



National Inquiry report on Factors and causes of Rape and Honor Killing in Afghanistan

Spring - 1392

Introduction

In most societies, gender inequality and discrimination are one of the most prominent factors for violence against women that has resulted in an unequal position of women in the society than that of men.

In Afghanistan, with regard to some undeniable facts that cause degradation of women in the society, and have affected part of their family and social life, we see that women are still faced with serious problems and various violence, and several cases of violence against women occur every day. A few of these cases are filed in the government institutions and civil institutions.

Cases of honor killings and rape against women has been the most serious violations of human rights, and unfortunately a great range of the Afghan population is facing these kinds of accidents, as in recent years more people refer the commission to file so many incidences of such cases in the database of the. This phenomenon has become already a major problem for women in the country.

Given this alarming situation, the AIHRC, launched the National Inquiry Program on honor killing and rape in August 1391. It covers incidences between 1390 and 1391. The purpose of this program is to provide a clearer and more precise picture of the situation of violence against women in the country, and fight against these problems, especially against these two very acute cases of violence against women. To fight violence against women implies a relatively higher level of social awareness, which constitute one another objectives of this program. The AIHRC has strived in this program to identify the causes and contexts of violence against women, particularly rape and honor killing, and to warn them of its risks and adverse consequences, and present specific recommendations for eliminating this problem.

Starting in 1390 until the end of May 1392, 406 cases of honor killing and rape throughout the country have been registered with the Commission's offices. Out of which 243 cases are identified as cases of honor killing and 163 other cases are considered rape cases. Out of these 127 cases are documented in the National Inquiry Program, which is the basis of statistical data for this report. Out of these, 66% are rape cases and 34 % are cases of honor killing. It is clear that these figures do not cover all the cases of rape and honor killings taking place across the country, because the sensitivity of these cases that exists in the cultures and social traditional relations causes many of such cases remain hidden and uncovered. On the other hand, many traditional, cultural, social, economic and security restrictions and corruption of the judicial organs are faced by the victims and the families of the victims of such cases that limits the opportunities for the victims and their families to refer to judicial organs.

The present report is part of a national inquiry program drafted in eight chapters. After a brief introduction of the Afghanistan Independent Human Rights Commission, and its responsibilities towards women's rights made in the first chapter of this report, the general concepts related to national inquiry is described in the second chapter. The third chapter deals with legal analysis of rape and honor killing based on the human rights instruments and Afghanistan law. The fourth chapter reviews the duties and obligation of the Afghan government toward protection of women's rights and fighting violence against them in the law, strategies, programs and international agreements concluded with Afghanistan through international conferences as well as supporting structures in the state organs and civil society institutions in Afghanistan. Chapter Five includes the main statistical findings of the report. In addition, the sixth chapter deals with the legal- political, socio - cultural, economic and psychological causes of rape and honor killing.

Moreover, in chapter, seventh social and psychological consequences of rape and honor killing are discussed, and in chapter eight, a brief conclusion and recommendations are included.

The AIHRC would like to express its gratitude and appreciation to all those who cooperated and provided possibility to complete this report, especially our colleagues from the investigation team in regional and provincial offices of the AIHRC, government organs, civil society, media and social activists in all provinces who have made their efforts during different stages of National Inquiry Programs.

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Report Summary

Although, over the past few years, numerous attempts are made in the area of women's rights, and violence against women has been fought, violence against women is still one of the most serious human rights problems in Afghanistan. Many women and girls become the victims of different types of domestic violence. Despite all the problems and restrictions, each year, thousands of cases of violence against women in Afghanistan are registered through the Afghanistan Independent Human Rights Commission's offices. Honor killing and rape have been the most serious human rights violations and violence against women and the high number of such cases has caused the AIHRC to launch the Afghanistan's first National Inquiry Programs.

National Inquiry is a tool and a very effective way to address the important issues of human rights. This program has many various aspects and issues, including analyzing information, collecting the facts and presenting of recommendations. Likewise, education and awareness raising is the most important aspects of it. To sensitize public opinion on the issues of human rights constitute the basic objectives of this report. This program is widely implemented at the national level to address the larger problems of human rights, rather than handling individual routine cases.

The AIHRC using the experiences of different countries in this area, and relying on its legal mandate enshrined in Article 58 of the Constitution, and Article 5 and 21 of the Law on the Structure, Duties and Mandates of the Commission launch, implement the first National Inquiry Program on rape, and honor killings in Afghanistan.

The Commission for several reasons chose the issue of honor killings and rape as the main subject of this National Inquiry. First, based on the Commission findings, cases of honor killings and rape has become a serious cause of human rights violations registered with the commission in recent years, and the statistics for such cases are reported to be higher than those in the previous years. These cases have occurred almost in the most provinces of the country, and have become a public concern. These two issues are of the most serious cases of human rights violations causing victims and their relatives to endure severe physical, emotional and social harms and damages.

Therefore, it is necessary that this issue be investigated and analyzed as a serious human rights violation, and the victims of such cases should be protected, and the perpetrators are prosecuted and brought to justice.

The AIHRC pursues the following five main goals in the implementation of National Inquiry Programs on honor killings and rape against women and make efforts to achieve these goals.

1. To handle and investigate the cases of honor killings and rape occurred against women,
2. To assess the situation of victims and those at risk,
3. To collect and analyze relevant information
4. To raise public awareness and sensitivity against these phenomena and holding the government accountable for the implementation of adequate programs,

5. To bring changes in the laws and policies and prioritize the fight against such issues and provide specific recommendations to improve the situation through reporting of these cases,

In various stages of National Inquiry Programs, the cases of honor killings and rape was discussed with a population of over 2,000 people, including representatives from the government, civil society organizations, judicial organs, the media, associations, provincial councils, officials of safe shelters and dignitaries, influential people during the community advisory meetings and in joint focus group and public hearings meetings. Likewise, during this program, 136 suspects, offenders, victims, witnesses and family members of victims were interviewed. In addition, about 127 cases of rape and honor killing have been documented.

This report has been prepared in eight chapters, and its data have been provided through conducting of focus group meetings, public hearing meetings, interviews with victims, family members of the victims, witnesses of the cases, the perpetrators of these cases (the accused and offenders) and the Commission's database.

Summary of Findings of This Report

Since the beginning of 1390 until the end of Saur, 1392, a number of 406 cases of honor killings and sexual assaults have been registered by regional and provincial offices of the AIHRC, out of which 243 cases are honor killings and 163 cases are identified as sexual assault cases. However, Due to severe traditional sensitivities and cultural obstacles, a large number of such cases are kept hidden and covered, but still the highest number sexual of assaults and honor killings in Afghanistan is considered shocking.

Out of the above-mentioned cases, 127 of them have been documented in this National Inquiry, which include 66 percent (84 cases) of sexual assaults and 34 percent (43 cases) of honor killings.

The most common type of honor killings is committed under outside marriage sexual relation. The findings of this National Inquiry show that almost 50 percent of honor killings are committed because of outside-marriage relations between a woman and a man “attempt for adultery (Zena)”. However, sometimes “being a victim of sexual assault” can result in an honor killing. It constitutes 3.8 percent of honor killings documented in this national inquiry. According to traditions and cultural norms, women and girls who became victims of sexual assaults are considered the cause of shame and disgracefulness in the family and in the tribe. Their presence in the community can cause further continuation of shame and scandal.

Therefore, the killing of the woman is considered as restoration of respect and removing of shamefulness and humiliation from the family and tribe. Researches show that in many cases, justice and judicial organs in Afghanistan consider victims of sexual assaults as criminals and condemn them. This is common in most of the provinces and is considered a normal issue.

Sometimes, matters that have no direct connection with “illegal sexual relation” or even “sexual assault”, only personal and baseless suspicion about women can result in an honor killing. For example, escaping of women from home, though, is not considered as a crime, according to laws in Afghanistan, can sometimes cause honor killing. Almost 15.4 percent of honor killings documented by the National Inquiry Program are committed for this reason. Similarly, 3.8

percent of the cases have occurred for not accepting forced marriage and 1.9 percent of the cases happened for expressing interest to a man and willingness to get married with him.

Social traditions and customs are very strict and harsh against women, while men are not treated in such a harsh way due to their superior position in the society. For example the aforementioned cases seldom cause the killing of men. These findings show a high level of vulnerability and severe restrictions against women in traditional societies of Afghanistan

There is a high tendency for full or partial concealment of such cases in the society and has made research activities very difficult. For example, in 57 percent of the cases relation between victims of sexual assaults and the offenders has not been mentioned clearly, in 8 percent of the cases it is mentioned only as "offenders". Most probably, those who are not related to victims have committed 65 percent of the cases.

However, the shocking issue is that those who have a relationship with the victim have committed almost 35 percent of the cases. For example, relatives have committed 17 percent of sexual assault cases, around 10 percent by neighbors, 4 percent by father, 2 percent by a brother and 1 percent of sexual assaults have been committed by uncles of the victims. The marriage representatives (Wakils) have committed One percent of the cases

As honor killings also take place by close relatives and family members of the victims, sensitivity is very high against it, it is tried, that such cases be kept forgotten within family relations, and the publication and dissemination of information about it can be avoided. In these cases, also, the alleged perpetrators' relation to victims is not mentioned- in 37% of cases, and in 7 % of cases, it has been mentioned only under the name of "perpetrators".

Of the remaining 56% cases of honor killing, in 21% of cases, the husband perpetrates murder. In about 14%, other cases the perpetrators are mentioned to be the relatives. Moreover, about 7 % of the cases, the victims' brothers have committed the crime. In addition, in about 5 percent of cases of honor killing the fathers of the victim have been the perpetrators, and for the 3% of cases, the victim's brother-in-laws is responsible for the killing. The victim's mother-in-law, maternal uncle and the victim's mother are respectively responsible for the two percent of the honor killings.

Honor killings due to its connection to sexual issues and outside marriage relationship provokes sensitivity more and more in the victim's husband and her family, than anyone else does. Unequal and Possession-oriented relationship of the husband towards his wife, and the inferior position of women in her family makes women vulnerable against her husband and her family. For this reason, the victims of honor killings are usually married women and in most of the incidences, perpetrators of the honor killings are husbands or their family members. Unmarried girls are usually killed by her father's family members

Probably there is no direct relation between perpetrator's age and committing of honor killings, but the level of this crime is higher among young people. This research shows that the graph of rape and honor killings committed by the youth and middle age people is very high. It constitutes 82 percent of the cases. Based on the results of this research, 46.4 percent of sexual assaults and 34.9 percent cases of honor killing are committed by persons aging 19 to 30 years.

The age groups between 31 to 45 years are the perpetrators of 30.2 percent of honor killings and 27.4 percent of sexual assaults. The people under 18 years old have no role in honor killings, but

they are responsible for 10.7 percent of sexual assaults. The age for almost 10.7 percent of perpetrators of sexual assaults and 21 percent of honor killing perpetrators is not known, it indicates lack of tendency in the society to address such cases and reveal the details of such crime.

Comparison between the young and middle age perpetrators of sexual assaults and honor killings shows a contradiction in the behaviors of perpetrators of these two crimes. On the one hand, they make the majority of perpetrators of sexual assaults, and on the other hand, the high figures of honor killings committed by them show their severe sensitivity against sexual issues and their spouses' relations.

Perpetrators of sexual assaults and honor killings are usually people who are involved with low-income works. Approximately 17.6 percent of perpetrators of sexual assaults and honor killings are laborers, 14.5 percent are shopkeepers, farmers and drivers are respectively responsible for 7.6 percent and 4.7 percent of sexual assaults and honor killings. Almost 11 percent of perpetrators of such crimes are jobless people.

Among them, police commit 14.6 percent of honor killings and sexual assaults while the police force is responsible for public security and protection of vulnerable persons. This issue can harm public confidence and trust in the National Police. The occupation of almost 21 percent of perpetrators is unknown.

The results of this research show that most of the victims of sexual assault and honor killing are members of poor families than those of rich families. For example, 58.2 percent of sexual assaults and honor killing cases collected by the National Inquiry teams relates to the people living in poor families. Almost 38 percent of the victims belong to middle class families. This figure indicates severe vulnerability of women in poorer families. Nearly 38 percent of the victims relates to middle class family. These statistics represent the extreme vulnerability of women in poorer families.

About 91 % of honor killings and rape cases registered in this study are referred to judicial authorities and other government bodies. Of these, approximately 64.5% of the cases are assumed being addressed to the satisfaction of the interviewees, and considered to be successful and in accordance with the law. However, the action taken by the relevant authorities toward the remaining 35.5% of the cases have not been successful and have not attracted the satisfaction of those interviewed. Based on these results, more than one third of cases of rape and honor killings have not been addressed effectively and in accordance with the law.

The police have arrested almost 67 % of the perpetrators, but 32.6 % of them have not been arrested at all. In 60% of the cases, offenders have been trialed and punished, but in 39.5 % of the cases, the perpetrators and offenders have not been trialed and punished. Of course, this figure includes all the cases covered by this research. Therefore, in seven percent of the cases, although the perpetrators have been arrested, but they have not trialed and punished.

Causes and Context of Violence against Women:

There are several causes and factors contributing to violence against women, including honor killings and rape. There are also many patterns and cultural and traditional norms continue to provide grounds for the occurrence and continuation of violence against women or justify them.

