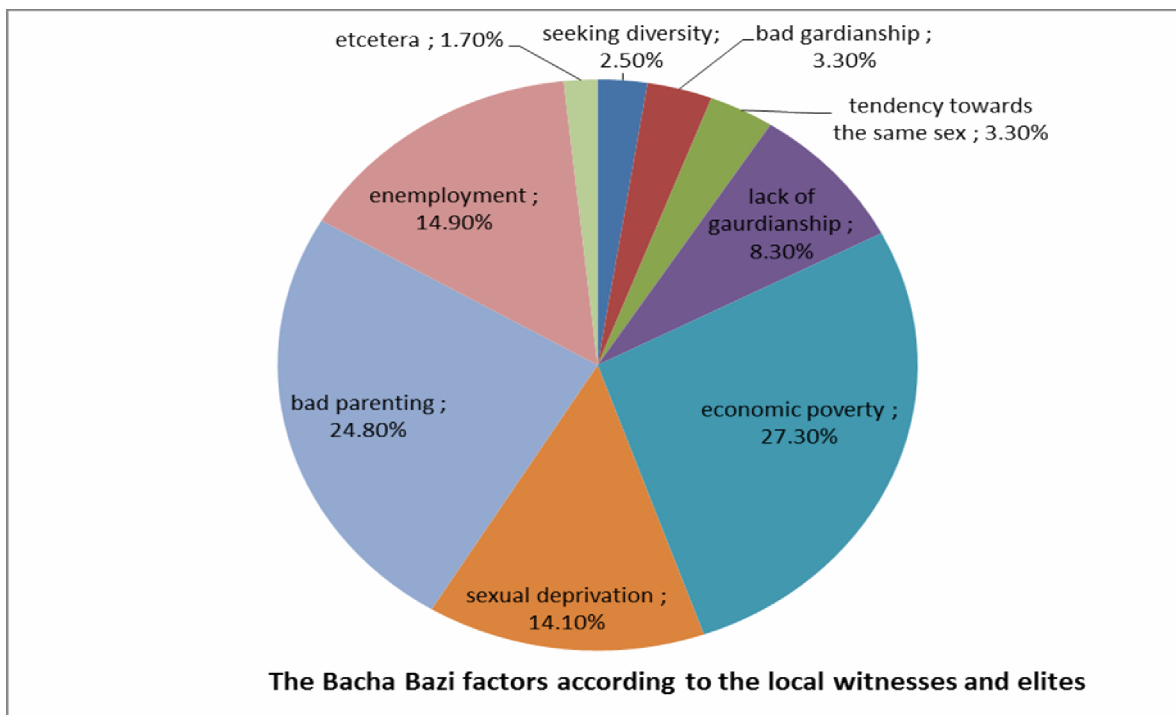
⁵⁶ .-Jahanbaglo, Ramin (1385), Hanna Arendt and the modern policy. Published on Dr. Faribarz Baqae Cultural Foundation for Enlightenment’s website. Reviewed on Saratan 9, 1393. Link: <http://www.fariborzbaghai.org/archives/individual/000312.php>. And Ashteyani, Mino (1391). Sexual assault, the stranger monster tale, published on BBC website. Reviewed on Saratan 9, 1393. Link: http://www.bbc.co.uk/persian/world/۱۳۰۱۰۹/۰۱/۲۰۱۳_۱۴۵_magazine_rape_psychology.shtml

⁵⁷ -ibid



The respondents, while explaining their motivations and how they turned to Bachabazi, discussed some other issues as well, which are helpful in understanding of this issue. For example, some of them mentioned companionship with Bachabazan or participation in Bachabazi parties; others mentioned the issues like poverty, unemployment, long journeys with truck drivers as car cleaners, and also Bachabazi with the waiters by the hotel owner have provided the ground for them to resort to Bachabazi.

The data in the Bachabazi witness form, indicate that according to the local witnesses and elites, the most important factors for Bachabazi are issues like poverty, bad parenting, unemployment, sexual deprivation, lack of guardianship and seeking diversity. It is worth mentioning that the local witnesses and elites shared their opinion on Bachabazi as a general custom and stated its factors and motives without differentiating between the factors and motives of Bachabazi, which are particular to the perpetrators and victims. The below chart details these data:



How boys are trapped by a Bachabaz?

Bachabazi however, is a common custom in some regions of the country, but as a whole, it is considered as an unpleasant custom in the culture of the society and there are intense sensitivities against it. Therefore, Bachabazan use different methods and approaches to trap the boys.

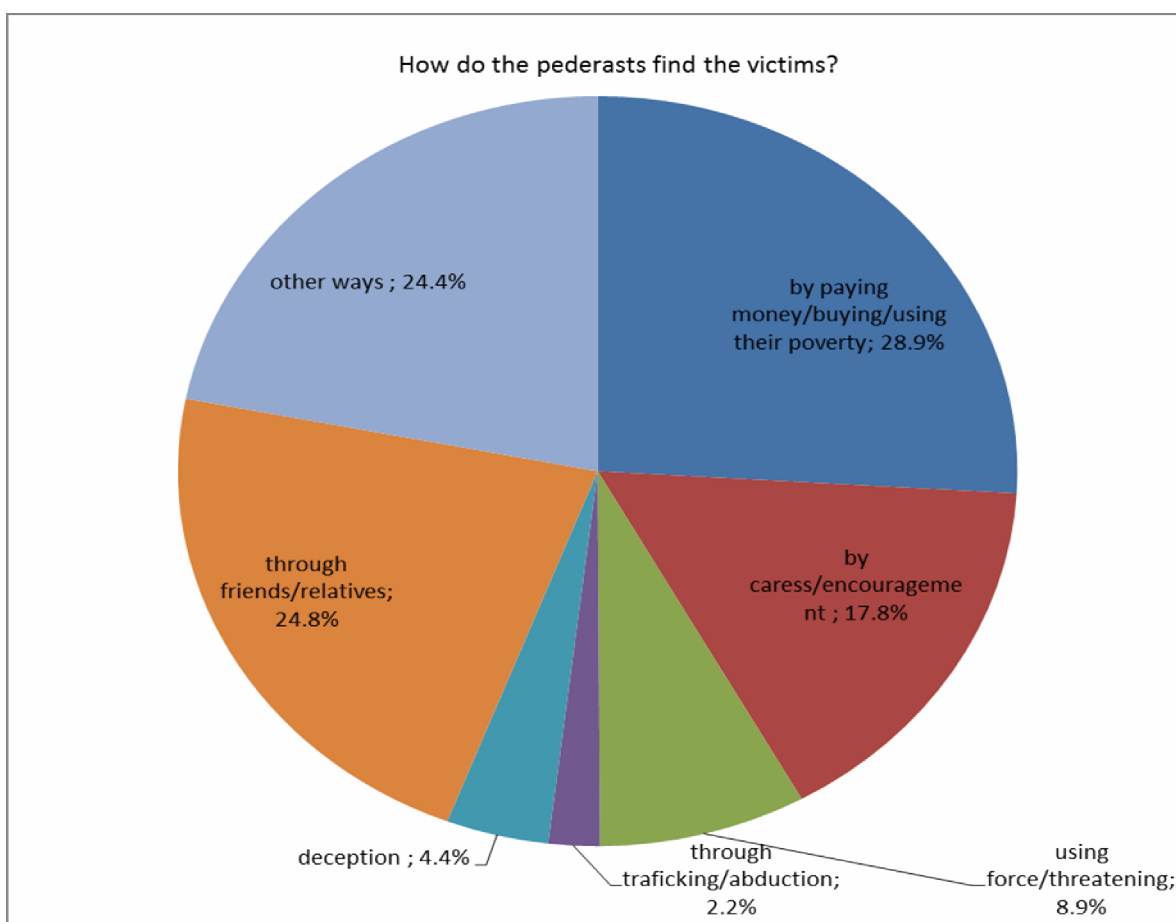
The data collected through interviews with the Bachabazan indicate that money payment and taking advantage of their family poverty is the most common way of trapping the victims. Whereas nearly 29 percent of the perpetrators have stated in this inquiry that they have trapped the victims through money payment, buying and taking advantage of their poverty.

This issue suggests that poverty has a critical role in Bachabazi like in other areas, and inflicts the major damage to the victims and their family concerning the issue of Bachabazi, and the perpetrators of Bachabazi trap the boys taking advantage of the vulnerability of the poor families. Another thing that is worth mentioning is that some of these families, because of their vulnerability, they themselves deliver their boys to Bachabaz for the money they receive.

The other main technique the Bachabazan use to trap boys is caressing and encouraging the boys to sodomy.

Nearly 18 percent of them stated that they find the victim boys in this way. Likewise, more than 13 percent of them stated that they get access to the victim boys through their friends and relatives. Around 9 percent of them stated that they use force and threat to find their victim boys. Deception, trafficking and abduction are the other ways of finding the victims. 24.4 percent of the perpetrators have mentioned other techniques in this inquiry, which are not clearly identified.

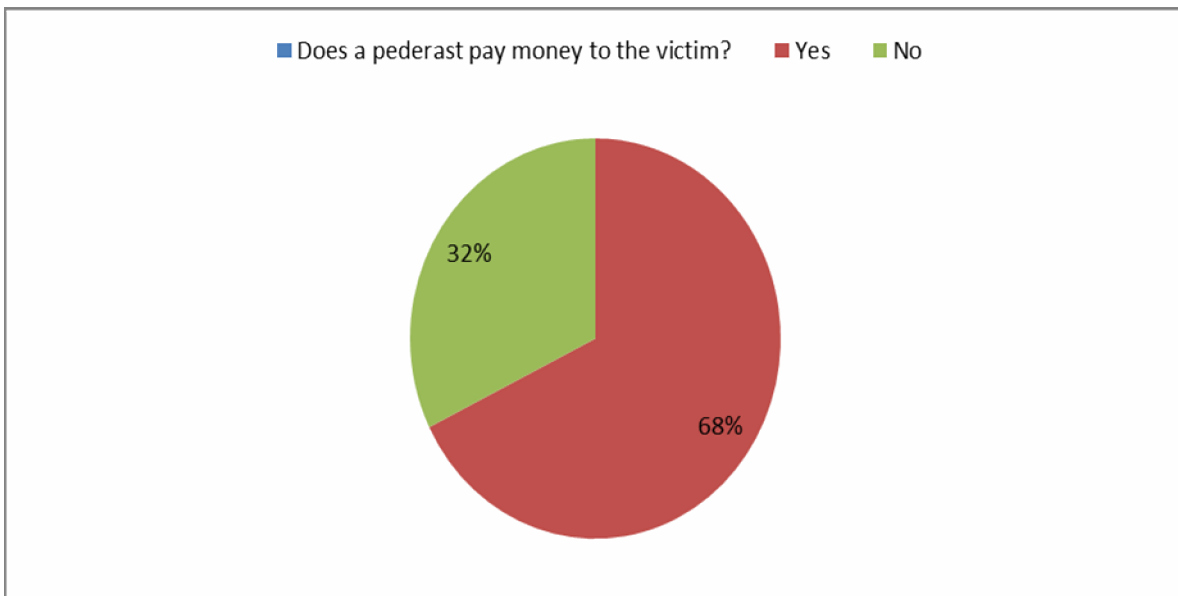
The following graph shows the issue in detail



The data collected from the victim forms also indicate that poverty is the most important factor that puts them in traps. Some of them have directly been put in the hands of the Bachabaz due to poverty, and have been paid money for being sexually exploited. Some others have stated that due to poverty, they had to work for the Bachabaz in their vehicles or shops or houses that later on they have been sexually

exploited. In some cases, it is reported that the father of victim worked as a servant or farmer for the perpetrator and this way the perpetrator has trapped the victim and has exploited him as Bachaberesh.

In the inquiry, the victims are asked whether they get paid for serving them as victims or not? Nearly 68 percent of them have answered in a positive response to this question. This issue proves that paying money and taking advantage of their poverty is the most common way to trap the victims.



Threat, deception and abduction are also parts of the ways the victims fall into the perpetrators' trap. Running away from home and falling in the pederasts' trap is the other issue the victims mentioned.

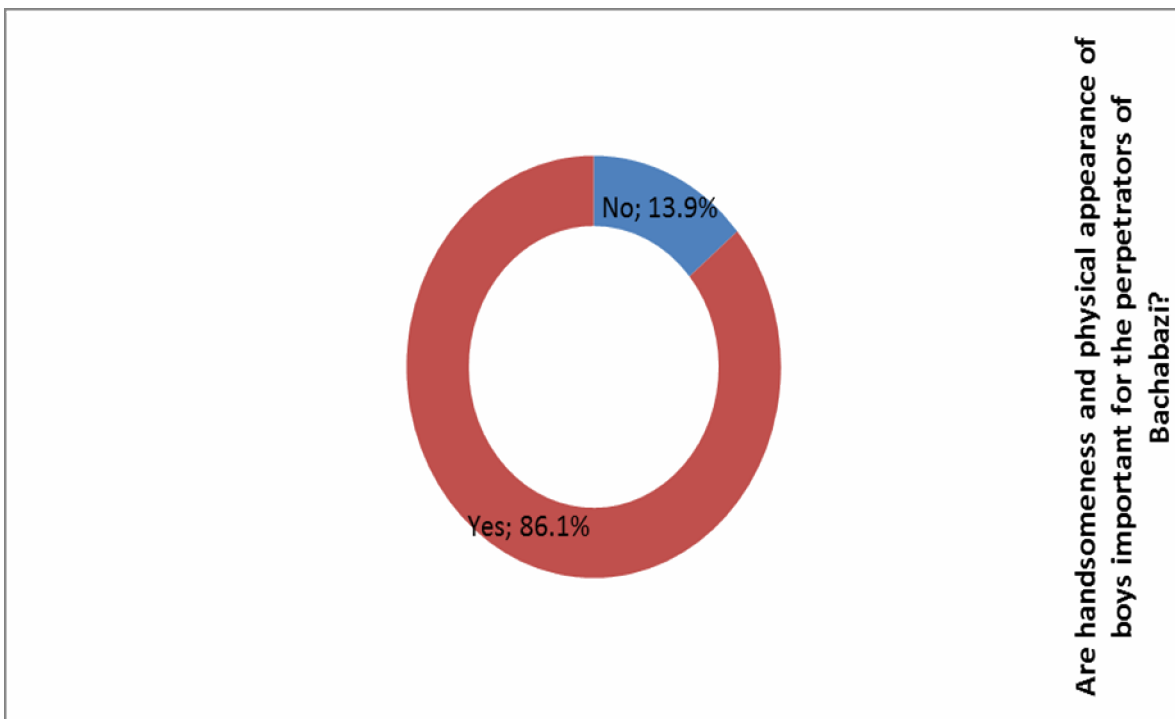
What Characteristics of the Boys are Important for the Perpetrators of Bachabazi?

Do the pederasts consider the personal characteristics or personality of the victims? Do they distinguish any difference between the victims? What issues are important for them? These questions are important because Bachabazi turned to a custom and the pederasts are interested in boys with specific characteristics. The importance of the characteristics of the victim boys may depend on the type of exploitation by the pederasts as well.

For example, if the boys are sexually exploited by Bachabazan or they are made to participate in Bachabazi parties and dance for them, then the boys' physical features

become important for the Bachabazan. Sometimes, the physical feature of the boys gets competitive aspect and the perpetrators compete with each other over the boys under their control and based on the boys' physical feature the perpetrators express the feeling of superiority over the others.

As shown earlier, Bachabazan are more interested in boys aging between 13 to 16 years of age. The perpetrators were asked in this inquiry if they consider the boys' appearance. 86 percent of them have given a positive response and the rest 14 percent of them stated that the boys' appearance is not of any significance to them.

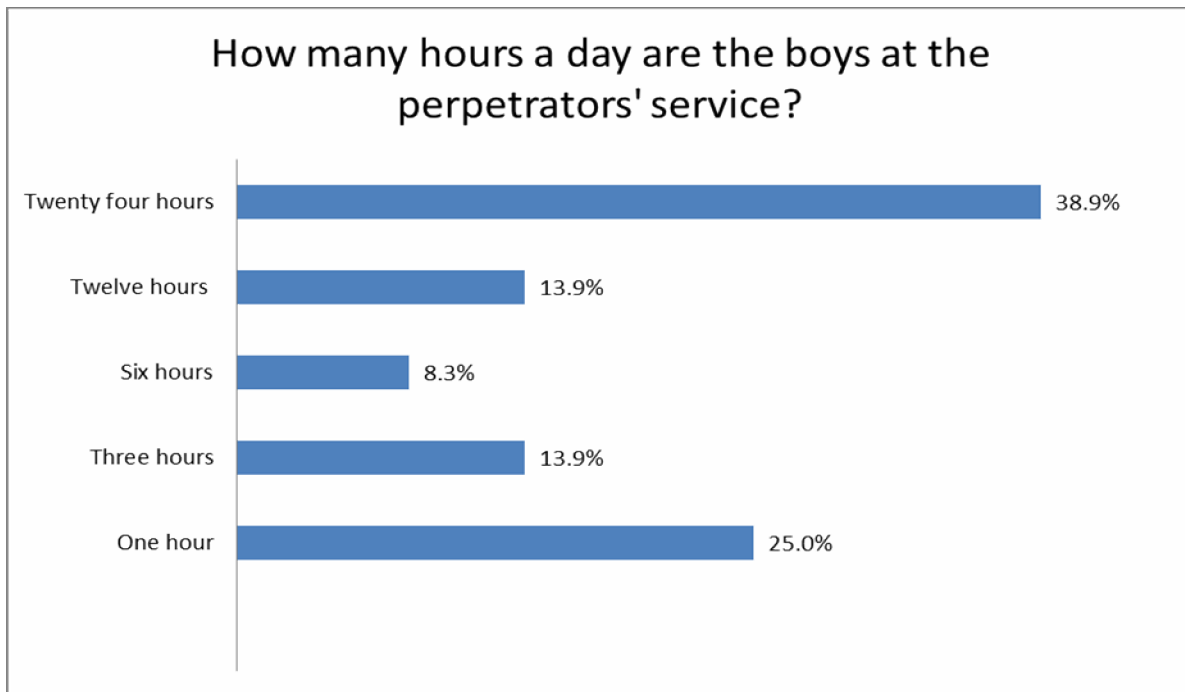


The perpetrators were asked if the lineage of the boys and their family were important to them. 83 percent of them responded that they do not care this issue, and 17 percent of them consider it important. However, nearly 53 percent of them stated that they do not know the families of the boys under their control and the rest, nearly 47 percent of them stated that they know the boys' families. What is interesting is that around 11 percent of these persons have expressed that they have friendship and family relations with the boys' families.

Around 31 percent of the perpetrators stated that the boys under their control have no connection with their families. Unfamiliarity of many boys' family with the perpetrators,

and disconnection of a large number of boys with their families indicate that most of Bachabazi victims are not enjoying any kind of family support as well.