These factors and patterns have been investigated in four groups: Legal- political, socio- cultural, economic and psychological factors.

I - Legal - political factors:

Commission's findings of National Inquiry show that the following cases are among the important legal - political factors that play an important role in the escalation and perpetuation of the crimes of rape and honor killings, and have been highlighted by the participants in all public hearings and, focus group meetings. As these factors are very clear and obvious and we avoid further clarification and comments in this regard and advise the readers to go through the complete contents of the report:

- Lack of decisive dealing with the perpetrators and perpetuation of the culture of impunity
- Problems that exist in the Laws, particularly Article 398 of the Criminal Code. And lack of a clear definition of honor killing in the law and legal gaps in criminalization of honor killing
- Corruption and abuse of a position and authority
- The involvement of influential people in the investigation, and resolution of cases of violence against women by unofficial sources
- Concealment of crimes and non-referral of victims to judicial organs for fear and mistrust of government organs
- Lack of accurate detection and investigation of crime due to lack of professional employees in the judicial organs and lack of modern equipment, including forensic medicine in the provinces
- Lack of necessary and appropriate coordination between the judicial organs (especially the Police, Attorney Office and Courts)
- Restricted women's access to justice (Courts, Relevant Attorney Office, Women Detention Centers)
- Presence of illegal weapons with irresponsible armed groups
- Lack of security, and poor governance in district and provinces
- Lack of necessary support to victims and non-observance of their rights
- Lack of public trial of offenders (lack of conduction of public judicial sessions)

II- Socio-cultural contexts and factors of violence against women

The prevalence of violence against women has its roots in the social structures and relationships as well as in the cultural patterns. These cultural patterns and norms present a special perception of women, based on which women are considered naïve, fallible and untrustworthy characters that are not able to carry out tasks properly – they always go astray. Thus, they should always be dominated by men. This inhuman attitude and understanding of women and the male domineering attitude toward women pave the ground for violent behavior against them. Violence, especially violence against women has turned to be a common and normal practice and an institutionalized issue in the cultural, traditional and rigid context of Afghan society. Various

manifestations of such a violent attitude and behavior against women could be seen in the culture and the social relationships of the society.

The practical patterns of such attitude, violent structure and treatment are also prevalent against women in various forms. Honor killing, rape, as the most severe, and obvious form of violence against women, appear, grow and continue in such a suitable cultural context and social ground. The linguistic aspects of such attitude are also rampant in the forms of saying and proverbs among the Afghan society.

- 1. Negative attitudes towards women:** The traditional culture and norms in the Afghan society, like many other tribal societies, foster various negative attitudes and views towards women and accuse them of having numerous unbecoming specifications and characteristics. In the Afghan traditional look, women are fallible, imperfect, unfaithful and untrustworthy creatures. This negative and degrading definition of women bears a great deal of consequences that affect their human value, their social status and their relationship with men. All these lead to violent behavior against women.
- 2. The relationship between men and women:** the cultural beliefs and stereotypes that society attributes to women also put women in a special position in their relationship with men – it defines a very special place for women. This way of looking at women has several interconnected consequences: triviality, devaluation, dependency on men, isolation from social activities and male dominance.
- 3. Pattern of behavior with women and prescription of violence:** imposing restriction on women and enslavement of them, dominance of men over women and violent behavior toward women is the consequence of such attitude toward women. Honor killing and rape could also be termed as the consequences of men's domineering relationship with women. Both as a violent behavior and as a means to dominate over women's bodies, those who are not family members commit rape. However, honor killing is sought as a means of punishing women who are out of control and have established relationship with others based on their free will, or under pressure.
- 4. Gender-based attitude toward women:** Based on this attitude and view, women are considered merely a means to relieve or quench sexual instincts or desire. This view would reduce the men's human relationship with women to merely a relationship for sexual instincts. It means that if a woman establishes connections with others or when she talks to others or even when she goes out of the home it is assumed to be inevitably sexual related, no problem if she willingly establishes this relation or forced to do that. Based on this kind of views, women are considered a sex prey, which, on one hand, intensifies the risk of rape, and on the other, justifies their obedience and enslavement for "maintaining of honor".
- 5. Sexual look at ethical values:** sexual sensitivities in the Afghan traditional society are due to both gender and sexual look toward issues like reputation, dignity and chastity. This means that the gender-based view of "reputation, dignity and chastity" terms these

ethical values in connection with sex issues – and defines them only in terms of sexual relations. Secondly, according to the gender-based view “honor, dignity and chastity” which are human values are considered “womanly” issues – as if they are specified only for women. On the other side, honor (Ghairat), dignity and “possession of honor” are termed as male qualities. The word “Ghairat” (honor) has been defined as “Namosparasty” something like honor, patriotism in the traditional culture of society and by “honor” they also mean the female family member (women and girls) who are dependent on men. Therefore, men are always supposed to protect their “honors” so that they will secure their own reputation, dignity and self-respect.

- 6. Concealment of rape cases and honor killing due to traditional sensitivities:** Rape and honor killing incidents are often concealed; reporting about them is prevented. From one side due to these sensitivities, there are no clear pictures about the situation and the rate of honor killing and rape in the Afghan society and from the other side by concealing issues related to two cases the possibility of legal proceedings, protection of victims and punishment of the perpetrators get limited.
- 7. The banality of evil” and usual violence against women:** As stated, the specific attitude existing in the society towards women prescribes a specific social status and treatments, which become as a justifier and basis for violence against women. In such a cultural and social context, the phenomenon of violence against women becomes a common practice, thus, its obscenity is overlooked in the society. Lack of looking over these cases by the relevant organs also contributes to the generalization of such phenomena. This traditional attitude even justifies honor killing and considers it as an admirable act. The judiciary and legal approach in terms of this practice also acts in a traditional way in line with the unequal and domineering attitude towards women. Article 398 of the Penal Code washes away the obscenity of honor killing under the title “Defending the Honor” changing it to a common crime.
- 8. Illiteracy and the low level of public awareness:** An illiterate society is usually more vulnerable to crimes and offenses. In addition, it deals with such crimes in an irrational, inappropriate and violent manner. In addition, the points, which are mentioned hereinabove, are more acute in illiterate communities.
- 9. Traditional patterns of marriage in the Afghan society:** The traditions and customs prevalent among the Afghan tribes also provide the ground for violence against women in the area of marriage. These kinds of marriages define a lower social status for women in the society. The common marriage patterns among various tribes in the country are under-age marriage, forced marriage, giving to Bad (giving a woman in compensation to a crime committed by someone to someone else), exchange marriage, polygamy, and buying and selling of girls. These kinds of undesirable traditions are rooted in the prejudice beliefs of men in terms of women’s status in the society. The traditional view strengthens such notions with the help of wrong interpretation of Islam.
- 10. Cultural support of violence against women in the literature:** Violence against women is backed by cultural norms and social relationship prevalent in the Afghan society. Many of these models and relations have not happened spontaneously nor are particular to the Afghan society. For instance, there are many instances in the literature of

the country that upholds the traditional attitude. This significant point describes the antiquity (age) of such attitude toward women in the history and furthermore, it indicates its commonness in the entire culture of this region.

III - Economic factors:

Some of the factors and contexts of violence against women are rooted in economic issues. The most important of these are presented below.

1. **Victims' Poverty:** Poverty puts families under economic pressures to be engaged in psychological trauma and as a result get involved in domestic violence. On the other hand, women and girls of poor families have to go to other people's houses and work (cleaning and washing clothes) for a very low wages. These women and girls who will receive a small wage are interdependent. In such circumstances, it may be pressurized and forced into prostitution or be raped. This sometimes causes the murder of women by their families. Sometimes they are killed based on the suspicion of families. Sometimes poverty itself leads to blatant prostitution, which can be considered rape.
2. **Economic insecurity:** sometimes, family members of businesspersons and capitalists are kidnapped by mafia networks and kidnapper groups and then ask for money from the victim's family. This way mafia groups and gangs obtain money. This problem stems from economic insecurity in the country. If the victims are women and girls, they are, in most cases, raped as well. Returning of the victims to their family very often leads to honor killing.
3. **Heavy dowry and costly wedding:** Heavy expenses of engagement and wedding parties and obtaining of dowry (Toyana, Walwar and Qylin) and heavy "Sherbaha" pave the ground for a dispute between families of boys and girls and even lead to hostility among the families, and finally result in hatred between the parties especially boy's family. These disputes provide ground for domestic violence and these differences may lead to accusations of adultery, and honor killing in fine.
4. **Addiction to Drug:** drug addiction, brings about severe poverty because the addicted persons impose heavy costs to the families. Drug addiction weakens the economic base of the families and engages persons in prostitution and causes sexual assaults and honor killing.
5. **Lack of enjoyment of the right of inheritance by women,** the right of inheritance by women is a legal right through which the women are able to enjoy a better dignity and status in the family of her husband. However, unfortunately women in Afghan men domineering society, especially in the rural areas are deprived of this right .Therefore, women, especially when they are in their husbands' houses, they do not have the financial ability and are economically dependent on her husband. In addition, do not enjoy an appropriate position in the family.

IV - Psychosocial factors:

Psychological factors are also involved in the prevalence of violence against women, including rape and honor killing. These factors are described as follows:

Social exclusion and isolation is one of these factors. Isolation can provide psychological ground for engaging in sexual violence, including rape

Unemployment, lack of jobs and depression stemming from it could also be involved in rising of this problem.

Deprivation ganglia are another important point that can cause behavior problems such as violence against women and rape.

Being Suspicious of women due to negative attitudes and traditional beliefs of the people toward them is another point. Sometimes the family, especially the husband's family, based on the slightest suspicion attempts murder of his wife. Such attitude limits the character and dignity of women to sexual affairs and submission to her husband's desire.

Psychological Problems and mental disorders are one of the major and important factors in violence against women, including rape and honor killing. Men who suffer from mental health problems, appealing to traditional sensibilities and the animal ego, which is rising from patriarchal attitudes, engage in rape.

Another important point is a kind of suspicion and delusions about women's relationship with strangers. Due to the existence of hypersensitivity against sexual affairs and forcefully behavior against it, this suspicion will lead to violence and even murder.

Social and Psychological Consequences of Rape and Honor Killing:

Social and psychological consequences of rape and honor killing is considered the most severe forms of violence against women, some of these consequences include:

1. **Consequences of Rape:**
 - Isolation from family and community, or murder of the victim
 - Panic, feeling of shame, guilt and insecurity
 - Hostility and revenge
 - Social and moral deviation
 - Suicide
- 2- **Consequences of honor killing:**
 - Feeling of hatred in relatives of victims and revenge
 - Restricted women's access to education, employment, and other social activities
 - Fundamental human rights
 - Strengthening of undesirable traditions
 - Shame and obsession in victim's families, especially the victims' children

Chapter I

About the Afghanistan, Independent Human Rights Commission and its responsibilities towards women

1.1 Responsibilities and working frameworks of the AIHRC

Afghanistan Independent Human Rights Commission was founded on 16 June 1381 based on the Constitution of the country. According to the Afghan Constitution, the state for monitoring over the observance, promotion and protection of human rights, shall establish the Afghanistan Independent Human Rights Commission. Every individual can lodge a complaint to this Commission about the violation of one's own human rights. The Commission shall refer human rights violations of individuals to legal authorities and assist them in defense of their rights. The law shall regulate the organization and method of operation of the Commission. In 1384, the President of the Islamic Republic of Afghanistan ratified the Law on the Structure, Duties and Mandates of the AIHRC based on Article 58 of the Constitution (1382), and the objectives of establishing of the AIHRC have been defined in this law.

The AIHRC's law provides that the AIHRC is working to achieve the following five objectives:

1. Monitoring the observance of human rights
2. Promotion and protection of human rights
3. Monitoring the situation and accessibility of people to their freedoms and human rights
4. Investigating of human rights violations
5. Taking measures to promote human rights in the country (The Law on Structure, Duties, and Mandates of the, 1384

Article 21 of The Law on Structure, Duties, and Mandates of the AIHRC has clearly stated the mandate of the AIHRC to monitor the human rights situation, investigate cases of human rights violations and conduct researches about human rights issues. This Article provides that the AIHRC is mandated and has a duty to monitor the human rights situation, the implementation of the Constitution, and other laws, regulations, and government obligations pertaining to human rights. In addition, this Article has authorized the AIHRC to monitor the practices of the administration, and judicial systems, national and international, profitable and non-profitable institutions in the country that are effective in the human rights situation. Paragraph 16 of this article about conduction of researches provides as follows: "conduction of systematic researches to find out effective methods to coordinate the international human rights principles with the national believes, culture and customs and provision of related drafts." Also paragraph 21 of the article 21 of this law has provided as: "condition of national consultations and general surveys

for the purpose of finding practical methods to promote and protect human rights and provide related plans. “(The Law on the Structure, Duties and Mandates of the AIHRC, 1384)

The AIHRC established 14 provincial and regional offices in order to perform its duties and mandates regarding human rights so that the people can access the AIHRC and refer their complaints for legal proceedings. At present, the regional offices of the AIHRC are operating in eight zones that cover several neighboring provinces and provincial offices of the AIHRC are active in six provinces of the country. (Afghanistan independent human rights commission, 1392)

The AIHRC has five programming units that each is operating in all the provincial and regional offices. These programming units include monitoring and investigation unit addressing complaints related to human rights violations, women's right unit, children's right unit, People with disability unit, and Human Rights Education Unit. (Afghanistan independent human rights commission 1392).

It is mentionable that in the past, one more unit under the title of transitional justice was operating but its operation ended with the completion of the related project in the year 2011.

The AIHRC in the year 1388 drafted and compiled a strategic program in consultation with all the staffs of the AIHRC and with more than 500 partners who are working in the area of human rights across the country, including civil society organizations, international organizations, governmental organs, elders and public councils.

This strategic program has been prepared for 4 years from 2010-2013 (1389 to 1392). Based on this strategic program the 's perspective, a just, developed and democratic society in which the human rights are observed, respected and protected, are determined.

Also in this strategic program a series of values are specified for the AIHRC which are human dignity, justice, equality and the elimination of discrimination, freedom, commitment, accountability and transparency, consultation and contribution, respect and mutual understanding, tolerance and acceptance of protest.

(Afghanistan independent human rights commission, 1388) based on this strategic program, the AIHRC has set 5 major objectives and has planned and regulated all its activities and efforts in order to gain these major objectives.

These objectives of the AIHRC include the leadership, education, empowerment, advocacy, monitoring and evaluation. According to the strategic program of the Commission, women's rights is one of the major programs of and many activities has been anticipated for the purpose of protecting women's rights, advocacy for women victims and attraction of public attention ensuring of their rights. (Afghanistan independent human rights commission, 1388).

1.2- the AIHRC's activities for the protection of women's rights

The AIHRC develop and implement its activities regarding the protection and promotion of women's rights, through special unit of women's rights with the help of supporting units. As it was mentioned before, this unit is one of the units of Afghanistan's independent human rights commission that has directed its assistance and its four-year action plan toward gaining its five major objectives that are mentioned in the strategic plan. The most important activities that are anticipated in the strategic plan and the AIHRC's Action Plan toward women's rights are to address the issues related to women's rights by the AIHRC, through advocacy and protection of the victims, advocacy for amendment and ratification of laws in accordance with values and international human rights norms, and monitoring the woman's rights situation.

The AIHRC receives the cases related to issues of violence against women through its regional and provincial offices and refers them to the relevant organs of the judiciary and justice for legal proceedings and advocates for the victims. The AIHRC based on the type of the cases gives legal consultation to those who refer to the AIHRC, complainants and those involved, and give them mediation and assistance in order to solve the problems, and introduces them to association of lawyers or other legal organizations when required to help them get access to defense lawyers.

Furthermore, the Commission tries to increase public awareness about women's rights and to promote women's rights in schools, universities, teacher training institutes and military educational centers and tries to bring changes in the attitude and behavior amongst the people and consequently to decrease violence against women. Likewise, the women's right unit has taken measures to create advocacy networks, and a joint initiative by state and civil society organizations, and take part in the process of legislation through presenting recommendations. On the other hand, women's right unit continuously and regularly monitors the women detention centers and women's safe shelters in order to evaluate the observance and protection of women's rights. The AIHRC has always published the results of its evaluation and findings in order to sensitize the public attitudes, enhance the accountability by relevant organs, and raise public awareness of women rights situation through preparation and publication of research and thematic reports or press conferences about women's rights.

It should be specifically mentioned that during several past years the AIHRC's research unit with the cooperation of women's right unit have prepared and published more than 9 research reports on women's rights that each of the reports has specific recommendations to the government of Afghanistan, national and international organizations. Some of the research reports that released are as follows: the Situation of widow rights in the country, situation of worker women, situation of young ladies in the family, situation of drug addicted women, domestic violence against women, factors of women suicide in eastern south region, Investigation of causes and factors of child and women trafficking and situation of presence and participation of women in public, political activities and annual reports on violence against women in Afghanistan. (Afghanistan independent human rights commission, research report)

In addition to these reports, some other reports like human rights situation in Afghanistan, economic and social rights situation in Afghanistan, situation of education are also prepared and published in which several topics pertaining to women's rights are discussed and investigated. It is mentionable that reports on the situation of human rights in Afghanistan are prepared at the end of each year and investigating the situation of human rights in Afghanistan. In addition, the reports on the situation of economic and social rights are prepared and published over two years that so far five reports have been released. The present report is also the outcome of the efforts of the AIHRC toward women's rights. This report is about the implementation of the National Inquiry on sexual assault and honor killing in Afghanistan, which is drafted and implemented in the second half of the year 1391. Conduction of the national inquiry program on sexual assault and honor killing is anticipated in the Action Plan of 1391 and was ratified on 14/5/1391 by the leading board of the AIHRC.

1.3- legal base of the commission's authority for execution of national inquiry

The national inquiry has several aspects and includes investigation of cases, analysis of data, fact-findings, delivery of consultations and recommendations. (APF. 2012) also training and giving awareness is one of its most important aspects and sensitization of public thought against human rights violation cases is of its basic objectives.

Each of these aspects and objectives is part of the AIHRC's legal mandate. As it was mentioned before, the major objectives of the AIHRC, based on the Constitution and the Law on the Structure, Duties and Mandates of the AIHRC are supposed to be monitoring the observance of human rights, monitoring the situation of people's access to human rights and freedoms, investigation of human rights violation cases and adoption of measures for the purpose of promotion and improvement of the human rights situation in the country.

Likewise, conduction of protective programs, research, advocacy and awareness raising programs are highlighted in different paragraphs of article 21 of the Law on the Structure, Duties and Mandates of the AIHRC. Some of the paragraphs of this article, which indicate different aspects of national inquiry, are mentioned below:

Paragraph 7: Investigation of cases of human rights violations;

Paragraph 8: collection documents, evidences and testimonies on cases of human rights violation;

Paragraph 10: formulating and implementing of national human rights education plan and public awareness programs;

Paragraph 16: carrying out research to find effective ways of harmonizing principles and mechanisms of international human rights instruments with Afghan culture and national tradition and making suggestions in this respect<

Paragraph 21: Conducting public consultations and surveys to find practical ways of promoting In addition, protecting human rights and develop relevant programs;

Paragraph 22: giving suggestions, recommendations, and reports to the accountable authorities, national and provincial councils and references, districts and villages with the intention of improvement, protection and development of human rights;

Paragraph 28: Releasing and publishing reports and statements on human rights situation in Afghanistan; (law of formation, duties and authorities of Commission, 1384, article 21)

However, in this article of the Law the national inquiry is not specifically mentioned, but the objectives of national inquiry, as a method of investigation and research on human rights violation cases, advocacy and giving awareness in this respect at national level is mentioned in different sections of article 21 of the Law on Structure, Duties and Mandates of the AIHRC are mentioned and counted them as part of the mandate and duties of the AIHRC.



Focus group

Chapter Two

Overviews and Concepts of the National Inquiry

2.1- What Is a National Inquiry?

According to training documents of Asia Pacific Forum for national human rights institutions, national inquiry came into being through innovative approaches by national human rights institutions during the last 20 years in Asia Pacific Region. (APF, 2012) Asia Pacific Forum for national human rights institutions defines the national inquiry as follows: National inquiry is a research on a basic human rights issue that requires inclusive participation in the research process. The National inquiry is launched through transparent approach and all-out participation. National inquiry includes general evidences, witnesses, and experienced persons and directed towards research about basic human rights issues. Findings and recommendations of a national inquiry are used for improvement of the human rights situation. National inquiry needs experts and experienced persons, including researchers, professors and those who are experienced in policymaking. (AFP, 2012)

National inquiry is a very effective tool and method for tackling important human rights issues. Carrying a national inquiry program includes different aspects, and covers evaluation of cases, data analysis, facts finding, presentation of consultations and recommendations. (APF, 2012) During a national inquiry, important human rights issues are evaluated and analyzed from different aspects, their social, political, economic and cultural roots come under evaluation. National inquiry in a broad sense has learning aspects. One of its objectives is to sensitize and provoke public opinions against human rights violations. Another characteristic of a national inquiry is its wide spectrum to deal with human rights violations in wide ranges, not addressing individual cases that occur routinely. (APF, 2012)

The national inquiry has many special characteristics and advantages that increase effectiveness of this mechanism. One specialty of this mechanism is that all involved persons in this mechanism have wide participation in the process of research, various views and perspectives come under evaluation in the national inquiry. On the other hand, the national inquiry deals with basic issues of human rights and evaluates different aspects of these problems.

There are many reasons that why national inquiry is used for addressing serious human rights violations. Prof. Brain Burdekin a pioneer in the area of national inquiry designing and development, and an ex-member of the National Human Rights Commission of Australia has listed many reasons for launching a national inquiry. He indicates that through launching a national inquiry, a large number of individual human rights violation cases can be settled actively and with less expenditure. While designing and preparing for a national inquiry, it is

necessary to consult with other stakeholders and civil society institutions. During this phase, the stakeholders get awareness about the role of national human rights commissions and realize their own responsibilities regarding these issues. Furthermore, through the launching of a national inquiry not only the main roots and causes of problems can be sought, but evaluation of the laws, policies and public programs can be achieved or their absence that is effective on the situation can be sought. (APF, 2012)

In addition, holding of public sessions that is an important phase of the national inquiry program, have strong learning aspects. Holding of public sessions and their reflection through media, raise public awareness about the role of national human rights commissions and also makes organizations, special social groups, including politicians and public officials aware of their responsibilities, (APF, 2012). For this reason, the AIHRC considers launching of a national inquiry about honor killings and sexual assaults very effective and implements its first program in Afghanistan.

2.2- Background of National Inquiry

For the first time, the National Human Rights Commission of Australia launched a national inquiry about homeless children in 1988. Its results were very effective in addressing basic human rights issues. After that, the National Human Rights Commission of Australia designed and implemented many national inquiries and achieved good results, (APF, 2012). Up until now, this commission has launched five national inquiries on homeless children, psychologically impaired persons and human rights, separation of indigenous children from their homes, training in rural and remote areas and discrimination against homosexuality.

Other national human rights commissions in Asia Pacific Region have also implemented national inquiry programs. Four national human rights commissions in New Zealand, India, Mongolia and Indonesia have implemented national inquiry programs on different human rights issues. Human Rights Commission of Indonesia has designed and carried out two national inquiries about killings by police and armed forces and on the issue of East Timor. Human Rights Commission of India has launched four national inquiry programs on the right to food, the right to health, psychotherapy hospitals, burning of people in Kashmir and in Punjab. Similarly, Human Rights Commission of Mongolia carried out one national inquiry about torture. Human Rights Commission of New Zealand conducted a national inquiry about access of people with disability to public transportation, (APF, 2012).

By using the experience from the above-mentioned countries, the AIHRC also designed and implemented a national inquiry program for the first time. It is worth mentioning that some staff of the AIHRC has received necessary trainings on launching national inquiry programs in the training workshops held by Asia Pacific Forum and Raoul Wallenberg Institute for national human rights commissions. To design and implement a national inquiry program, the AIHRC has used material, training manuals and reports prepared by other national human rights commissions that had already implemented national inquiry programs.

2.3-The First National Inquiry in Afghanistan on Honor Killings and Sexual Assaults

The AIHRC has chosen Honor Killings and Sexual Assaults in Afghanistan as the topic of the first national inquiry program for many reasons. First, based on the findings of the Commission, registered cases of honor killings and sexual assaults during the recent years has become a serious human rights violation and their statistic has been reported higher than previous years. According to findings by the AIHRC, during the years 1390- 1391 till the end of Saur, 1392 around 406 cases of honor killings and sexual assaults from all over our country have been registered by regional and provincial office of the AIHRC out of which 243 cases are honor killings and 163 cases are sexual assaults. Since the cases of honor killings and sexual assaults are severely sensitive issues, according to traditional culture in Afghanistan and harms the prestige of the family, it seems that the above-mentioned statistic is not a real and complete statistic of those issues. Due to the aforementioned reasons, most of the cases remain hidden and not reported to governmental or nongovernmental institutions. On the other hand, cases of honor killings and sexual assaults happen in most provinces of Afghanistan, and it has turned to a general concern. Second, since women constitute the main victims of honor killings and sexual assaults, and the female victims and their families and relatives suffer severe physical, mental and social harms, therefore it is necessary to consider and evaluate these issues as serious human rights violations. In addition, victims of such cases should be protected and the perpetrators should be brought to justice.

Furthermore, it is necessary to discuss about the root causes of such cases, and in the light of the findings of this inquiry, specific recommendations should be put forward to responsible organs for reduction of such problems. Similarly, findings by the AIHRC show that the main victims of honor killings and sexual assaults are usually young women. The existing protection mechanisms are insufficient or due to the existence of administrative corruption, lack of rule of law or legal gaps such cases are not taken serious. In addition, literacy level is severely low among women in Afghanistan and the majority of women have no sufficient awareness about their rights. Lack of awareness among women causes continuation of violence against them, and the responsible authorities do not take effective measures to eliminate this problem.

Taking into consideration the fact that due to low level of awareness among women, existence of harmful traditions and customs, economic poverty, the weak rule of law and other factors in Afghanistan, woman's situation is very fragile and the causes of violence against women are increasing. It is considered necessary that human rights protection institutions, especially the AIHRC in cooperation and coordination with related governmental and non-governmental organizations should address such issues, and attract public attention to seek suitable mechanisms for the improvement of the situation and to take necessary and comprehensive measures.