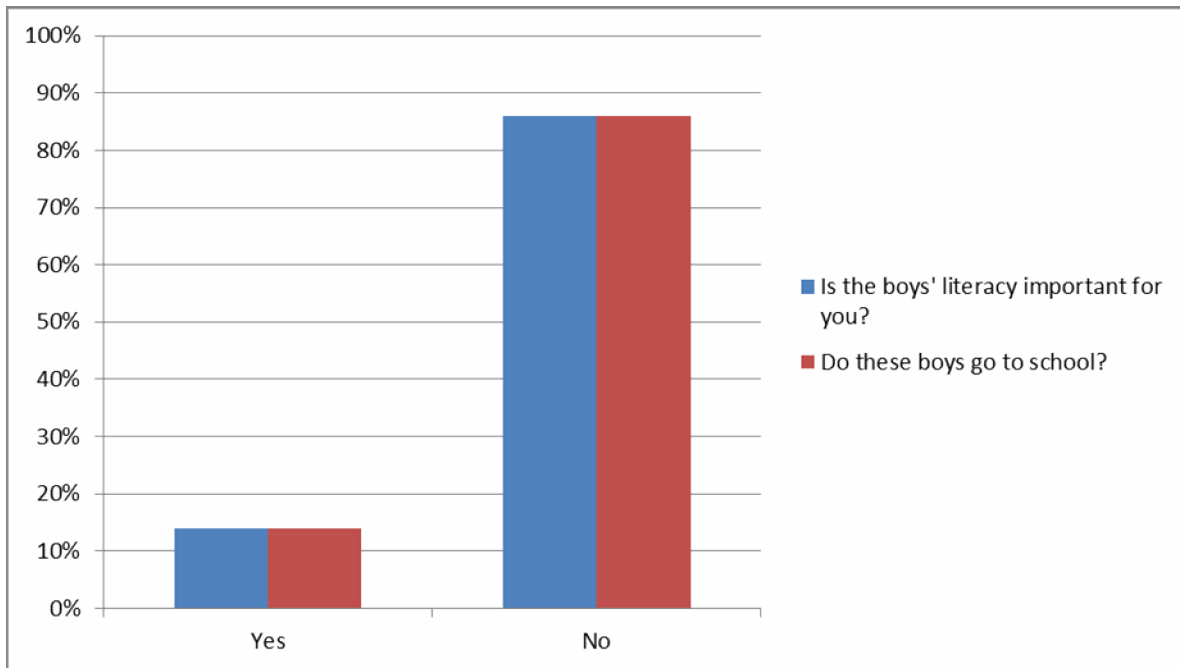
Many of the victims are at the service of the perpetrators for long times. The perpetrators are questioned in this regard. Around 39 percent of them answered that boys have been in their service for 24 hours and live with them. 14 percent of them responded that the boys have been in their service for 12 hours, the other 8 percent replied that the boys have been with them for six hours a day. The remaining 14 percent and 25 percent has also stated that the boys have been with them for three hours and one hour respectively.



According to the perpetrators' statements, these boys live with their family, go to school and engage in their personal business during other times of the day. Some of them have no idea about this issue.

Contrary to the physical appearance of boys, literacy is not of any significance for the perpetrators. The reason may depend on the type of exploitation of these boys. As was indicated earlier, sexual exploitation and debauchery account for most of the exploitations from these boys, which are not related to the issue of literacy. The issue of literacy of boys is asked from the Bachabazan whether it is important for them or not?

86 percent of them responded that the issue of literacy is not important for them and only 14 percent of them stated that this issue is important for them to some extent.



Regarding to this issue, 86 percent of Bachabazi perpetrators stated that the boys under their control do not go to school.

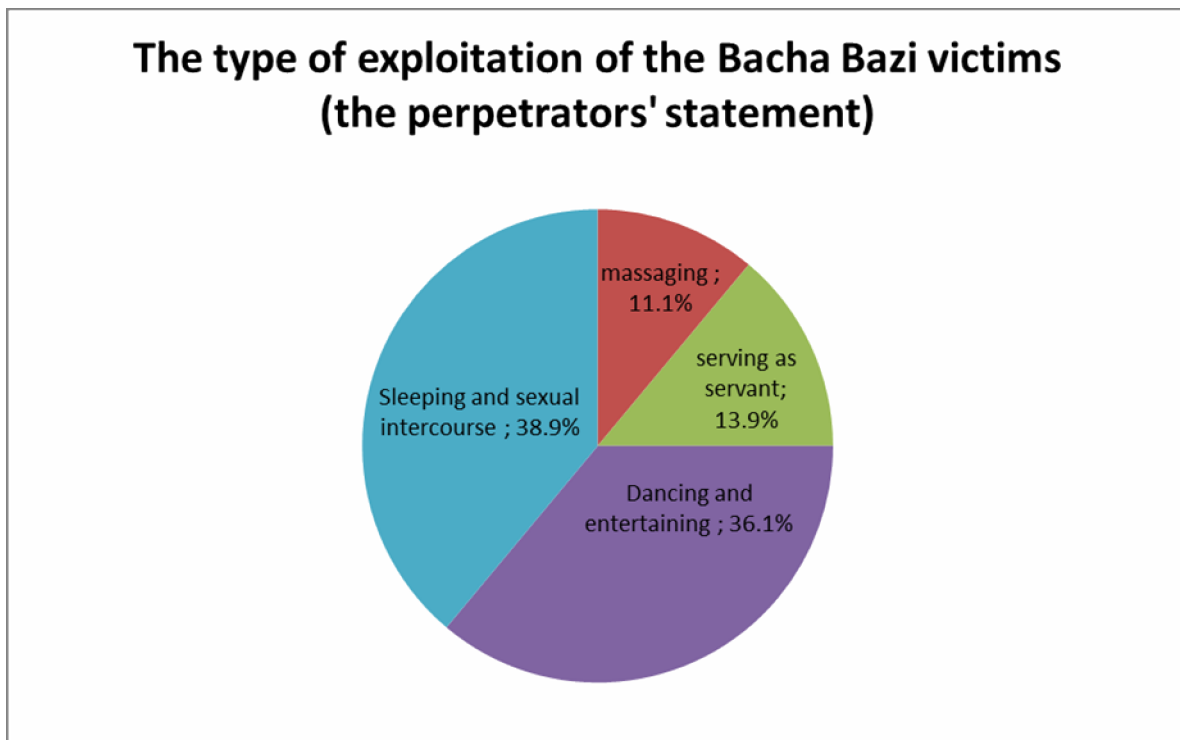
The Type of Exploitation of the Bachabazi Victims:

The types of exploitation are important in Bachabazi custom. Exploiting the Bachabazi victims may vary in different regions of the country. As was mentioned earlier; resorting to Bachabazi is not necessarily due to sexual deprivation. The most common and usual types of exploitation are sleeping with them, sexual exploitation, making them dance, entertaining with them in Bachabazi parties and gatherings, serving as a servant at parties and gatherings, touching their body organs, forcing them to massage bodies of the perpetrators and etc.

The important point is this that most of the victims may be exploited in different forms. This means that a victim may be sexually exploited or also may be asked to dance at parties and gatherings or may be forced to massage the perpetrator's body or other types of exploitation.

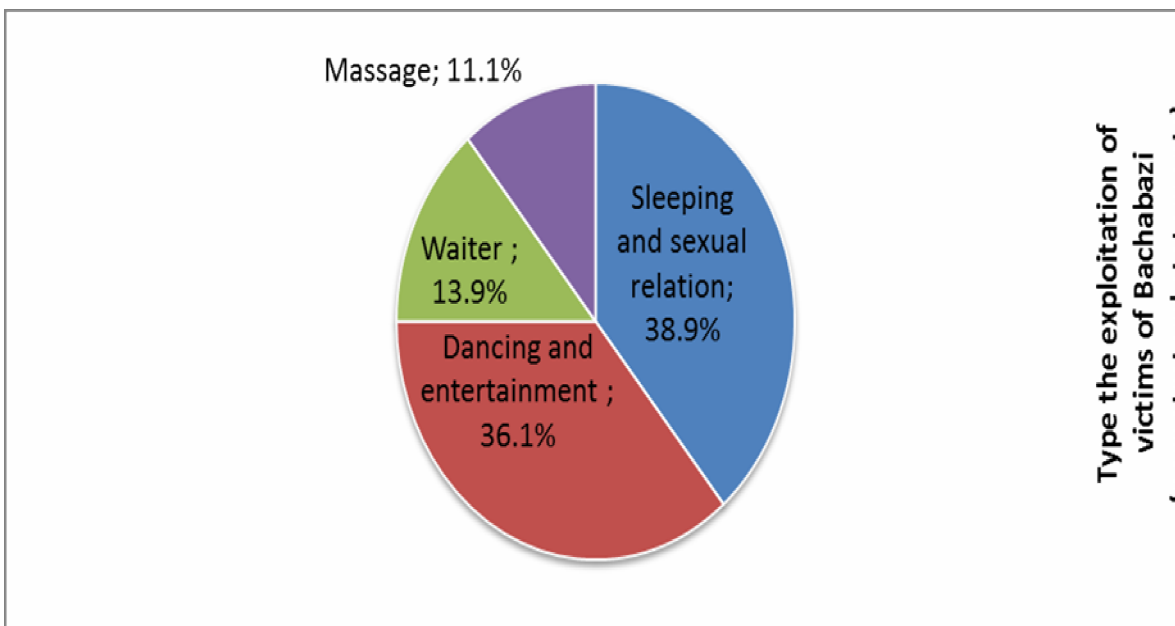
The data collected through interviews with the Bachabazi perpetrators indicate that sleeping with them and sexually exploiting the boys are the most prevalent type of exploitation as 39 percent of the total exploitations is said to be this issue.

Dancing and entertaining are the other types of exploitation that account for 36 percent of the cases. According to the perpetrators, serving as servant and forcing them to massage their bodies account for 14 and 11 percent respectively.