Therefore, the AIHRC has chosen honor killings and sexual assaults as the topic of this national inquiry program.

2.4- Aims and Objectives of the National Inquiry on Honor Killings and Sexual Assaults

Before launching the national inquiry program, a plan of this program was prepared and presented to the leadership board of the AIHRC in a meeting held at the Commission's headquarters on 14 Assad 1391. The Commission's leadership approved the important aims and objectives of this program. The AIHRC emphasized on five main objectives of the national inquiry on honor killings and sexual assaults and make endeavors to achieve them:

1. Investigating and addressing of the cases of honor killings and sexual assaults
2. Evaluation of the victim's situation and persons prone to risk
3. Collection and analysis of data in this regard
4. Elevation of awareness level and the creation of public sensitivity against these phenomena and to hold the government accountable to implement sufficient and necessary programs in this area
5. Change of laws and policies, prioritization of struggle against such cases and putting forward specific recommendations for improvement of the situation through preparation of a report in this regard

Although the AIHRC address and evaluates human rights violation cases in a routine bases, but cases of honor killings and sexual assaults have been highlighted in a special way in the national inquiry program. During the implementation of the national inquiry program, most of the cases which were delayed and suspended due to various reasons and were not addressed and followed up by the related organs, came under process. The AIHRC encouraged the related organs to address such cases as soon as possible and settle them according to the laws. Besides addressing such cases, the situation of victims, their family members and witnesses will also be evaluated. The Commission will evaluate psychological, social, economic and political situation of the victims and analyze the effective social, cultural and other factors and outcomes, which are supposed to harm the victims and their family members.

During this national inquiry, the Commission collects trustworthy and reliable information about cases of honor killings and sexual assaults. A collection of information can evaluate the situation from different points of view and presents a clear picture about the size and widespreadness of such cases. In addition, through implementation of this national inquiry program the Commission is willing to raise public awareness about women's rights situation, especially cases of honor killings and sexual assaults and elevate public sensitivities against these phenomena. The AIHRC believes that provoking sensitivities against human rights violations and giving awareness about human rights values and norms, can decrease the number of human right violation cases in the future. On the other hand, through launching this national inquiry, the Commission intends to urge justice and judicial organs to participate in the implementation of national inquiry and increase their responsibilities and accountability against such violations. Participation and contribution of justice and judicial organs in the national inquiry process, elevates the level of their understanding of the situation, and highlights their legal responsibilities.

There are no sufficient strong legal mechanisms for the protection of victims and persons at risk or there are visible legal gaps concerning the cases of honor killings and sexual assaults. Therefore, one of the Commission's aims is to review and study state laws, policies and programs in this regard. The Commission presents specific recommendations to the government of Afghanistan, especially to justice and judicial organs to design and codify new laws, policies and mechanisms for the protection of victims and addressing of such cases.

2.5- National Inquiry Methodology and Procedure:

Procedure for implementation of the national inquiry on honor killings and sexual assaults are similar to procedure envisaged in training manuals of Asia Pacific Forum for launching national inquiries. The national inquiry launched by the AIHRC has followed the procedures provided in the training manuals of the Asia Pacific Manual. For the implementation of this national inquiry, the Commission has implemented a process, which includes the following 16 steps:

1. Selection of the topic
2. Designing and drafting the aims and objectives of this research
3. Appointment of the members of the national inquiry committee
4. Designing and preparation of a training workshop plan for national inquiry for staffs of the regional and provincial offices of the AIHRC
5. Holding of training workshops in eight regional offices
6. Identification of stakeholders and consultation with them
7. Establishment of focus groups and discussion on the subject of the national inquiry
8. Holding of public hearing sessions in the biggest cities
9. Designing of a research questionnaire about cases of honor killings and sexual assaults
10. Interview with the victims and perpetrators
11. Dealing with the individual cases, investigation and documentation of them
12. Writing a report
13. Preparing recommendations
14. Publication of the report
15. Advocacy and follow up on the recommendations
16. Evaluation of the inquiry

The AIHRC launched this national inquiry program, according to its strategic and action plan. The Commission's Executive Directorate established committees for this purpose and presented the initial plan to the Commissioners in a session held on 14 Assad 1391. During this session, discussions were made on the topic of this national inquiry and finally it was approved that the first national inquiry would be held about honor killings and sexual assaults in Afghanistan. Similarly, during this session, the aims, objectives, method of inquiry and members of the national inquiry program was set up.

After that, the national inquiry committee prepared a plan for holding training workshops on national inquiry for the staff of regional and provincial offices. According to this program,

members of the national inquiry committee traveled to eight regional offices and held a two-day workshop at each regional office. During these workshops, the Commission's staff, especially the staff of Women Rights Units and Investigation and Monitoring Units received training on the concept of national inquiry, its background, process and methods as well as the topic of the national inquiry, the basis of the national inquiry, legal analysis of honor killings and sexual assaults. The staff of provincial offices was also invited to the nearest regional offices and benefited from these workshops. It is worth mentioning that it took almost two months to prepare and conduct these workshops and according to its plan, the whole process of this national inquiry was arranged to be completed within six months.

After the completion of training workshops in the regional offices, all regional and provincial offices were instructed to hold consultative meetings with stakeholders and share the topic for discussion and review. After holding this meeting, they convened focus group sessions to evaluate the related topics. 63 focus group sessions were held in different provinces, which were attended by almost 1078 participants. The focus groups were consisting of the representatives of civil society institutions, representatives of state offices, associations and unions, members of provincial councils and local elders who attended these sessions. Based on the views and recommendations of these focus groups, the Commission obtained reliable information about honor killings and sexual assaults and identified their motivations and root causes.

In the next phase, public hearing sessions were held. 15 public hearing sessions were held in 15 cities which attended by almost 1000 participants¹. Each of these sessions were participated by related state organs, including justice and judicial organs, representatives of civil society institutions, media representatives, members of parliament, members of provincial councils, representatives of forensic medicine, police, in charges of safe shelters, representatives of associations, and defense lawyers. They discussed on the related subjects about national inquiry for one day and shared their views. In addition, during these session discussions were made on the causes and reasons of honor killings and sexual assaults. They also talked about legal gaps, policies and the state programs in this regard. At the end of each session, specific mechanisms were proposed to struggle against honor killings and sexual assaults. It is worth mentioning that all public hearings were reflected through audio, video and printed media and most of the media prepared and broadcast news and reports about these sessions. Similarly, the Commission also prepared a report and a film regarding these public hearings and recorded all information and views presented by the participants.

Simultaneously, by holding of public hearings, two questionnaires for interviews with victims of sexual assaults and relatives of the victims of honor killing as well as perpetrators of such cases were prepared and dispatched to regional and provincial offices. Using these questionnaires, the Commission's staff traveled to different provinces and districts and made interviews with victims, their family members, witnesses, offenders of such cases. In addition, to carry out such

¹ A table of focus groups sessions and public hearings is attached

interviews, the Commission's staff went to visit and monitor female and male detention centers and safe shelters for women and made interviews with victims, accused persons and offenders of such cases. These questionnaires were sent to the HQ and their data was entered to the database.

In addition, the Commission utilized the daily information collected in the Commission's database. This report is based on the data collected through the holding of focus group sessions, public hearing sessions, carrying out interviews with victims, their family members, witnesses and offenders (accused persons and perpetrators) as well as a database of the Commission. In other words, this report is not only based on the Commission's sources, but also on the information gained through broad-based consultations and dialogues with organizations, involved institutions and different social strata. Therefore, the AIHRC believes that the findings of this report and the discussions explain the existing realities in the society and depicts a relatively clear picture of the present situation.



Chapter Three

Legal Analysis of Sexual Assaults and Honor Killings

According to the laws in our country and international human rights instruments, sexual assaults and honor killings are criminal acts and considered violation of human rights. Unfortunately, the number of such crimes is increasing and turning to be a widespread matter and an issue of concern in Afghan society. The victims of such crimes are usually young women and girls. Since the beginning of 1390 until now, the regional and provincial offices of the AIHRC have registered 243 cases of honor killings and 163 cases of sexual assaults; though it never covers all such cases. Undoubtedly, the number of honor killings and sexual assault cases is far greater than its official statistic, because most of such cases are kept secret and are not reported to official organs.

Some important structural grounds such as gaps in the laws, harmful social mentalities and traditions, unawareness among public and official institutions of causes of such phenomena prepare the ground for the emergence and continuation of these problems.

Here we focus on the legal investigation of such crimes and legal bases that exist for prohibition and criminalization of these issues.

3.1- Sexual Assault

Sexual assault is a type of violence in the realm of sexual relationship imposed on women. It is similar to other violations against women and used as a tool for gaining domination over women. Sexual assault as a violence against women for the first time was defined precisely and assumed as a crime in the Law on Elimination of Violence against Women. Although “rape” was prohibited and its punishment was determined in the penal code of Afghanistan, but no specific definition was presented to it.

According to article three of the Law on Elimination of Violence against Women, “rape: is committing of adultery (*Zena*) or pederasty (*lewat*) against an adult woman with force, or against an underage girl or attack on chastity and honor of a woman. This crime In spite of some ambiguities, has been defined in the law on the Elimination of Violence against Women (1388), this definition has clarified the different dimensions and aspects of this crime to some extent.

The concept of “adult” has not been defined in the law on the Elimination of Violence against Women; the Law has kept silent in this regard. However, in the Civil Law, an adult person is the one who is physically grown up and reached to the age of marriage. (Linger Woody, 1390). Therefore, an adult woman is the one who has reached the age of marriage. Regarding the age of marriage, article 70 of the Civil Law of Afghanistan provides “The age of marriage is completion of 18 years old for boys and 16 years old for girls.” Similarly, article 71 paragraphs 2 of the Civil Law clearly say, “Marriage of a girl under the age of 15 is never permissible.” (The Civil Law, the first volume, 1355) Similarly, article 94 of the Law on Personal Status of Shia, has

determined the age of marriage as completion of 18 years for boys and 16 years for the girls. (The Law on Personal Status of Shia, 1388) Taking into consideration the above-mentioned points it can be concluded that if the victim of this illegal act is a girl under 16 years, in spite of the victim's consent and lack of force it can be considered sexual assault and the perpetrator is punishable.

3.1.1 Criminalization of Sexual Assaults

According to the valid laws in our country and international human rights documents, sexual assault is prohibited and considered to be a criminal act. Articles 426 to 429 of the Criminal Law of Afghanistan are allocated to the crimes of rape, pederasty and attack on the honor, and especially article 429 prohibits rape and determines punishment for "a person who commits or attempt to commit sexual assault against a female or male. Severe cases of such crime are also explained in the second paragraph of this article. (Penal Law, 1355)

In addition, article five of the Law on Elimination of Violence against Women considers sexual violation against women as a clear violence and put it on the top list of violations. (The Law on Elimination of Violence against Women, 1388) According to article four of this law, violence is a crime, no one is allowed to commit it in residential areas, government and nongovernmental organs, public places, in vehicles, or other places, and in case of commitment, the perpetrators shall be punished in accordance with the mandates of this law. In this way, sexual violation is one of the most severe violations against women and considered a criminal action and perpetrators are punishable. (The Law on Elimination of Violence against Women, 1388)

In article 17 of the Law on Elimination of Violence against Women, the punishment for perpetrators of sexual assault is clearly defined. According to this article

1. If a person commits rape with an adult woman, the offender shall be sentenced to the continued imprisonment in accordance with the provision of Article (426) of the Penal Code, and if it results in the death of the victim, the perpetrator shall be sentenced to the death penalty.
2. If a person commits rape with an underage woman, even with her consent, the offender shall be sentenced to the maximum continued imprisonment, according to the provision of Article (426) of the Penal Code, and if it results in the death of the victim, the perpetrator shall be sentenced to the death penalty.
3. Under the above-mentioned paragraphs (1 and 2) of this Article the perpetrator shall be convicted to pay the amount of dowry (Mahre Mesl) to the victim as reparation.
4. The person who commits a violation against a woman's chastity, but his violation does not result to adultery or pederasty, (Tafkhiz, Mosheqa etc...), considering the circumstances he will be sentenced to long term imprisonment not more than 7 years.
5. If the victim of the crime which is written in paragraph 4 of this Article has not reached the age of 18 or the perpetrator of the crime is close relative up to degree 3, or the perpetrator is a teacher, a servant, doctor of the victim or somehow the perpetrator has influence and authority

over the victim, in such situations, the perpetrator shall be sentenced to long term imprisonment not more than 10 years considering the circumstances.

The above-mentioned article not only determines severe punishment for perpetrators of sexual assaults, but insures reparation for the victim too. According to paragraph three of this article, perpetrators of sexual assaults in addition to specific punishment subject to payment of reparation to the victim. This important point ensures the right to reparation for the victim. In addition, immaturity of the victim and other situations mentioned in paragraph 5 of this article, are part of the most severe situations of sexual assault crime.

3.1.2 - Sexual Assault; Human Rights Violation

Sexual assault is one of the most serious crimes that are in contradiction to human dignity and personal integrity and contrary to the general social morality, it violates human dignity as well as human rights of a person, and such act is prohibited based on international human rights documents. Human dignity is one of the undeniable rights of all human beings and is considered an important human rights principle. Through committing of sexual assault, the principle of human dignity will be violated. In addition, other human rights of the victim, such as the right to freedom and personal security, the right to be free from sexual violence, the principle of equality and prevention of gender-based discrimination will also be violated. The principle of human dignity and other aforementioned rights are fundamental human rights that are officially recognized and ensured by national and international human rights documents. For example, article 1 of the Human Rights Universal Declaration proclaims “All human beings are born free and equal in dignity and rights” (Universal Declaration of Human Rights, 1948)

Similarly, article 24 of the Constitution provides “Liberty is the natural right of human beings. This right has no limits unless affecting others freedoms as well as the public interest, which shall be regulated by law. Liberty and human dignity are inviolable. The state shall respect and protect liberty as well as human dignity.” (Constitution of Afghanistan, 1382)

Likewise, according to the provisions of the Declaration on Elimination of Violence against Women, sexual assault is a violation against women and considered as sexual violence. For example, article 1 of this declaration says, “The term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” (Declaration of Elimination of Violence against Women, 1994)

From this definition, it can be concluded that sexual violations, especially sexual assault are one of the clearest violations against women. This type of violence is based on gender and mostly committed for the subjugation of the victim. According to the feminists, sexual assault is a manifestation of violence and supremacy that deprives the victim from human dignity and prestige. According to them perpetrators of sexual assault, commit such crime purposefully to

create panic and intimidation among women and take advantage of this situation. In this way women through being threatened with sexual assault, remain under the domination of men. (Clarwa Alas, 1385)

Article 2 of the Declaration on Elimination of Violence against Women defines violence very clearly as follows:

“(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution,

(c) Physical, sexual and psychological violence perpetrated or condoned by the government, wherever it occurs. (Declaration of Elimination of Violence against Women, 1994)

Therefore, it can be concluded that sexual assault as an example of violence against women and human rights violation, is against human rights values and contradicts with international human rights documents and principles of our Constitution and it violates fundamental human rights. The states are obliged and responsible to prevent the perpetration of this crime and to protect victims against such crimes.

3.2- Honor Killing

According to evaluations carried out, honor-killing crimes in Afghanistan have many similarities and common aspects:

First, such crimes are committed in the most horrible and harshest possible forms and the victims are usually young girls and women.

Second, this crime is motivated by a sense of safeguarding honor (protecting chastity of female family members) and committed by resorting to manly honor and prestige.

Third, the killing of the victims is considered a private- family matter and the perpetrators deem committing of such crimes as their right, and reject intervention of the state and human rights defenders and consider it as an intervention in the realm of their family privacy. Therefore, honor killing is perpetrated inside family relations and buried behind impenetrable walls of the family.

Fourth- Some related institutions that are influenced by harmful social traditions consider these perpetrators and criminals as rightful and do not punish them according to the laws.

3.2.1 - Conceptual Framework of Honor Killings

The terminology of honor killing has not been defined in the legal texts of Afghanistan and it has no background. The new laws ratified recently have paid no attention to this matter. Even in the

legal terminologies of Afghanistan, this term has not been defined clearly. Therefore, presenting a comprehensive, precise and academic definition of this term is difficult. Taking into consideration its particularities and occurrences of similar incidences all over our country which are registered and evaluated by the AIHRC, we can conclude that: “honor killing is an example of intentional killing when the victim is killed by her close relatives in accusation of out of marriage, sexual relationship with a man, or attempting *Zena* (*sexual* intercourse), being raped or escaping from home and even evidence of forced marriage. The victims of such killings are usually young women and girls.”

Considering this definition, the victims of honor killings are young women and girls who are killed by male close relatives. In some cases, the perpetrator kills the victim after committing sexual assault to conceal his crime. Under such a situation, if the perpetrator is a relative of the victim, this killing is also considered as an honor killing.

To elaborate this definition, there are some important points to be mentioned: one of the basic indicators of honor killings is to protect the honor (*namoos*). According to traditional and common perceptions in Afghan society, (*namoos*) means wife, mother, sister, daughter or other female members in the family. Men of the family, consider their responsibility to protect them and this term is not used for women. It emanates from patriarchal view prevailing in the family and in the society and shows superiority and domination of men over women. According to this view, man considers himself as guardian of the family prestige and honor. If he feels that his wife, sister, daughter or even his mother has done something that causes disgrace and shame to the family, he kills her.

Honor killing is an example of intentional killing. Intentional killing is committed willingly. (Linger Woodi, 1385). Since honor killing is committed willingly and as pre-planned, it can be counted as intentional killing.

Honor killing is committed for various reasons: Killing for attempted sexual intercourse is one of



the aspects of honor killing. Another reason for honor killing is establishment of sexual relation with opposite sex, even in its primary stage or suspicion to the establishment of such relation. Refraining from forced marriage is another reason for honor killing. It has happened time and again that a young woman or girl has been killed because of being raped. The elders of the tribe or men of the family decide to kill the victim in order to remove the stain of shame and ignominy from the family skirt. Escaping from home, though for the purpose of getting married ends up in honor killings, although escaping from home for the purpose of getting married is not a crime according to article 425 of Afghanistan's penal code, 1355, the girls who resort to such action are usually returned to their families and then they would be killed

Honor Killing as a Violation of Human Rights

Illegally and arbitrary deprivation of the right to life, including honor killing is a clear violation of human rights. Article three of the Universal Declaration of Human Rights declares, "Everyone

has the right to life, liberty and security of person.” Article 6 of the International Covenant on Civil and Political Rights says, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” Article 23 of the Afghan Constitution based on items of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights and taking into consideration article seven of our Constitution says, “Life is a gift of God and a natural right of human beings. No one shall be deprived of this right except by the provision of law” (Afghanistan, 1382)

In all national and international documents as mentioned earlier individual’s enjoyment of a healthy and sound life is a fundamental and undeniable right endowed by God and no one, under no circumstances can be deprived of this right. There is only one exception of sentence to death for very serious crimes that can be implemented on “legal permission”², in cases of serious crimes and according to the law enforced before committing of the crime. There is no other exception. According to paragraph 5, article six of the International Covenant on Civil and Political Rights, “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.” (International Covenant on Civil and Political Rights, 1966)

The purpose of legal permission is the absolute and final authoritative court verdict on execution, after ratification by the President and legal proceedings, fair trial and full observation of all rights of the convict. Since honor killings are carried out by irresponsible individuals without observation of legal norms and in a horrible and under inhuman condition, it can be an example of arbitrary and illegal killing. According to the principles enshrined in human rights, international documents and article 23 of our Constitution, it is forbidden and considered a clear violation of human rights.

3.2.3 - Criminalization of Honor Killings

As it was clarified, honor killing is an example of intentional killing. Articles 395 to 398 of the Afghan Penal Code are specified for intentional killings. Intentional Violation of the right to life is considered a serious crime and perpetrators are convicted to continued imprisonment or execution.

As it was explained above, honor killing is an example of intentional killing, arbitrary violation of the right to life is a serious crime according to the penal code of Afghanistan, and perpetrators are convicted to severe punishment.

The important point is that in spite of severe punishment for intentional killing, the punishment of killing for defending honor is considered an exception and its punishment is not severe according to article 398 of the Penal Code. Article 398 says, “A person defending his honor who

² The general view of human rights protection institutions, due to essentiality of the right to life, requests suspension of implementation of execution in the countries where the condition for fair and just trial is not available.

sees his spouse or another of his close relatives in the act of committing adultery or being in the same bed with another and immediately kills or injures one or both of them shall be exempted from punishment for laceration and murder, but shall be imprisoned for a period not exceeding two years as a (Tazeeri) punishment.” (Ministry of Justice, 1355).

According to article 398 of the Penal Code, killing in defense of honor is considered a criminal action and is punishable, though the perpetrator is exempted from capital punishment and he would be punished only for the crime committed. However, this article in spite of its distorted interpretation does not issue permits for honor killing and does not exempt perpetrators from punishment.

It should be noticed that implementation of article 398 of the Penal Code depends on conditions envisaged in this article and only in case that all conditions are provided, the offender of such killing would benefit from a reduction of punishment envisaged in this article. Since provision of these conditions is almost impossible and impractical, implementation of article 398 also looks impossible.

The first condition for implementation of article 398 to enable the perpetrator benefit from the envisaged punishment reduction, is witnessing his wife or other close female relatives while committing adultery. In other words, the man sees personally his wife or other close female relatives committing adultery. If the man is informed by someone else about adultery of his wife or close female relatives or he watches it through film or photos and resort to honor killing, in this case article 398 is not applicable on him. Therefore, physicality witnessing of the man is necessary. In this case, the proof of committing adultery is the responsibility of the killer. He should be able to prove that adultery has committed otherwise the court cannot consider committing of killing under article 398. If committing of adultery is not certain and is based on suspicion of the man, this killing does not come under the said article.

To prove the crime of adultery, presence of four honest eyewitnesses who have witnessed the crime is necessary. The case should be proved before the court. According to a famous jurisdiction, there are two basic criteria for proving adultery: First, confession and this condition are negated in such cases. Second, according to all jurisdictions and Islamic lawyers perpetration of adultery cannot be proved except through affirmation of four witnesses. (Nazir, 1391) Testimony of the witnesses should be clear and documented on witnessing and they should be presented simultaneously and without elapse of time. Therefore, the claim by the murderer cannot cause a reduction in his punishment. If he cannot provide sufficient testimonies about the case, punishment of intentional killing would be implemented on him

The second condition for implementation of article 398 is that the wife or a close female relative is committing adultery and the man is as sure of the consent of the woman or his close female relative to commit adultery (Zena). In the text of above-mentioned article, the term (Zena) is used. If the woman refrains from adultery and the assailant forces the woman to do so, this action

is sexual assault³. In this case, if the man of the family (husband) witnesses them during sexual assault and resorts to killing of the women, in reality he kills the victim of this sexual assault and cannot benefit from punishment reduction mentioned in article 398. Although, proving this condition is very difficult, it is important for prevention of punishment reduction in the cases of arbitrary killings and killing on suspicion.

The third condition is when a man sees his wife or his close female relative in a bed together with a man. In this case, also sufficient testimonies should be available to make article 37 of the provisional Penal Code applicable.⁴

The fourth condition for implementation of this article is that killing is to be committed on the spot and without elapse of time. If a man sees his wife or a close female relative during sexual intercourse with a man in a bed and take no action and later resorts to killing out of that place and time such killing is considered taking revenge and article 398 is not applicable.

In general, we can conclude that article 398 does not oblige men of the families to resort to killing of his wife or a close female relative if he sees such an incident. Instead, he can refer to justice and judicial organs to take legal action to punish perpetrators of committing adultery. Another important point is that realization of conditions for implementation of article 398 is more difficult than some people imagine. None of the honor killings common in the Afghan society are according to this article of the Penal Code. The victims are killed based on suspicion, negative assumptions and undocumented cases by their relatives.

On the other hand, lack of possibility for implementation of this article on perpetrators of honor killings; proves the need for the implementation of the previous articles on intentional killings.

Meanwhile, it should be mentioned that there are eye-catching legal problems and gaps in article 398 of the Penal Code, which pave the ground for the continuation and occurrence of honor killings. These problems will be discussed in the next section “Legal-political Causes and Factors”.

Chapter Four

³ According to article three of the Law on Elimination of Violence against Women, sexual assault is “perpetration of adultery or sodomy with a women by force or committing this act with an immature woman or aggression on her chastity and honor.”

⁴ According to the interim criminal procedural law for the courts, proving tools and evidences are as following: 1. witnesses 2. crosscutting of testimonies, identification of the offender in a line up, 4. inspection of the place 5. searching, confiscation of goods, 7. professional evaluations and tests, 8. prosecution

Obligations, Commitments, and Efforts by the government for Protection of Women Rights

And

Elimination of Violence against Women

Women's rights were totally ignored during the Taliban Regime in Afghanistan. Women had no right to education, higher education and work at that time. They could not go out alone without a close relative. The new government in Afghanistan promulgated the decrees and laws of the Taliban regime that limited the rights of women to education, higher education and work. New steps were taken in the areas of legislation, new mechanisms and national programs were designed for protection of human rights of women and the elimination of violence against women. These efforts during the last ten-eleven years resulted in outstanding achievements in the areas of ensuring women rights and elimination of violence against women, though women's rights are still facing numerous challenges, especially the unfavorable security situation in the country and concern about future, threats the preservation of these achievements.

We briefly classify and introduce the responsibilities and efforts of the government of Afghanistan towards protection of women's rights, especially elimination of violence against women in three sections.

4.1- In the Areas of Legislation and Human Rights Commitments:

4.1.1 - State Responsibilities based on National Laws

4.1.1.1 - The Constitution (6 Dalwa 1382)

Ratification of Afghanistan's new Constitution on 26 June 2004 is the most important step taken by the new state of Afghanistan in ensuring of equality between men and women in legislative areas. The new Constitution clearly emphasizes on equality between men and women

Articles 7, 22, 44, 54, and 83 are the most important articles of this Constitution that emphasize on equality between men and women. The state is obliged to implement programs effective for improvement of women's situation in the country.