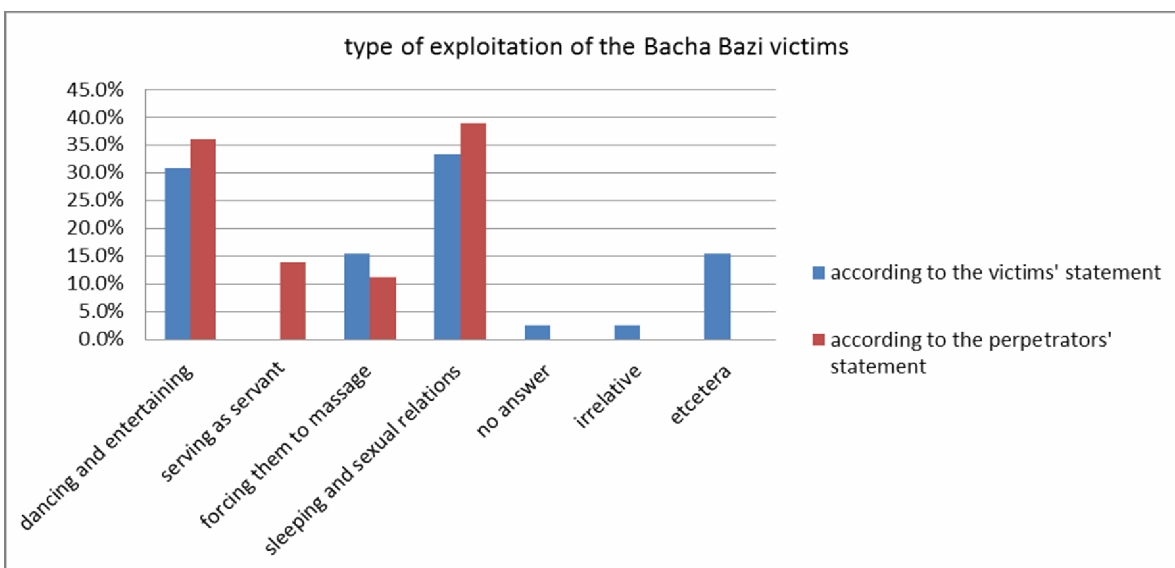


Likewise, the Bachabazi perpetrators in response to the question of this inquiry that asks what else the boys do for you, have answered that they do nothing else except what were mentioned earlier. The other 33 percent have responded that they use their boys in other houseworks like cooking, as shopkeeper, personal guard etc. The data collected through interviews confirm these results as well. Whereas 33 percent of the perpetrators said they sleep with the victims and have sexual relations with them. The statistics may be more than this, but due to sensitivities toward this issue, the perpetrators and the victims may conceal.

Nearly 31 percent have stated that they dance in the presence of the perpetrators and entertain them. More than 15 percent have mentioned massaging. Serving as servant is not mentioned in the data collected from the Bachabazi victims' statements, but instead, 15.4 percent has mentioned as other types of exploitation and 2.6 percent have been as no answer or irrelevant to the point. The below graph indicates this issue.



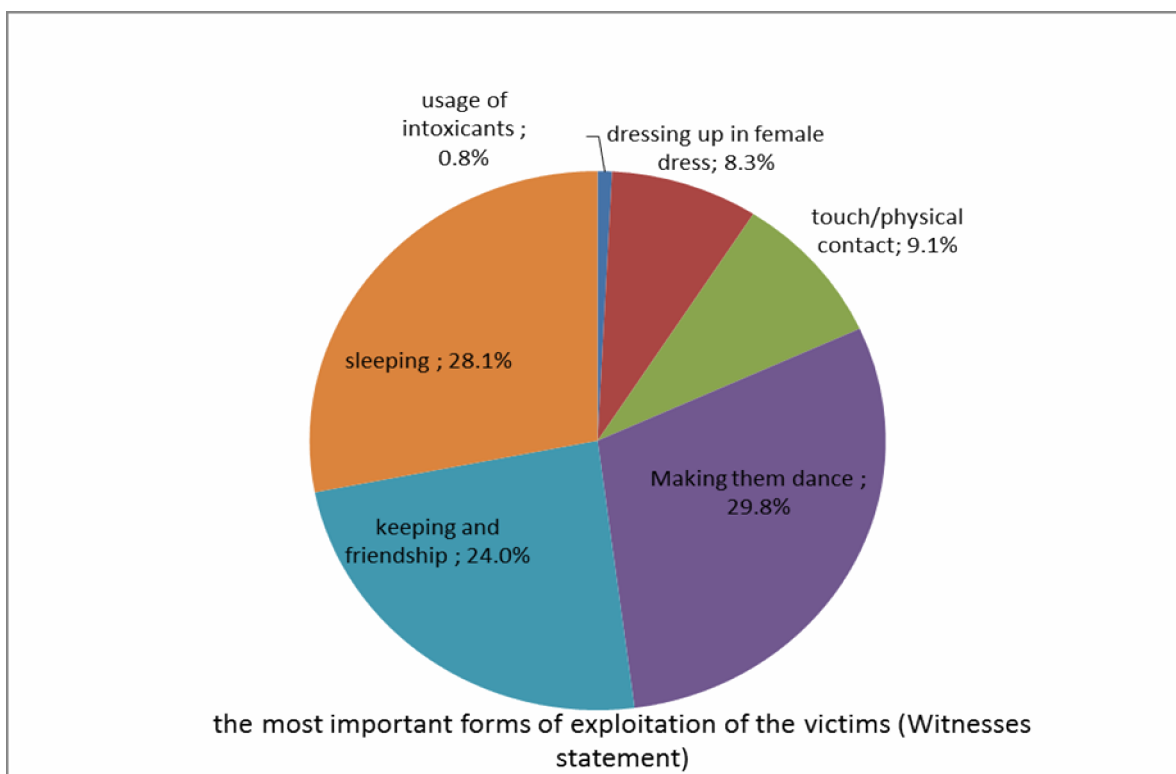
The above statistics indicate that most of the exploitations of Bachabazi victims are sexual exploitations, dancing, entertaining and debauchery. This issue highlights the horrible situation of Bachabazi victims in Afghanistan. The following graph shows the information collected from the perpetrators and victims' statements:



The data in the witness forms also represent that the most important forms of exploitation are sleeping and sexual exploitation, making them dance, entertaining, keeping and friendship.

In their response they have mentioned “physical contact”, but what they meant by this is not so clear which might be merely bodily touch or even sexual exploitation. Likewise, the case of “dressing up in female outfit” is also mentioned that apparently this is meant to make the victims dance.

The following graph represents the issue in detail according to the local witnesses and the elites:



However, as mentioned above, exploitation of the Bachabazi victims does not confine to one single form and in most of the cases, the victims may be exploited in different ways by the perpetrators.

Bachabazi Parties:

As was indicated in the above statistics, making the victims dance in Bachabazi parties is one of the most prevalent ways of exploitation of Bachabazi victims.

For this purpose, they hold a special ceremony and the perpetrators bring their boys to these ceremonies and make them dance. At times, Bachabazan compete with each other and bet on dance performance of the victims and in some cases; even such ceremonies would result in fights and conflicts among the pederasts or the audiences.

Likewise, the victims are used as dancers in wedding and other such parties as well. The pederasts bring their boys to such parties and make them dance.

Around 53 percent of the perpetrators who were interviewed during the inquiry; have stated that, they hold joint parties with other pederasts and they make their boys dance in such parties. The remaining 47 percent have stated that they do not do so. Dancing, singing and entertaining are the most important things that the victim boys are forced to do them in such parties.

Many of them said that they know many others who engage in Bachabazi. They have mentioned that they have friendship with many of them. Some others have stated that they have no specific relations with them, and sometimes meet them only in Bachabazi parties.

Consent and Coercion in Bachabazi:

Bachabazi can be considered as trafficking in children and based on the definition of trafficking in children in the Palermo protocol (2000), the matter of consent in employment and exploitation of children below 18 does not change the nature of the crime⁵⁸, but this issue is important due to engaging in violence and applying pressure and coercion on victims.

The perpetrators were asked that, whether the boys under their control accede to be exploited by their own will or not? The answer of 86 percent of them was positive and only 14 percent have responded that the boys are not happy with this practice. Do the Bachabazi victims confirm this issue?

The same question has been asked from the Bachabazi victims, too. The result of victim forms in response to this question is thoroughly opposite to the above result.

⁵⁸ - AIHRC (1390). The factors and causes of trafficking in women and children in Afghanistan, published by the AIHRC, page 22.

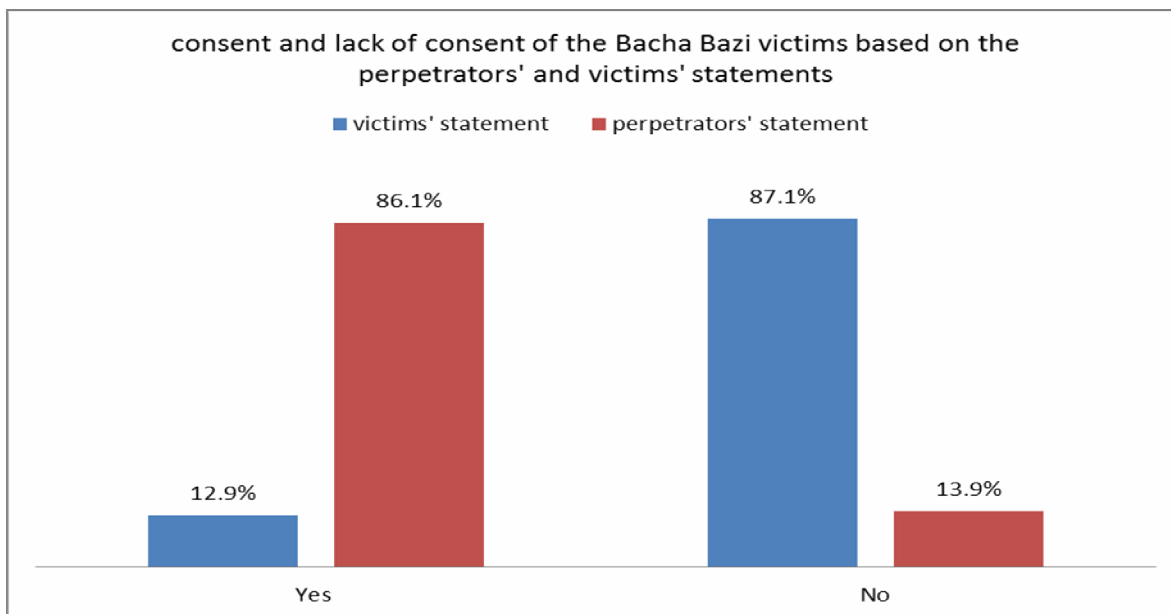
Around 87 percent of these victims have stated that they have exploited them without their consent. Only 13 percent have stated that they are happy with what they do.