Article 7 of the Constitution obliges the state to observe international documents and commitments that are signed and ratified by the state. These commitments include international conventions and covenants protecting women's rights such as the Convention on Elimination of All forms of Discrimination against Women, Convention of Civil and Political Rights, and Convention on Economic, Social and Cultural Rights. For example, paragraph one, article 7 of the Constitution says, "The state shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights" (Collection of laws, 1390). In article 22 of this law, gender equality has been clearly mentioned, and proclaiming any form of discriminations among citizens as illegal. "Any kind of

discrimination and privilege between the citizens of Afghanistan are prohibited. The citizens of Afghanistan – whether man or woman – have equal rights and duties before the law”, (collection of laws, 1390)

Similarly, article 44 of the Constitution obliges the state for insurance of balanced educational development, especially for women, “The state shall devise and implement effective programs for balancing and promotion of education for women, improving of education of nomads and elimination of illiteracy in the country.” (Collection of laws, 1390)

Precise evaluation of article 44 of the Constitution shows that legislators have used positive discrimination in the interest of women and instructed the state of Afghanistan to protect the right of women to education and introduce clear and effective mechanisms in this regard.

The state obligation to protect families is mentioned in article 54 of the Constitution. This article duty-binds the state to ensure mother and child’s physical and mental health and provide the necessary condition to meet this need. “Family is a fundamental unit of society and is supported by the state. The state adopts necessary measures to ensure physical and psychological well-being of family, especially of child and mother, upbringing of children and the elimination of traditions contrary to the principles of the holy religion of Islam”. (Collection of laws, 1390)

Article 83 of the Constitution is another article on political participation and the role of women in parliament. Based on this article at least two women from each province should be included in the house or representatives. This article clarifies, “...

In the election law measures should be adopted that the electoral system shall provide general and just representation for all the people of the country, and proportionate to the population of the province as an average at least two female delegates should be elected from each province.” (A collection of laws 1390) Similarly, article 84 demands from the President to introduce half of the members of the Senate (out of one third of selected members) from among women in the country.

4.1.1.2 - Elections law (27 May 2004)

According to article 83 of the Constitution 68 seats out 249 seats in the House of Representatives are allocated to women, while women are free to compete for gaining more seats in a free and equal competition with men. Taking into consideration the challenges and limitation in front of women's participation, especial grounds are prepared for the protection of women, according to which at least 25 percent of seats in the House of Representatives is allocated to women.

Based on article 83 of the Constitution, the law on elections guaranteed allocation of 68 seats in the House of Representatives for women and an opportunity for competition to gain more seats is legally provided. In this way, the House of Representatives would have at least 68 female members in each round while the arena for competition with men to gain more seats is legally open. Article 22 of the election law clearly says,

(1) In order to determine the minimum number of female candidates to represent each province, the Commission shall develop procedures and formula, based on the population of each province, to determine the number of female candidates to represent each province in accordance with the requirements of Article 83 of the Constitution of Afghanistan. According to which the number of female representatives shall be at least twice the number of existing provinces of the country.

(2) The candidates who receive the most votes in each constituency shall be awarded seats in accordance with paragraph 1 of this article. Once the representation requirements are met, the remaining seats shall be awarded according to Article 21 of this Law.

(3) If there are not enough female candidates in the list to occupy the seat(s) allocated to women in a particular constituency, the seat or seats shall remain unoccupied till the next preplanned parliamentary elections ” (article 22 of the elections law)

Analysis of the mentioned articles shows that the law on elections in its own place can be considered as a kind of guarantee in the struggle against deprivation of women from their political rights, which is counted a clear discrimination against women, and prevents their active participation in the society

4.1.1.3 - The Labor Law (17 June 2007)

Gender equality in staff employment, is considered in the Labor Law of Afghanistan. Paragraph one of article 8 says, “Workers in the Islamic Republic of Afghanistan are entitled to the equal right to work and equal right to payment” This part of article 8 guarantees equal right to work and equal right to payment for men and women. Similarly, paragraph 2 of article 9 of this law says, “Women in the work area are entitled to specific privileges during pregnancy and procreation periods and other issues which are confirmed in this law and related legislative documents”.

Prohibition of women’s employment in night shifts is an important measure taken by the Labor Law of the IRA in the best interest of women. Article 120 of the Labor Law writes in this regard, “Employment of women and juveniles in heavy physical labors, harmful to health and underground labors are not permitted”. A list of these labors is confirmed and ratified by the ministry of public health and ministry of labor, social affairs, martyrs and disabled, (MoLSAMD).

Similarly, article 121 of this law says, “The management cannot employ a woman or a juvenile for night shift works. Employment of women and mothers who have babies in hospitals, health clinics, and with her agreement the duties and labors which are imperious and which can be done periodically and in accordance with the schedule are excepted from this law. ”

Paragraph 19, article 5 of the Law on Elimination of Violence against Women defines deprivation of women from the right to work as a violence against them. Taking into consideration the weak and vulnerable points of women's right to work, the said articles have provided good opportunities to prevent violation of women's right to work which is considered a



kind of violence against them.

4.1.1.4 - Regulation on Legal Assistances (22 Saratan 1387)

Inclusion of some opportunities and privileges as legal assistances for women in the regulation of legal aids (Council of Ministers, civil and legal institutions of our country 1387) counts as an important protective step in the promotion of women rights and the fight against violence. Paragraph one, article 29 of the legal aid regulation has duty bound the Office of Legal Aids to provide free legal aid for women in civil cases when possible. "According to this regulation, the Legal Aid Office of the Justice Ministry can provide assistance to needy women and children when it is possible" (paragraph one, article 29 of legal aid regulation)

Article four of this regulation, defines legal aids as protecting the rights of a poor suspect, accused, and considers defending the rights of women and children as the legal obligation of the Legal Aids Department. This law clearly created an opportunity for poor female victims that have faced violence or are the sexual assault victims to make use of the approved opportunities envisaged in the legal assistance regulations and get a lawyer free of charge without worrying about the cost.

4.1.1.5 - The Law on Elimination of Violence against Women (20 June 2009)

Validation of the Law on Elimination of Violence against Women is one of the most basic achievements that the state of Afghanistan made in the course of the last three years for prevention of violence against women.

According to article two, the objectives of this law are to maintain legal rights and human dignity of women, to ensure integrity of families and fight against harmful traditions, customs and behaviors that cause violence against women, to protect victims of violence, to elevate public awareness about violence against women, and judicial prosecution of the perpetrators of violence against women.

Although this law does not expressly deal with honor killings, article three defines violence against women as the actions that “harm personality, physical, mental or material wellbeing of women” and considers them as violence against women. (Law on Elimination of Violence against Women, 1388) These actions are mentioned in article five and “sexual assault” is on top of them. (Law on Elimination of Violence against Women, 1388)

Article 15 of this law, establishes a High Commission for Prevention of violence against Women that is authorized to conduct investigations, implement awareness programs, ensure coordination among institutions, fight against violence, propose changes or amendments or impose effective regulations on implementation of this law. (Law on Elimination of Violence against Woman, 1388)

Articles 8 to 15 of this law introduce institutions protecting women against violence and mention their responsibilities in the area of protecting women against violence. Chapter three of this law pays attention to penal issues of offenses like violence against women.

One of the most important articles of this law is article 43, which clarifies that if any articles of this law were in contradiction to other common laws in the country, the provisions of this law would be preferred.

4.1.1.6 Shia’s Personal Status Law (29 Saratan 1388)

After ratification by the Parliament of Afghanistan on the fourth of Hoot 1387 and following advocacy made by the AIHRC and demonstrations launched by civil society activists and women's rights protection institutions, some articles of this law that clearly affected equality of men and women were annulled or amended through a Presidential decree by the council of ministers.

Paragraph four of article 141 of this law allows those women who suffer from violent acts of their husbands and as interpreted by this law “beating or any kind of mistreatments by husbands

which are intolerable” to refer to the court and get divorced. Mistreatment can include all forms of violence and it can provide a protective chance for women against violence.

4.1.1.7 – The Law on Anti- Abduction and Trafficking in Person (24/4/1387 ratified by the Council of Ministers):

The Law on Counter Abduction and Trafficking in Person is one of the most important achievements made by the present government focusing on crimes related to abduction and trafficking, cases of sexual assaults on women and children. It clearly criminalizes the abduction and human trafficking and envisages punishment for them.

Second paragraph of article 2 of this law aims at protecting victims of abduction and trafficking, especially woman and child victims.

The third paragraph of article 3 of this law has defined exploitation of the victims of abduction and trafficking as obtaining benefits from the victims through employment, selling, employment to sexual activities, pornography etc. Based on this definition of the Law on Anti-Abduction and Trafficking in Person has envisaged a relatively suitable protective guarantee for women who become victims of sexual assault through abduction and trafficking.

Similarly, paragraph two of article 7 of this law focuses on the punishment of those who engage in abduction and trafficking in women and children for the purpose of sexual exploitation and clearly condemns them to severe punishment envisaged in the law.

Finally, paragraph three of article 8 of this law focuses on the punishment of those who make sexual assaults on victims of abduction and trafficking. In addition to punishment for the crime of abduction and trafficking, the offenders are convicted for the crime of sexual assault (rape or sodomy).

4.1.2- State Responsibilities on the Basis of Human Rights, International Instruments

Article seven of the Afghan Constitution duty binds the state to observe “United Nations Charter, interstate treaties, international covenants that our state is adhered to and the Universal Declaration of Human Rights.” (Constitution of Afghanistan 1382, article 7). In reality, this article of our Constitution is the base of state responsibilities to observe all international human rights documents signed or ratified by the state. Some of the most important documents in the protection of women's rights are introduced as follows:

4.1.2.1 - - International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights was approved on 16 Dec. 1966 (25/9/1345) by the UN General Assembly and it was ratified by the state of Afghanistan on 24

Jan. 1983. The International Covenant on Civil and Political Rights points out on basic rights of citizenship for all, including men and women and prohibits all forms of discrimination regarding the right to citizenship.

Article two of this covenant clarifies:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (UN general assembly 1966 a, article 2)

Therefore, taking into consideration this article, all forms of discrimination and differences between men and women in the social life are prohibited. The state parties are obliged to design and follow policies to ensure equality between men and women and remove all grounds that cause discrimination and violence against women.

Article three of this covenant points on equality of rights between men and women to enjoy their civil and political rights and article 23 recognizes the equal right of man and women to marry and establishment of family when they reach to the age of marriage. (UN general assembly, 1966, a, articles 3 and 23)

4.1.2.2 - International Convention on Economic, Social and Cultural Rights

The Convention on Economic, Social and Cultural Rights was approved by the UN General Assembly on 16th of December 1966 and ratified by the state of Afghanistan on January 24, 1983. This convention also points on issues related to equality and non-discrimination between men and women and prohibits violence and unfair treatment against women.

Article three of this convention writes:

“The States Parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant” (the UN general assembly, 1966 b, and article 3)

Article seven of this convention provides for the equal payment for equal work, regardless of any gender discrimination between men and women. (The UN general assembly, 1966, b, article 7)

4.1.2.3 - Convention on the Elimination of all forms of Discrimination against Women:

The Convention on the Elimination of all forms of Discrimination against Women was adopted by the UN General Assembly on 18th of December 1979 and ratified by the state of Afghanistan on March 5, 2003. This convention primarily refers to the UN Charter and Universal Declaration of Human Rights, which emphasize on equality between men and women and prohibition of discrimination and highlights that all state parties are obliged to their observation. It says, “State

members of this convention are committed to ensure that all women and men enjoy their basic social, cultural, civil and political rights”

This Convention has emphasized on elimination of discrimination against women, taking measures to protect their rights and ensure their equality with men and to remove violence against women. These issues are considered as the legal obligations of the state parties. For example, article two of this convention says, “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) Incorporation of the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein, and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate to prohibit all kinds of discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women;

(g) To annul all national penal provisions which constitute or cause discrimination against women” (UN general Assembly, 1979, article 2)

Article two of this convention clearly specifies the obligations of the state parties in the area of gender equality in legislation and taking measures to amend or even annul the laws, regulations and present traditions, which are discriminatory against women.

Article six of the Convention on Elimination of any forms of discrimination against women says, “States Parties shall take all appropriate measures, including legislation, to prevent women trafficking and exploitation of them” (the UN general assembly, 1979 article 6)

Based on this article, the state parties are obliged to legally prohibit or correct any acts, which cause mistreatment or ends up the violence against women.

4.1.2.4 - Declaration on Elimination of Violence against Women

Taking other human rights documents into consideration, and in order to provide further protection for women, this resolution was prepared and approved on 23th of February 1994 by the UN General Assembly.

Article 1 of this declaration defines violence against women. On the basis of this definition, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life"(UN general Assembly, 1994, article 1).

In article 2, some cases of violence against women are mentioned:

“Violence against women shall encompass, but not be limited to the followings:

(a) Physical, sexual and psychological violence occurring in the family, including beating, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.” UN general assembly, 1994, article 2)

Article 4 of this declaration emphasizes on the responsibilities of member states in dealing with the phenomenon of violence against women. At the beginning of this article it is clarified that, “States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women.” (UN General Assembly, 1994, article 4)

4.1.2.5 - Resolution number 1325 of the UN Security Council:

This resolution was adopted by the UN Security Council on 31 Oct. 2000. This resolution focuses on the vulnerability of women during armed conflicts and the need for especial protection for them and emphasizes on the role and participation of women in the peace process at national and international levels. This resolution presents special advices to the UN Secretary General, state parties and conflicting sides in this regard and urges them to take specific measures for reduction of women’s vulnerability. Paragraph one of this resolution recommends the state parties to ensure ever increasing presence of women in levels of decision making at national, regional and international institutions and provide a special mechanism for prevention, management and settlement of disputes.” (UN Security Council, 2000) Paragraphs second to sixth of this resolution put forward specific responsibilities to the UN Secretary General to

provide strategies and frameworks for the protection of women and their participation in the management of the society. In a part of paragraph 6 of this resolution it is requested from the UN Secretary General to “ provide guidelines and training materials for member states for protection, rights and special needs of women and also on the importance of women's participation in activities related to peace keeping and peace building” (UN Security Council, 2000)

Paragraph 8 of this resolution calls on all actors involved, while negotiating and implementing peace agreements, in getting perspectives on them, their gender shall be considered, including:

a- The special needs of women and girls during repatriation, resettlement, and for rehabilitation, reintegration and post-conflict reconstruction;

b- Measures that support local women’s peace initiatives and indigenous processes for conflict resolution, and involve women in the entire implementation mechanisms of the peace agreements;

c- measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, electoral system, police and judiciary;” (UN Security Council, 2000)

In paragraph 10 of this resolution emphasis has been made on the protection of women against sexual violence, especially rape and “ calls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in armed conflicts.” (UN Security Council, 2000)

Similarly, paragraph 11, “ Emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those related to sexual and other violence against women and girls, and in this regard stresses on the need to exclude these crimes, where feasible from amnesty provision.” (UN Security Council, 2000)

In addition, there are other documents, which protect the women's rights, and they are as followings:

- Universal Declaration of Human Rights adopted by the UN General Assembly (10 Dec. 1984, 19 Qaus 1327)
- The Four Geneva Conventions, dated 12 Aug. 1949, on protection of people during armed conflicts and their supplementary protocols 1977
- Convention against trafficking in Person and sexual exploitation, adopted by the UN General Assembly (21 March 1950, Afghanistan adhered to this convention on 21 May 1985)

- The Convention on the Political Rights of Women (31 March 1953, enforced: 7 July 1954)
- Declaration on Protection of Women and Children in Emergency situations and Armed Conflicts, UN General Assembly, (Resolution (29) 3318 dated 14 Dec. 1974)
- Declaration of Beijing International Conference (Sept. 1995)
- The Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women adopted by the UN General Assembly, (Resolution 54/4 dated 15 Oct. 1999)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children adopted by the UN General Assembly (Dec. 2000)
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4.2 - In the Areas of Strategies, Programs and Agreements

The State of Afghanistan has made specific commitments in the areas of its strategies and practical programs regarding women's rights issues. The main parts of these commitments focus on the issue of violence against women. Here we briefly review such commitments through national and international strategies and agreements made by the state of Afghanistan

4.2.1 - Strategies

4.2.1.1 - Afghanistan National Development Strategy:

The Afghanistan National Development Strategy was ratified by the state of Afghanistan and the international community in Paris Conference held in 2008. A gender issue has been considered in all aspects of the ANDS as a common issue, though sexual assaults and honor killing have not been mentioned specifically in this strategy. Emphasis has been made on elimination of violence against women and insurance their security. This strategy considers the situation of Afghan women, especially in the areas of education, health, economy, participation and security as “the worst in the world”; therefore special attention has been paid to gender equality and protection of women and introduced them as priorities. The text mentions, “The main purpose of this strategy is to ensure that overall achievements of the ANDS have improved women's situation and prevented the negative effects on their life.” (IRA, 2008)

As it was mentioned above, gender is a common issue in the ANDS and is taken into consideration in different parts of it. One part of this strategy is a specific gender strategy.

A- Gender Strategy

This strategy has been designed aiming at promotion of women's rights. This strategy focuses on violence against women as a serious problem. In the content of gender strategy, it is mentioned, “Different forms of violence against women are common in Afghan society that most of them are not reported and the perpetrators remained unprosecuted. “The low value of women in the society, control of men in the family, cultural traditions, and shame and lack of self-confidence among women as well as lack of sufficient support for removal of injustice are the causes for inability of women to benefit from their rights. In addition to a weak judicial system, women’s access to this system for advocacy is limited due to cultural restrictions on women’s right to freedom of movement, fear and lack of trust on the judicial system as well as shame and gender problems in the society. ” (Gender strategy, 2008, p. 9)

Gender strategy defines “elimination of violence against women in public and private areas, including ratification and implementation of policies against sexual harassment, providing consultation and conflict management” as part of priorities in 5 years national action plan for women in Afghanistan (from 2008 to 2013). (Gender strategy, 2008, p. 19) For this reason, the state of Afghanistan ratified the Law on Elimination of Violence against Women in 1388.

Similarly, Gender strategy has introduced correction and amendment of the legal framework for protection of women and girls’ rights. Improvement of women’s access to justice through training judicial staff, establishment of legal aids clinics, paralegal training, lawyers’ national network, referral services, strengthening of family courts, modifying implementation of the laws, promotion of legal awareness (for women) through media, literacy courses and public information campaigns, cooperation with organizations involved in public information, inclusion of women rights issues in the curricula, taking into consideration of security and safety of women as priorities in the 5 year national action plan. (Gender strategy, 2008, pp. 20-22)

B- Security Strategy

During insecure and violent situation women’s vulnerability increases and women are usually the main victims. There are different types of violence against women in insecure areas and they are very severe. Therefore, paying attention to safety and security of women and their emancipation from threat and fear is one of the main issues in Afghanistan security strategy. A part of security strategy reads, “Security for women means that they should be free from threat, fear and violence in personal and social areas and enjoy their fundamental rights and follow a meaningful life. Since a secure atmosphere is the precondition for the progress of women, the state makes out all efforts to prepare such a ground for women. The principle of justice and gender equality can be evaluated based on security for women and their participation in the peace process. (Gender strategy, 2008, p. 28)

C- Good Governance, the Rule of Law and Human Right's strategy

Insuring and protection of women’s rights and prevention of violence against them depends on the rule of law and observation of human rights. One of the causes for violation of women's rights upon which the ANDS emphasizes is non- access of women to justice and prevailing of traditions in the society. “At present non-accessibility and limited trust on official justice have increased public dependency on traditional mechanisms for conflict resolution that are full of costumes violating women's rights. Giving women as “Bad” for settlement of local and tribal conflicts, forced marriages, child marriages, the exchange of women due to economic problems, and their deprivation of the right to inheritance are some examples of such traditions. (I.R.A, 2008)

Therefore, this matter is specified in the Afghanistan National Development Strategy- section of good governance, the rule of law and human rights, «the justice and rule of law strategy are a

sector that focus on creation of gender awareness and sensitivity in the justice system, and works on the increment of the woman's appearance in this sector, and attempts that women enjoy justice and judicial protection, so that through this, they can eliminate the patterns of discrimination against women which exist in the law and prevent all types of violence occurring against women. » (Gender strategy, page 28-29, 2008)

D- Education and Culture Strategy

Violence against women is deeply rooted in Afghan culture and traditions that are justified by cultural patterns in the society. Therefore, to eliminate violence against women, its root causes should be removed from the culture and cultural patterns prevailing society. “ Underestimation of women in the society, the superiority of men in the family, cultural traditions as well as shame and low self-confidence among women and also lack of sufficient protection for removing of the injustices cause inability of women to enjoy their full rights.” (I. R. A, 2008) In the strategy of education and culture, two sectors relate to capacity building of women and social resistance against enabling of women and gender equality which will be evaluated as follows:

- Education and sport Sector
- Media Sector

The education and sport sector make efforts to remove inequality at the level of provinces in relation to accessibility of women to education and sport and pay special attention to young girls and women. The culture and media sector try to change negative social visions about women and as a tool for promotion of women access to information and education that will have a constructive effect on their life and provision of services. (Gender strategy, 2008, p. 30)

E- The social immunity Strategy:

One of the expected results from implementation of programs and plans of social immunity strategy is reduction of women’s vulnerability. Based on the emphasis of this strategy in the area of women's rights, “the capacity of government and non-governmental institutions shall be built to provide necessary services in settlement of issues related to vulnerable persons including women who are in crisis. National monitoring of women's rights would continue to ensure that the voice of women is heard and their participation in local committees and projects is increased. The Ministry of Labor, Social Affairs, Martyrs and People with Disability and other state organs carry out serious evaluation of the specific needs of vulnerable women and take measures in response to such needs.” (M.oW. A, 2008, p. 31)

4.2.1.2 - National Action Plan for Women of Afghanistan (NAPWA)

As it is mentioned in the introduction of this plan in the message of the Minister of Women Affairs, “National Action Plan for Women is the outcome of two years consulting with state institutions, international community, experts and specialists, private sectors and civil society institutions. This plan was ratified in a session of the Council of Ministers held in Saur, 1387 and

related state institutions, through inclusion of indicators and aims of this plan in their programs and budgets have ensured implementation of this plan.” (State of the IRA, 2008, p. h)

This plan emphasizes on previous commitments of the state based on international laws, documents and national and international agreements and accords. It explains policies and strategies of the state in three sections, 1- Security, 2- Governance, law and human rights, 3- Social and economic development. It is designed specific programs and projects for the improvement of women's situation in the country, the main part of which relates to the elimination of various kinds of violence against women.

The security section of this plan reads, “Incidences of violence against women have been alarmingly disclosed during the recent years. A big part of such violence occurs inside the family and committed by close relatives. Family violence limiting the right of women obliges women to live in a hostile family environment, and is considered a serious threat against the health and physical wellbeing of women. Even more serious is the continued cycle of violence against women and inferiority of them will continue to future generation through mainstreaming of unhealthy and violent family relationships.” (State of the IRA, 2008, p. 28)

This plan provides specific programs, projects and activities for the ministries and various state organs to eliminate violence against women, parts of which are as follows:

- Establishment of a temporary working team at the Ministry of Interior Affairs to design strategies to eliminate violence against women in public and private places.
- Establishment of an experimental response unit to deal with family problems at police stations.
- Establishment of an experimental referral center
- Launching of public awareness campaign for raising awareness in the families, public and local institutions about the existence of units responding to family problems and referral centers,
- Strengthening of preventive security measures, including preparation of security reports, security information and emergency data for women, people and related institutions
- Taking suitable measures to control family violence against women,
- Establishment of close relations with institutions and ministries dealing with health, human rights of women and the rule of law,
- Design and implementation of training programs and awareness campaign about human rights, especially women rights and gender based violations,
- Designing a strategy for the continuation of struggle for establishing a culture of peace and forbidding violence, (IRA, 2008, p. 32-35)

Similarly, this Plan in the section of good governance, the rule of law and human rights has designed and proposed specific programs, projects and activities related to the elimination of discrimination against women. Some of them are as follows:

- Revision and amendment of the laws to make them consistent with the Constitution, international covenants, conventions and norms,
- Amendment of all discriminatory laws
- Criminalization of violence against women, traditions and customs harmful for women and girls, including forced marriages, child marriages and underage marriages,
- Training of all staff of judicial organs, national police and national army sectors on the implementation of laws, especially items of laws related to human rights of women and children,
- Ratification of laws for the provision of reparation for those women and girls who are illegally detained, especially victims of violence committed by the state,
- Clear definition of sexual assault (rape) as an action taking place outside marriage and consent,
- Expansion of activity program to increase women's participation in justice and judicial sections
- Strengthening and supporting the organs, providing legal aids for women and assisting the victims of violence,
- Establishment of legal aids sections all over the country,
- Establishment of family courts in the provinces
- Establishment of reparation mechanisms to protect women who are affected by violence,
- Launching of public campaign on minimum age of marriage (IRA, 2008, p.p. 46-49)

Similarly, the section of leadership and political participation in this plan related to the elimination of violence against women in private and public areas reads, “Activities in the areas of security and legal protection should be carried out with regard to the specific obstacles faced by female leaders and staff.... Consultative, protective and treatment services shall be provided for women in crisis or threatened by violence. Ratification and implementation of a policy to fight against sexual harassment will be a priority for the state. (State of the IRA, 2008, p. 58)

4.2.2 - Presidential Decree No. 45

This decree was issued on fifth of Saratan 1391 to all state organs emphasizing on certain duties and obliges them to carry out those duties. Article 32 of this decree duty binds the Ministry of Women Affairs to do the followings:

1. During three months, a large public awareness campaign on the reduction of violence against women should be launched through mass media, mosques, Takaia, and other sources.
2. Within six months, the structure and monitoring system of implementation of the NAPWA should be finalized and its first report should be submitted to the Council of Ministers. (Afghanistan, 1391)

The Ministry of Women Affairs also launched the public awareness campaign in Kabul and in 34 provinces of our country simultaneously in cooperation of media and civil society organizations

on 19 Sonbula 1391. (M. W. A., special page for implementation of Presidential Decree 45, 1391)

Regarding paragraph second of this decree, the MWA writes: The draft for “ monitoring and evaluation system for Monitoring and Evaluation Unit of the MWA and also the draft of “ monitoring guideline for monitoring on implementation of NAPWA” have been prepared and shared with Gender Units of the state offices and related institutions to seek their views. Similarly, Inter-ministerial Monitoring Committee of the MWA has been established with participation of Planning and Policy Directors of the ministries and an implementation plan of the Presidential Decree No 45 have been prepared by the Monitoring and Evaluation Unit of the MWA. (MoWA, special page for implementation of Presidential Decree No. 45, 1391)

4.2.3 - International Agreements and Commitments

Since 2001 until now, numerous conferences have been held about Afghanistan in each of which emphasize has been made on women’s rights, especially on women’s participation and elimination of violence against them and obliges Afghanistan to abide by those commitments. The most important of such commitments are mentioned in the following documents:

First Bonn Agreement:

Bonn Conference was held in Bonn city of Germany in December 2001 and laid the corner stone of the new Afghanistan. The interim government of Afghanistan was established in this conference. Although in the text of Bonn Agreement the issue of women rights and the challenges in front of them have not been discussed in detail, emphasize was made on gender proportion and participation of women in administration of the country and drafting of the new Constitution . It is clear that this emphasis includes elimination of all kinds of violence against women.