The inconsistency in response of the perpetrators and victims in this regard indicates inaccuracy in the perpetrators' statements. It seems like the perpetrators wanted to answer the question to their own favor and this way justify their deed.

They have even said the things their boys like most to be done on them. According to their statement; dancing, entertaining, sleeping, sexual relations and serving as servants are the things the boys like.

Apart from this inconsistency, the consent of 13 percent of the victims for being exploited is also noteworthy. These statistics indicate that Bachabazi is turned to be a custom, because being a custom can somehow justify this deed in the mind of the perpetrators as well as victims. The other factor, which plays a critical role in their consent, may be the payment of money to them. As was mentioned earlier, many of them may accede to this deed due to economic problems.

The following graph shows the result of perpetrators and victims' statements in this regard:



Likewise, the victims have been asked whether they enjoy Bachabazi or not. The response to this question may be in conflict with the perpetrators' statement. Nearly 84

percent of the victims have stated that they do not enjoy doing this practice and only 16 percent of them have stated that they enjoy doing this practice.

They have been asked if they want to give up this practice, more than 81 percent of the victims have said that they want to give it up. 19 percent have given a negative answer to this question.

Usually coercion is accompanied by violence. The issue of violence is asked from the Bachabazi victims. 58 percent of them have responded with a positive answer and have stated that they have been subjected to violence. Based on their sayings, beating, confining and threatening to death are the most prevalent ways of applying violence against them.

However, 42 percent of them have stated that they have not been subjected to violence. Comparison of the statistics of these two questions regarding the consent of the victims indicates that the perpetrators have exaggerated in this regard.

In another section of the questionnaire, the perpetrators are asked whether their boys ever refused their demands. 50 percent responded as negative and 50 other responded as positively.

Social Reactions against Bachabazi :

Bachabazi, however, has turned into a custom in some regions of the country, but this custom is hated by the public. Nonetheless, the public has not done any serious and effective intervention in this respect. Perhaps the most important reason is that people who have a strong relationship with powerful people usually engage in such practices or they themselves are powerful, influential and rich.

Yet, at times, some sort of individual disagreements have raised against the Bachabazi custom. The perpetrators are asked if they ever faced any objection for keeping a boy with them. More than 69 percent of them have delivered positive answer and have stated that they have faced some objections and nearly 31 percent of them have stated that they have not faced any objection from anyone. The perpetrators admit that they face peoples' objection because the act is bad, and has anti-Islamic. Likewise, 61 percent of them have declared that the peoples' objections are justifiable.

But the reason why some of the perpetrators do not consider the people's objections justifiable is that this act has become a prevalent custom and goes back to a long time ago, or they express that they do this practice with the boys' (victim) consent so others have no right to object.

In response to this question that whether they regret doing this practice or not, 61 percent of them have said that they do not regret doing this job and nearly 39 percent of them feel a kind of regret.

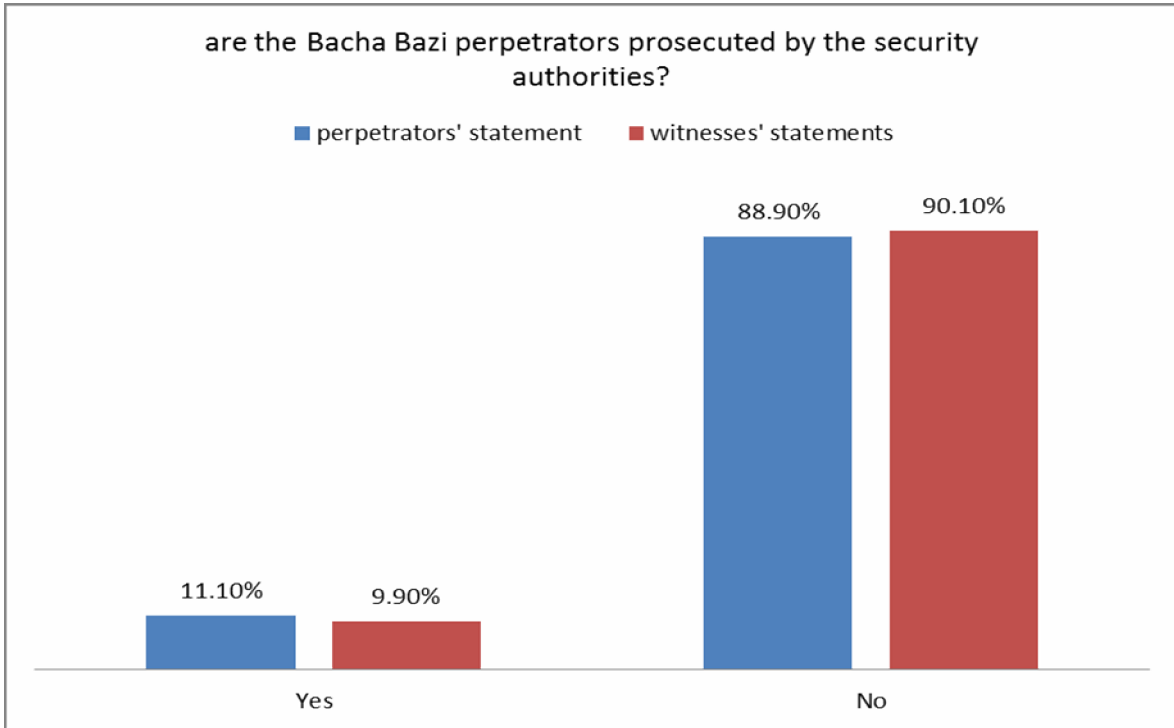


Follow up and Addressing the Bachabazi Cases:

Bachabazi is not expressly criminalized in the Afghan Criminal Code and the law still lacks such a provision. Therefore, this practice may be prosecuted under titles such as sodomy and prostitution. But usually it is rarely seen to happen in a serious manner. In addition, if it is prosecuted in some cases, usually prosecution of such cases would not be fulfilled because there is no clear and precise legal basis to issue a decree on this regard.

The Bachabazi perpetrators were asked if they have ever been prosecuted by the security authorities, 89 percent of them have given negative answer. This question has been asked from the local witnesses and elites as well. They have even had a worse

viewpoint and stated that more than 90 percent of the perpetrators are not prosecuted. This figure also indicates that the Bachabazi cases are rarely prosecuted. The following graph indicates this issue:



Out of 11 percent of the perpetrators who have been prosecuted have stated that their cases have been sent to the court, and less than half of them have been sentenced to imprisonment. Others have stated that their cases are under process.

The above figures prove the necessity of criminalization of Bachabazi to prevent it. So, in order to seriously fight this practice, its legal ground must be provided.

Chapter 5

Bachabazi Factors and Grounds

Spread of social disorder is due to some factors and contexts that contribute in this regard. The researches indicated that the determining factors of criminal behavior should be sought in the complex situations relating to person-situation interaction.⁵⁹ Therefore, the objective situation is significant in criminality that lays the ground for a criminal act. In addition, social disorder and criminal behaviors depend on complex political, social, legal, economic and cultural issues. Bachabazi as a social disorder is accompanied by a number of factors, which should be identified.

In the investigation of the Bachabazi factors and causes in Afghanistan, the participants' comments and opinions of more than 1900 people, including religious scholars, university lecturers, tribal elders, influential figures, social experts, medical doctors, psychologists, teachers, and human rights' and civil institutions' activists received in seventy one focus group meetings and 14 public hearing assemblies in which the factors and causes of Bachabazi were discussed, have been used. The participants highlight lack of rule of law and corruption, the culture of impunity from punishment, poverty, insecurity, ambiguity and legal gaps, limited access to justice, low level of literacy and indecent traditions as the Bachabazi factors and grounds, each of which are discussed below.

5.1 Legal-Political Factors and Grounds

The legal and political factors are those that have their roots in the defects existed in the legal mechanisms and standards, administrative structures, judiciary and justice institutions' performances (rule of law) and the political will of the concerning authorities. In this part of the report, these factors and grounds, which contribute in

⁵⁹ - Luis Kuzer and Bernard Rosenberg, sociology basic theories, translated by Farhang Ershad, page 480, published by Nay, year 1387

prevalence of Bachabazi are discussed and scrutinized. The identification and scrutiny of these factors and grounds are done through using the participants' comments and viewpoints in the focus group meetings and public hearing assemblies.

Furthermore, the Bachabazi factors and grounds have been identified and discussed through interviews with Bachabazi victims, perpetrators and witnesses. Based on the AIHRC findings the most important legal-political Bachabazi factors and grounds are the following cases that the participants, perpetrators, witnesses and the victims have stressed upon them in the focus group meetings and public hearing assemblies.

5.1.1 Lack of Rule of Law and Corruption

It is obvious that implementation of justice and the rule of law is effective in decreasing crimes in the society. Experience has shown that in the absence of rule of law and impunity from punishment; crime graph has had an ascending trend and the criminals using such an

opportunity have repeatedly engaged in committing crimes and in many cases, other people are also encouraged to commit criminal acts as well. Other factors that encourage and spread



Bachabazi in Afghanistan are lack of rule of law and corruption in the justice and judicial organs of the country. Based on the AIHRC findings, there are very few cases that the perpetrators have been prosecuted. Moreover, if someone is arrested on accusation of Bachabazi, he is released after a short period of time.

In the documentary under the name of Afghan dancing boys, it is shown that two people accused of Bachabazi have been arrested, and after a few months they were freed. This way most of the focus group meetings' and public hearing assemblies' participants have stated that the culture of impunity from punishment and lack of taking a decisive action against the perpetrators are the main factors that contribute in crimes

continuity, mainly that of Bachabazi in the country. The participants have stated that the absolute majority of the perpetrators are not prosecuted and if they are prosecuted, they find different ways to escape justice and trial, and soon they get released.

Corruption is one of the most serious problems in the governance and rule of law. This is crystal clear that a large number of organs, mainly the judiciary and justice departments are involved in corruption. Based on a study done by the Afghanistan Transparency Watch; corruption is increasing in Afghanistan and the judiciary, justice and police systems are known as the most corrupted organs⁶⁰. The claim that corruption is commonly practiced in judiciary and justice organs is implicitly accepted by these departments. As the high court some days back have announced that, due to corruption and bribery, 60 judges have been disqualified and thousand judges have been arrested.⁶¹

The Bachabazi perpetrators are released by paying bribes and by using their connection with judicial, justice and police organs and they are exempted from prosecution, and



continue to commit criminal acts. A number of the perpetrators have clearly stated that they are in close contact with police and even acting in accordance with their interest. The police department authorities have appeared in documentary under the name of Afghan dancing boys that they are present in some Bachabazi parties. This documentary shows that the then police officer of the criminal department in Takhar province was present in the dance party of these children⁶². In this film, Dastgir one of the

⁶⁰ - Tolonews, "Afghanistan Transparency Watch: corruption is increasing", *Jawza* 7, 1393, retrieved on July 26, 2014 from <http://www.tolonews.com/fa/afghanistan/15034-new-survey-shows-increased-corruption>

⁶¹ - BBC, Persian page, "expelling and trialing of tens of judges in Afghanistan due to bribery", February 29, 2012, retrieved on July 26, 2014 from http://www.bbc.co.uk/persian/afghanistan/2012/02/120229_k01_af_courts_corruption.shtml

⁶² - "Afghanistan dancer boys", documentary, produced by Jimi daran, reported by Najibullah Qoraishi, minute 26:55

perpetrators admits that he had close contacts with the police for his security, and whenever he wants he can contact the police and ask for help. He claims that he can call 100 police officers at a time to help him.⁶³

In such a situation where the police, judiciary and justice departments act as accomplice with the perpetrators, it is clear that they can confidently continue engaging in such practices and fear no one.

Therefore, the rule of law and insuring of justice directly depends on the transparent performance of the legal, judiciary and justice departments and the police institution. Thus, in order to protect the human rights violation victims, including the Bachabazi victims, it is very important to strengthen the rule of law and fight corruption in the country.

5.1.2 Ambiguity and legal gap concerning Bachabazi

As in Chapter III, the act of Bachabazi was analyzed from a legal perspective,, the Bachabazi practice is not definitely recognized as a crime in the Afghan Criminal Code. But, considering this that Bachabazi is often accompanied by sexual exploitation of children, this practice is against the laws and should be considered as a crime. Likewise, it has been stated that Bachabazi is considered as trafficking in human, and based on the Law on Combating Abduction and Trafficking in Human, and human rights international conventions, this practice is an clear human rights violation.

Since the Afghan Criminal Code is not clear about the practice of Bachabazi, the judiciary and justice organs may not take action to address cases relating to Bachabazi or if they decide to prosecute the perpetrators of Bachabazi, they may face with legal gap and ambiguity and may not be able to take an explicit action to trial them. This perception that there is legal gap and ambiguity on Bachabazi in Afghan Criminal Code also exists amongst the judges and justice authorities. As some of the judiciary and justice authorities, including the Head of Military Attorney Office, Head of Appeal Attorney Office in Kandahar, and Head of Military Attorney Office in Herat have stated that the Afghan laws are silent regarding Bachabazi and there is no decree to provide for the punishment of the perpetrators.

⁶³ - ibid 11:30 minutes

The judiciary and justice organs of the country, however, can rely upon the article 427 to 430 of the Penal Code and the Law on Combating Abduction and Trafficking in Person, that to some extent can cover several aspects of Bachabazi, but in spite of that the perpetrators are not punished due to lack of precise legal laws on the Bachabazi and this contributes in its prevalence more than ever. Therefore, the relevant authorities are obliged to take measures for criminalization of this practice and prohibit Bachabazi by amendment of the relevant laws and this way punish the perpetrators.

5.1.3. Limited Access to Justice

Citizens' accessibility to justice, and independent, legal and fair judicial mechanisms is one of the undeniable rights of people. This right includes the physical accessibility to court and accessibility to independent, legal and fair courts. The Afghan government based on the international human rights instruments to which Afghanistan is a party, and the domestic laws, is bound to provide the grounds for citizens' access to justice and judicial mechanisms, and ensure implementation of the law and realization of justice in the country. The International Covenant on Civil and Political Rights clearly states "... everyone has the right that his lawsuit be fairly and openly addressed in an independent, fair and impartial court. Moreover, the court makes a decision on the truth of the criminal charges against him or disagreements on his rights and obligations...⁶⁴". According to article 116 of the constitution and articles 13 and 14 of the Law on Structure and Competencies of the Judiciary Courts, it is essential to establish courts at the province and district level in order to carry out judicial proceedings and realize justice in the country.

Existence of justice and judicial organs across the country is of special significance. In fact, the state sovereignty is strengthened by the implementation of law through law enforcement organs. In other words, the state sovereignty is enhanced and rule of law is strengthened by the existence of judicial organs, and transparent and legal activities made by such organs in all over the country.

Otherwise, the level of people's reliance on the government will decrease and the gap between people and government will increase. Moreover, in the absence or inactivity of justice and judicial organs, disorders and violations will appear and expand every day.

⁶⁴ - The UN general assembly, the International Covenant on Civil and Political Rights, article 14, approved in 1966



The AIHRC findings indicate that a considerable number of citizens of the country specifically in the remote and insecure regions are facing numerous restrictions in their access to justice. In the report “the Status and Performance of the Courts and the Judicial System in Afghanistan” published by the AIHRC in 1390, it is stated that the primary courts in 47 districts of 14 provinces are inactive⁶⁵. But, the report on “the citizens’ access to justice that was published in 1391 indicates that due to insecurity the number of inactive primary courts has increased as the primary courts of the 86 districts has been reported to be inactive in 23 provinces.⁶⁶ With regard to the fact that problem of insecurity in many parts of the country still exists, it does not seem that this court has reopened and are active. In addition to this, access to advocates is very limited in many provinces. Based on the AIHRC findings, less than 5 people have been serving as advocates in 44 percent of the provinces in 1391⁶⁷

These restrictions in access to justice cause the families of the Bachabazi victims not to lodge complaint against the perpetrators. Firstly, fewer people want to lodge a

⁶⁵ - Afghanistan Independent Human Rights Commission, the report on the courts’ situation and performance and the judiciary system in Afghanistan, page 14, 1390

⁶⁷ - *ibid* – page 29

complaint against the perpetrators in the absence of justice organs. Secondly, in the case of lodging complaints, many refer to unofficial mechanisms such as local councils; therefore, ensuring justice is difficult due to the influence of Bachabazi perpetrators as many of them are in contact with powerful persons or they are powerful themselves. Restrictions in access to official justice mechanisms was also confirmed by the participants of the public hearing and focus group meetings. In addition, in the absence of justice organs in some districts police cannot arrest and prosecute the perpetrators, because no one believe that the perpetrators will be trialed. Therefore, based on these reasons we can say that no Bachabazi cases have been followed up or addressed either by victims or by security and justice organs. Based on the facts mentioned above, lack of people's access or limit access to justice and fair, legal and impartial justice and judicial mechanisms provide the ground for appearance of Bachabazi in these areas. Moreover, in the absence of transparent, legal and impartial courts the perpetrators of Bachabazi boldly continue the sexual abuse of children in some districts, and this encourages many other people to engage in Bachabazi.

5.2 Insecurity and Availability of Weapon among Irresponsible Individual and Groups

Insecurity is directly linked to lack of rule of law and the culture of impunity from punishment. Likewise, by ensuring security, the rule of law would be strengthened and impunity from punishment would decrease. In the area where there is no security, no doubt the observance of human rights and the application of justice and the strengthening of the rule of law is very difficult. Experience has shown that human rights are violated more in the insecure regions. In the insecure areas, the law is violated more than everything else and the level of disorders and crimes gets increased.

Spread and continuation of insecurity have affected the governance, rule of law, ensuring of human rights and justice, social life system, economic activities and normal life of people since many years back.

Insecurity caused the perpetrators to continue their criminal acts openly and not to be prosecuted; because during insecurity the security and justice organs cannot prosecute the criminals mainly the powerful and rich ones. As it was mentioned, a large number of the Bachabazi perpetrators are rich and powerful and they are in contact with irresponsible armed people and even with police departments.

Availability of weapon among irresponsible persons has led to insecurity and such persons break the laws and hinder ensuring of justice. By using force, the armed persons and groups can easily abuse children sexually and in addition, by using weapons they can threaten justice and judicial organs not to prosecute them. Based on the AIHRC findings, more than 600 irresponsible armed groups were actively present in different provinces and districts of the country in 2013 each groups consists of 10 to 100 armed persons⁶⁸. Based on the AIHRC information, availability of illegal weapons resulted in bloody incidents, the use of force, attack upon the rights of others, denial of the decisions issued by official authorities, disruption of order and lack of ensuring justice.⁶⁹ It seems like the government had no specific and firm program to disarm these irresponsible people in the recent years, these people have often been armed, and there has been an increase in their number.

Based on the AIHRC findings and the statements of the participants of public hearing and focus group meetings, many of those who engage in Bachabazi, they are not only in contact with the armed individuals and groups, but they are armed themselves and even they own their



own armed groups. Given this reason, the judiciary and justice organs cannot prosecute these powerful persons. Police departments have not made necessary efforts to disarm them and even the irresponsible armed groups appear stronger than the police forces in some districts of Kunduz province, and police dare not encounter them, because they are armed with heavy weapons and their strength is more than that of police forces⁷⁰

⁶⁸ - Afghanistan Independent Human Rights Commission, the report on “the citizens’ access to justice, page 34, 2013 link:

<http://www.aihrc.org.af/media/files/2%D8%AF%D8%B3%D8%AA%D8%B1%D8%B3%DB%8C%20%D8%B4%D9%87%D8%B1%D9%88%D9%86%D8%AF%D8%A7%D9%86%20%D8%A8%D9%87%20%D8%B9%D8%AF%D8%A7%D9%84%D8%AA-%20%D9%86%D8%B3%D8%AE%DB%80%20%D9%86%D9%87%D8%A7%D8%A6%DB%8C.pdf>

⁶⁹ - ibid

⁷⁰ - Afghanistan Independent Human Rights Commission, the report on “from Arbaki to national police, today’s challenges and tomorrow’s concerns, page 49, 1391, available at the below link:

<http://www.aihrc.org.af/media/files/Reports/Research/Dari/Report%20on%20Afghan%20Local%20Police%20Dari.pdf>

Availability of weapon among Bachabazi perpetrators has sometimes caused armed conflicts among perpetrators and resulted in killing and injuring of people. The Bachabazi perpetrators compete and feel jealous with each other in making the children dance and sometimes they get involved in conflicts. For example in the month of Jawza in 1393, as a result of conflict between two local commanders on Bachabazi, 7 people were killed. These seven people have been killed due to disagreement of two commanders on the performance (dance) of a boy in a wedding party⁷¹ "The armed conflict occurred between commander Joma Khan known as Ayob and commander Salim in Deh Salah district of Baghlan province", Aminullah Amarkhel, the Baghlan police Commander said⁷².

The presence of children among the security forces of the country leads to their sexual abuse as well. Since several years back, however, the Afghan government has attempted not to recruit children in the army or expel them from army⁷³; and human rights institutions have always expressed their concerns in this respect.⁷⁴

Based on the statements of the public hearing participants during this national inquiry, children are still serving in the national police, especially in remote areas like insecure districts and they are kept as Bachaberish in the military camps. These children are present in the police camps, day and night under the name of "cook", "security personnel" or "Chereek". According to the participants, these children are sexually abused in military camps. According to one of the public hearing meeting participants in Helmand province, some police officers clashed with each other over possessing of a boy and as a result of the clash 5 policemen have been killed.

⁷¹ - Jamhooor news agency, "the disagreement on Bacha Bachi left 7 persons dead", Jawza 8, 1393, available at the below link:

(<http://www.jomhornews.com/doc/news/fa/50650/>)

⁷² - ibid

⁷³ UN News Center, "UN welcomes Afghanistan's recommitment to end recruitment of child soldiers", August 1st 2014, available at: <http://www.un.org/apps/news/story.asp?NewsID=48393#.U99ud33z7IU> (August 4, 2014)

⁷⁴ - Klid Group, "children are still soldiers," Saratan 21, 1391, available at the following link:

<http://tkg.af/dari/report/research/8898-%D8%A7%D8%B7%D9%81%D8%A7%D9%84%D8%8C-%D9%87%D9%86%D9%88%D8%B2-%D8%B3%D8%B1%D8%A8%D8%A7%D8%B2-%D8%A7%D9%86%D8%AF>

5.3 Economic Poverty

It is obvious that the economy has a critical role in the society and economical situation is directly and indirectly linked with many social phenomena.

Economic poverty makes a society vulnerable and causes social disorders. Likewise, economic poverty in families makes the members of the families, particularly women and children vulnerable. Afghanistan is one of the poorest countries in the world and 36 percent of Afghans live below the poverty line.⁷⁵

A bad economic situation of the Bachabazi victims' families is considered as one of the main factors in the prevalence and spread of Bachabazi. Based on the AIHRC findings, most of those who keep and sexually abuse children, they misuse the economic



poverty of the victims' families, keep their boys with them for the practice of Bachabazi, and pay money to their families in exchange. Likewise, most of the complaints concerning sexual abuse of children received by the AIHRC indicate that the victims most often come from poor families.

To earn money, such poor families put their boys in the service of powerful and rich people. It is worth mentioning that based on the AIHRC findings, many of the families are unaware of their children who are used as dancers at parties or sexually harassed. Some of the families of such children lack guardian, and therefore, they have to resort to such practices to run their lives.

In all the public hearing and focus group meetings that have been held on the factors and context of Bachabazi, all the participants unanimously have considered poverty as one of the main and the radical factors for Bachabazi and have stressed that a bad economic situation of their families is the main reason of spread of Bachabazi custom. As was mentioned earlier, 29 percent of the perpetrators have also admitted that by using the poor economic situation of the families and by payment of money, they trap

⁷⁵ The World Bank, Poverty Status in Afghanistan, Page 10, 2010, Available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/07/12/000333037_20110712011847/Rendered/PDF/631800WP0Pover00Box0361508B0PUBLIC0.pdf (Aug 6, 2014)

the victims. A victim from behind a dark glass in a public hearing meeting held in Mazare Sharif uttered as such, "I have to work in a hotel and sleep at my workplace with my employer".

In the documentary known as "Afghan dancing boys" that was produced and released a few years back, it was shown that most of the victims are coming from poor families. Their family members put their children in the service of rich people as a servant or a footboy to make a source of income that they will turn into victims of Bachabazi in the future. In this documentary, a minor child by the name of "Najib" (nickname) says that he was with "Dastgir" to earn money and he needed money for his family⁷⁶. Dastgir is a famous Bachabaz; he also says in the movie that the boys he keeps are the boys coming from poor families .⁷⁷

5.4 Lack of Guardian, Illiteracy and Domestic Violence

Lack of guardian or improper parenting of families provide the ground for abuse of children of these families as well. Some families have lost their guardian during the armed conflicts in the last three decades, during the current conflicts or due to natural disasters now live their life without a guardian. Usually the close or distant relatives or the eldest child of the family takes the guardianship responsibility of such families.

Such families are seriously vulnerable due to lack of guardianship or bad parenting and the Afghan government has no effective program to protect these families. Therefore, usually the eldest child of the family serves as the guardian and the breadwinner of the family and when their close or distant relatives take the parental responsibility, they do not fulfill their responsibility well and they do not protect the family properly. The child of such families works in restaurants, hotels, bakeries, workshops, shops and also as servants at private homes for their livelihood without knowing the consequences and the risks of working in such places.

According to the statements of the public hearing and focus group meetings' participants, children are not well protected within such families due to illiteracy or low

⁷⁶ -documentary by the name of "Afghanistan dancer boys", produced by Jimi Daran, report by Najibullah Qoraishi, minute 2:37

⁷⁷ - Ibid .minutes ۱۳:۰۰

level of literacy. The awareness level of child rights and how to control and take care of children depend on the level of knowledge as well. The parents who are illiterate, often do not have such awareness about the risks and damages their children may face. Such people regardless of such risks send their children to earn money while having no idea about the risks and the consequences like falling in the trap of Bachabaz, those who sexually exploit children.

A large number of Afghan children are directly or indirectly prone to different kinds of violence⁷⁸. Physical violence occurs more at home, school or on the streets and roads. Physical violence against children occurs in the family environment in a widespread way and the dominant culture among most of the families is that they consider the training and discipline of children a justification for their behavior and even physical punishment.⁷⁹ . Based on the public hearing assemblies' and focus group meetings' participants, severe violence against children within families leads to running away of children from the home. Running away of children from home is followed by dangerous consequences and such children easily fall in the trap of pederasts, abductors, and human traffickers.

⁷⁸ - Afghanistan Independent Human Rights Commission, the report on children situation in Afghanistan, page 54, 1392

⁷⁹ - Ibid page 55

Chapter 6

Social and Psychological Consequences of Bachabazi

Bachabazi, which is considered as a social disorder, has several psychosocial consequences. First of all, the victim is affected by Bachabazi psychosocial consequences and then their families, relatives and consequently all the people in society. The various consequences of Bachabazi are separately discussed below.

6.1 Exclusion, Isolation from the Family and Community, Murder of Victim

Bachabazi has turned into a common custom and usual practice among some people in some regions of the country; but this is a hated and disgusted custom in the public opinion and most of the people are very sensitive against this practice. Therefore, people hate Bachabazi perpetrators and even the victims that most of them are children.

For this reason, isolation and exclusion are the first Bachabazi psychosocial consequences for the victims. It has been seen in some cases that victims of Bachabazi have been beaten by the perpetrators or their families or even killed.

As mentioned earlier, Bachabazi is accompanied by sexual exploitation and sodomy. Therefore, according to people, this custom is severely disgusting and many of them hate the perpetrators specifically the victims regardless of the fact that the victims have no fault in this matter. Given the conservative Afghan society and the fact that a remarkable number of perpetrators are powerful, rich, and influential, perpetrators are less isolated from the society compared with the victims.

The people may have the same hatred against the perpetrators, too; but practically, for various reasons they express less hatred and disgust against them. May be, because the victims enjoy a lower social status, people have a negative look at them even break up their relations with them. According to the statements of the participants of the

public and focus group meetings, many people cut their communication and deal with the victims and their families.

However, the Bachabazi psychosocial impacts directly affect the victim, but their families and relatives are affected as well.



The negative impacts of this custom get intense when Bachabazi is perpetrated publicly and openly by making the children dance at wedding parties and feasts. Since this type of Bachabazi is perpetrated publicly, the victims and their families receive wide recognition among the public. Recognition of such boys makes them and their families further isolate and exclude them from society. This is the reason why Bachabazi is a bigger crime than sexual assault because in addition to sexual assault, they receive a bad recognition in the society as well.

The negative psychosocial impacts of Bachabazi on victims and their families last for a long time and even it remains with them after they give up this custom . As instance, some of the public and focus group meetings' participants have said the victims cannot marry their favorite girl when reach to the age of marriage due to their bad reputation among public, because many families do not want to betroth their daughter to a disreputable person. All the public hearing and focus group meetings' participants have considered the victims' and their families' isolation and exclusion in society as one of the consequences of Bachabazi.

6.2 Psychological Trauma

Children's mind and personality are very vulnerable; therefore, their protection and sound nurturing are emphasized. The victims' mind and personality are seriously damaged as a result of sexual abuses and the negative impacts of violence specially that of sexual assault and other sexual harassments remain for a long time.

Children sexual harassment, especially sexual assault against them, result in their severe isolation, stress, desperateness, pessimism and lack of confidence. Some researches indicate that children who have been subjected to sexual assault, hardly can explain what happened to them, because they are very young. Because sexual assault is an inauspicious trauma, it induces a kind of shame within the victim.⁸⁰

One of the common symptoms and effects of sexual assault against children is the turmoil and mental confusions. These symptoms may last even until adulthood. Some researches indicate that one of the effects of sexual assault against children is appearance of unusual sexual character in adulthood⁸¹. These researches indicate that sexual assault against children causes the victims to fear sexual behaviors in adulthood or it would cause hyper-sexualized character and promiscuity by the victims.⁸²

The children's sexual abuse specific symptoms and effects are numerous based on the researches conducted and each of which indicates that the child's character and mind is seriously injured. "The American Academy of Experts in Psychological Stress and Trauma" has highlighted the specific symptoms and effects of sexual abuse of children as such:

- Isolation and mistrust towards adults
- Tendency to commit suicide
- Having problem in establishing relationship with others
- Having unusual interests
- Sleep problems, nightmares, fear of going to bed
- Consecutive incidents and behavior that injure himself

⁸⁰ Psychology Today, Trauma: Childhood Sexual Abuse, By Susanne Babbel, Ph. D., MFT, Available at: <http://www.psychologytoday.com/blog/somatic-psychology/201303/trauma-childhood-sexual-abuse> (Aug 10, 2014)

- Sexual approach in the images and electronic games
- Refusal to go to school, doctor, or home
- Being mysterious and unusual aggressiveness
- Having unusual sexual feelings and behavior
- Forcing other children to perform sexual behaviors
- Intense fear of being touched by someone
- Feeling bored with physical examinations²⁸⁸³

Many of the public hearing and focus group meetings' participants have stated that one of the consequences of Bachabazi is that some of the victims continue their practice until their adulthood and others turn to be Bachabaz and sexually abuse other children through Bachabazi. This issue is consistent with the psychologists' researches explained earlier that states one of the consequences of sexual assault against children is an appearance of abnormal sexual behavior or hyper-sexualized character in older ages. The AIHRC findings also indicate that a large number of perpetrators who are still involved in Bachabazi, they themselves have been the victims of Bachabazi in their childhood.

The reason of this tendency is the psychological impacts of Bachabazi that has established during victim's childhood period. In the documentary by the name of "Afghan dancing boys", it is shown that a victim of Bachabazi wishes to become a Bachabaz in the future and keep handsome boys of 12 or 13 years of age.⁸⁴

So, we can say that one of the consequences of Bachabazi is the continuation of this practice by the victims after they grow older as Bachabaz and this custom continues this way.

6.3 Increased Fear, Hostility and Vengeance

Other consequences of Bachabazi is creation of fear and insecurity in the society. The majority of the public hearing and focus group meetings' participants have said that continuation and spread of Bachabazi results in fear among people and this situation is alarming. They have asked the authorities to stop this custom and put an end to this

⁸³ -ibid

⁸⁴ - 29 the documentary by the name of Afghanistan dancer boys, produced by Jimi Doran, reported by Najibullah Qorayshi, minute 29:46

situation. The perpetrators are trying to hunt handsome boys and they look for them on streets, parks and other public places until they find their favorite boy and they capture them by paying money, coercion, force, enticement or tricks. In the documentary by the name of Afghan dancing boys it is shown that, a perpetrator known as "German" seeks a boy whom he knew before in a shrine in Takhar province.⁸⁵ He said he had come to look for the boy to take him to a party. After a while, when could not find the boy, he finds another boy and takes him to the party⁸⁶

It is obvious that many families are afraid of the perpetrators and continuation of the Bachabazi custom in their city or village, because a large number of the perpetrators are powerful and influential, and most of the people are concerned about their children not to be hunted by them. Refusing, disagreeing or resistance against the powerful people in a society where the judiciary and justice organs are not accountable and transparent and often accused of corruption, is considered very risky. So, continuation of Bachabazi results in horror and fear in the society and seriously become a cause of concern for the people.

The Bachabazi custom causes hostilities and vengeance. The AIHRC has received several reports that a number of the Bachabazi victims, their family members or the perpetrators themselves or other people have been killed or injured as a result of conflicts on Bachabazi. As it was mentioned earlier, most of the perpetrators are armed with guns or they are in contact with legal or illegal armed groups and they use guns during quarrels and conflicts on Bachabazi.

At times, it is reported that some victims' families have resisted against the perpetrators or have referred to governmental institutions; but the perpetrators have threatened them or practically attacked them. Based on the public hearing and focus group meetings' participants, some of the victim families are displaced from their native place because of threats received from the Bachabazi perpetrators and have shifted to other provinces.

Moreover, the AIHRC findings indicate that the Bachabazi practice caused the dispersion of their family life. Their wives have opposed with the practice of Bachabazi

⁸⁵ - Ibid ,minutes 16:40

⁸⁶ -ibid

and as a result of quarrels they have consequently separated from each other. It is also reported that the Bachabaz has left his joint life after facing opposition of his wife or family members, and has left with no certain destiny. A woman in a public hearing meeting that was held in Balkh province stated that her husband has left her and her children seven years ago without paying their alimony, engaging in Bachabazi.

Chapter 7

Conclusion and recommendations

7.1 Conclusion

The Bachabazi custom must be considered as a major crime because young boys are subjected to sexual assault and sexual harassments and the child boys receive a negative wide recognition among the public. Considering the international covenants to which Afghanistan is a member, constitution, penal code and the law on combating abduction and human trafficking, Bachabazi is prohibited and it is a violation of human rights and is contrary to the spirit of the law of the country. The Bachabazi practice violates the right to human dignity, personal freedom and security, the right to education, the right to health and other rights of children.

Based on the previous information, analysis and discussions, the Bachabazi practice is spreaded in many regions of the country and several factors provide the ground for the spread of the Bachabazi custom. The most important factors and grounds contributing in prevalence and spread of the Bachabazi are corruption, weakness in governance and the rule of law, ambiguity and legal gaps in the law concerning the practice of Bachabazi, limit access to justice, insecurity and the presence of illegal armed persons and groups, economic poverty, uncertainty, illiteracy and domestic violence.

Based on the AIHRC findings, weakness in the rule of law and the culture of impunity from punishment are the most important factors contributing to the spread of Bachabazi. The judiciary and justice organs do not prosecute the absolute majority of the perpetrators and this gives courage to them to continue their practices without fear and in this way encourage many others to engage in this practice.

As was mentioned earlier, continuation and spread of the Bachabazi custom will have negative consequences and effects on the mind and character of the children who are 10 to 18 years of age. The victim children are subjected to serious psychological

depressions and are isolated and excluded from the society. The Bachabazi negative and destructive effects would last for long times until adulthood and destroy their self-esteem. In addition, the negative and destructive consequences result in their isolation and exclusion, their family members and relatives would not be safe either.

Given the spread of Bachabazi in many regions of Afghanistan, the Bachabazi custom is a national problem. With regard to the Bachabazi harmful consequences discussed above, Bachabazi seriously threatens the Afghan society and this is a serious alarm for the rule of law and social order and ethics.

With regard to fact that today's children are the future generation of this country, lack of attention to their protection would seriously threaten the well-being of their future life, and would lead to social disorder, and make fighting and controlling so difficult.

Based on the above discussions and analysis, according to the AIHRC, continuation and spread of the Bachabazi custom is a serious threat to the children, families and as a whole for all the people in Afghan society, and the ignorance in this regard further contributes to make the threat more grave. Therefore, the AIHRC calls on all the Afghan government authorities, governmental and nongovernmental organizations, including the three branches of power of the government, international organizations and Afghan civil societies to ponder upon the elimination of the Bachabazi custom in Afghanistan and outline effective and practical strategies.

7.2 Recommendations

The AIHRC considering the information and findings of this national inquiry and the analysis of this report presents some specific recommendations as follows:

1. The AIHRC calls on the Afghan government to criminalize Bachabazi, prohibit it by an amendment of the Penal Code, and consider it as a crime.
2. The AIHRC asks the Afghan government to criminalize the Bachabazi practice by a legislative decree until the Penal Code is amended.
3. The AIHRC urges the government to give direction to all the organs of justice and the police department to prevent the spread of Bachabazi through detention and prosecution of the perpetrators of this act and to take legal action in this regard.
4. The AIHRC wants the government to identify the victimized children and while considering their personal confidentiality provide them and other children at risk with

protection and support. Protection and support require the government to design and develop a comprehensive and effective program in which budget and adequate possibilities are considered.

5. The AIHRC asks the government to adopt the necessary measures to restore the mental health of victimized children and provide mental health care and services for them.

6. The AIHRC asks the government to seriously fight the culture of impunity and to put more efforts to strengthen the rule of law so that the perpetrators of Bachabazi would be punished.

7. The AIHRC asks the government of Afghanistan to disarm the irresponsible armed groups and act decisively to uphold the rule of law and prevent law-breaking acts, disobediences and promiscuity in the country.

8. The AIHRC asks the government of Afghanistan to decisively fight corruption in security, justice, judicial and other governmental organs and to provide grounds for accessibility of Afghan citizens to justice.

9. The AIHRC asks the government and civil society organizations to develop a national program to give awareness to the vulnerable families about the harms of child labor, child abduction and specifically about the practices of Bachabazi.

10. The AIHRC asks the government of Afghanistan and civil society organizations to put some efforts to strengthen, the spirit of respect for human rights and accountability in security, detective and justice organs in the country by conducting training programs. The AIHRC can play a leading role in this regard.

11. The AIHRC asks the Ministry of Hajj and Religious Affairs and the council of scholars to promote awareness by explaining the provisions of the sacred religion of Islam concerning Bachabazi, and try to enlighten the public minds and mentality.

12. The AIHRC asks the Ministry of Information and culture to prevent production, release, and sale of CDs, cassettes, DVDs and albums containing banal songs encouraging Bachabazi in the country, and take action against the perpetrators and introduce them to to judicial organs.

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