4.2.3.1- Afghanistan Compact:

Afghanistan compact was signed by Afghanistan and the International Community in London Conference held on January 31 to February 1, 2006. In addition to continuation of cooperation between Afghanistan and the International Community in the areas of security, good governance, the rule of law, human rights, social and economic progression, this agreement clarifies the state commitments in the areas of implementing legal guarantees, non-discrimination, and equality of rights and responsibilities between men and women, establishment of gender equality, and protection of vulnerable women.

4.2.3.2 - London Conference Resolution

London Conference was held on 28 January 2010. In addition to reiterating emphasis on previous commitments made between the International Community and Afghanistan, emphasizes on observation of human rights, and gender equality, this resolution insisted on implementation

of the national action plan for women of Afghanistan and the law on elimination of violence against women. In the content of this resolution it is mentioned that: “The International Community welcomes the commitments made by the state of Afghanistan on implementation of the National Work Plan for Women of Afghanistan and implementation of the law on elimination of violence against women. The participants of this conference also welcomed commitments made by the government of Afghanistan for protection and consolidation of women’s participation in state institutions including elected and selected posts in civil services.” (Resolution of London Conference, 2010, p. par 26)

§.2.3.2 - Declaration of Kabul International Conference

Kabul International Conference was held in the month of Asad 1389 in Kabul. During this conference, the international community and the state of Afghanistan renewed their previous commitments. This conference emphasized on women’s rights, implementation of the National action Plan for Women, carrying out strategies for implementation of the law on elimination of all forms of violence against women and protection of girls and boys. This resolution reads, “The participants emphasized on centrality of women’s rights including political, economic and legal equality for future of Afghanistan as it is mentioned and clarified in the Constitution.

The participants appreciated mainstreaming of gender issues in all priority programs and proclaimed their commitment to provide assistance for all the ministries and provincial sub institutions to carry out their responsibilities under the National Action Plan for Women in Afghanistan and ensure that all trainings and civil education go on towards eye-catching implementation of this program. In addition, the government of Afghanistan recognizes and prioritizes the scheduled objectives of the National Work Plan for Women of Afghanistan in the center of each cluster during the next six months and takes in hand a strategy for implementation of the law on Elimination of All Forms of Violence against Women including rendering of services to the victims. The participants also made commitment on observation and prioritizing the rights of children and investment in the areas of health care, education and protection of girls and boys.

“Kabul International Conference declaration, 1389)

In addition, the government of Afghanistan made commitments in many other international conferences to fight against violence against women and protection of women rights. Some of these conferences are:

London Conference Agreement on Afghanistan (11-12 Dalwa 1384 coinciding 31 Jan.-1 Feb, 2006, London England)

- Second Bonn Conference Resolution (14 Qaws 1390, coinciding 5 Dec. 2011, Bonn, Germany)
- Chicago Summit Agreement (1 Jawza 1391, coinciding 21 May 2012, Chicago- the



Public hearing meeting in

USA)

- Tokyo Conference Agreement (18 Saratan 1391, coinciding July 8, 2012, Tokyo- Japan)
- Long Term Strategic Cooperation Agreement between the IRA and the USA (Sonbula 1391, coinciding Aug. 2012, Kabul- Afghanistan)

4.3- In Administrative Structures and Supportive Institutions Area

Government and non-governmental structures and institutions work for promotion of women rights, gender equality and elimination of all forms of violence against women. They usually came into being after 2001 following collapse of the Taliban administration. Therefore, changes, innovations, activities and structures in the area of women's rights, especially prevention of discrimination and elimination of violence against women emerged during this period are not comparable to any era in the history of Afghanistan. The practical effects of these structures and institutions on legal, social and political systems of women are remarkable and eye-catching.

The important and key point in this area is continuation and institutionalization of these structures and organizations in sphere of collective life of women that has turned to a main concern for women and human rights activists recently. The qualitative and quantitative outcomes in the area of women's life during the recent years will be studied in detail in other parts of this report, but here we only mention these structures, institutions and organizations established inside the ministries in the form of commissions and independent structures.

It is worth mentioning that a large number of these institutions have been established according to official action plans and regulations. It clearly shows formation and establishment of citizen centered legal system from which women and other socially and politically vulnerable people would benefit more than others would. Similarly, nongovernmental organizations, especially civil organizations and women rights institutions that are acting outside the state circle also helped promotion of human rights and structural protection of women rights. In this section the two areas, (1) state and (2) civilian spheres of human rights are discussed, both of which have similar perspectives for women.

4.31 - State Structures and Administrations

4.3.1.1- Triple Courts and General Attorney Department

The triple courts are in reality the executive body of justice and judicial system and one of the independent state organs that deals with laws and is responsible for maintenance of justice. Therefore, it seems that correct implementation and follows up of the laws related to women; especially the law on Elimination of Violence against Women is one of the main duties of justice system in Afghanistan. In addition, the triple courts in our country and General Attorney Department is counted as another part of justice and judicial system.

In the formation of the said institution, there is a separate attorney directorate for fighting violence against women dealing with investigation and prosecution of the crimes against women. In addition, this institution monitors the judicial proceedings of the cases of violence against women and accelerates the process. While providing necessary information to victims of violence, this institution has close relations with defense lawyers, institutions and organizations defending women rights. Among the abovementioned duties, this department especially deals with the cases related to running away from home and adultery, (Ministry of Interior Affairs, p. 16, 1390). This institution plans to expand its activities in all provinces of Afghanistan.

4.3.1.2 - The Ministry of Women Affairs

One of the measures taken by the interim government of Afghanistan, and implemented after Bonn Accord, was the establishment of Women Affairs Ministry. This Ministry mainly designs and makes policies and programs to ensure promotion of women's rights and their participation in all areas. Therefore, the Ministry of Women Affairs is counted as a policy maker in the areas of women rights and their participation. In addition, this Ministry has established its units in other ministries. Their specific duty is making programs for presence and participation and share of women in the state offices and in general areas.

While designing big national policies and programs for women, the Ministry of Women Affairs is practically active in the areas to fight against violence, and to take preventive measures. Provincial Directorates of this Ministry record and keep all cases of violence against women and their causes on a monthly base that can be used in researches and finding the root causes. In addition to above mentioned activities, the Ministry of Women Affairs carries out many programs on protection, advocacy and awareness in the areas of violence against women disseminated through media.

4.3.1.3- Gender and Human Rights Directorate

Out of 25 ministries, 16 ministries have established their gender units so far (Ministry of Foreign Affairs, Afghanistan, p. 15, 1390). These units are established according to the National Work Plan for Women, and carry out activities such as equal gender opportunities, paving the ground for fair presence of women in the state offices, equal treatment in employment of female and male employees, prepare the ground for political, administrative and social participation of women.

Although establishment of gender units in 16 ministries had no remarkable achievement, still, it can be considered a good achievement from structural viewpoint. Establishment of such a cornerstone for vast changes aimed at gender equality and wide participation of women in general areas and realization of fundamental rights of women and protection of them in collective life can be counted an effective work.

4.3.1.4 -The Afghanistan Independent Human Rights Commission

The AIRHC is mandated to promote, protect and monitor human rights of the citizens in Afghanistan. The AIHRC as an independent institution established based on article 58 of the Constitution. A key unit of the Commission is Women Rights Protection Unit. Since its establishment until now, this unit has carried out remarkable activities in the area of women rights protection. In the areas of policy making and planning at high levels, this unit has had active participation in cooperation with other responsible institutions.

This unit consistently follows up cases of violence against women, and refers them to justice and judicial organs with the consent of complainants and monitors the process of judicial proceedings of the cases. In addition, the AIHRC has carried out researches and training activities on elimination of violence against women. Here we can point out annual research reports on causes and situation of violence against women, causes of abduction and trafficking in women and children in Afghanistan, causes of women addiction, causes of suicide and self-immolation in the southwest zone of Afghanistan, situation of young women in the family, worker women and numerous training workshops as clear examples. The mentioned reports in addition to the scrutiny of the matters that constitute its main concept, directly or indirectly dealt with the areas, main factors and the situation of violence against women in Afghanistan. Since

the Commission has been introduced fully at the beginning of this report, there is no need for its repetition.

4.3.1.5 - The High Commission for Elimination of Violence against Women:

The High Commission for Elimination of Violence against Women is another official institution that was established according to a presidential decree in 1384. Identification, classification and recognition of various forms of violence against women as well as finding solution for such problems in cooperation with other official organs are the main duties of this institution. As mentioned in primary state report to the Committee of Elimination of Discrimination against Women, the said committee has had outstanding achievements up until now. Preparation of a five-year strategy, creation of a systematic monitoring strategy, organization of seminars on scrutiny of violence, prevention of forced and child marriages which resulted in ratification of a protocol on prevention of forced and child marriages, establishment of sub-offices in provinces are the most important achievements of this commission.

This commission has been established based on the law on Elimination of Violence against Women and it is chaired by the Ministry of Women's Affairs. The member institutions and ministries are The Ministry of Interior Affairs, General Attorney Office, Ministry of Justice, Ministry of Education, Ministry of Culture and Information, Ministry of Haj and Religious Trusts, Ministry of Labor and Social Affairs, the, the chair of Defense Lawyers Association and Kabul Family Special Court. (ibid, p. 16- 1390)

4.3.1.6- The Commission Dealing with the Cases of Sexual Abuse of Children and Women:

In addition to the above mentioned institutions, another commission under the name of

“The Commission on Dealing with Cases of Sexual Abuse of Children and Women” was formed based on a Presidential Decree. This Commission carries out its activities under leadership of the First Deputy President and membership of some ministries and independent Commissions. In a preliminary state report to the Commission on Elimination of Discrimination against Women, it was mentioned that after widespread media coverage about sexual assaults on women, this commission was formed.

In the month of April 2008, the media reported about 18 cases of sexual assaults and it urged the President to issue a decree on establishment of such an institution to follow up this widespread social problem. This institution is responsible for consultation, monitoring on daily activities of responsible organs dealing with cases of sexual assaults, and studying of shortcomings and deviations in these organs. (ibid, 1390)

4.3.1.7 - High Commission for Anti- Abduction and Trafficking in Person

The High Commission for Anti- Abduction and Trafficking in Person is an institution which is consisted of the Ministries of Interior, Foreign Affairs, Women Affairs, Public Health, Repatriation, Haj and Awqaf, Information and Culture, Labor and Social Affairs, Martyrs and Disability, Higher Education and other institutions such as the, General Attorney Dept. Defense Lawyers' Association and National Security Department (Daily Afghanistan, 1390). The High

Commission for Anti- Abduction and Trafficking in Person is an institution that coordinates and manages the efforts of member organizations towards prevention and fight against abduction and trafficking in persons and its subsequent outcomes. While designing policies and effective programs concerning prevention, fight against abduction, and trafficking in persons, this institution is mandated to coordinate activities and efforts made by the responsible organs in the area of elimination, fight and prevention of abduction and trafficking in person and its outcomes.

Statistics show that most of the victims of abduction and trafficking in persons are women who are trafficked for the purpose of sexual exploitation. According to the UN reports on universal trafficking in persons, 65 to 75 percent of the victims are women. Out of the victims at the international borders, 80% are women and girls. Similarly, out of 800000 victims who are trafficked at the borders of countries annually, most of them are women and girls who are trafficked for the purpose of commercial sex. A UN research in 51 countries of the world shows that 79 percent of exploitations identified by state organs are considered sexual exploitation. (The, 1390. p.26-27)

Although there is no precise statistic about trafficking in women in Afghanistan, undoubtedly a big portion of the victims is women. In spite of severe sensitivities to hide such cases in Afghanistan, a research carried out by the AIHRC on trafficking in women and children in Afghanistan shows that 61.5 percent of victims are women and girls.⁵ Sexual assault is one of the outcomes of trafficking in women and girls. A research by the AIHRC shows that 29 percent of women and girls who are victims of trafficking in persons suffered from sexual assault then forced to get married. (ibid, 1390, p. 60-63)

5



In traditional society of Afghanistan female victims of abduction and trafficking in person not only experience sexual assaults and slavery but they face honor killing and other family violence when they are rescued from the claw of perpetrators. Based on a research carried out by the AIHRC on trafficking in women and children in Afghanistan, 13 percent of the victims have been killed by their family members or close relatives after returning home. (ibid, 1390. p. 112)

Therefore, efforts and programs carried out by the Anti-Abduction and Trafficking in Persons High Commission to eliminate and prevent honor killings and sexual assaults emanated from abduction and trafficking in persons are considered effective and useful.

4.3.1.8- The Afghanistan Independent Local Organs Office

At the first sight it seems that the Office of Independent Local Organs only deals with appointment of provincial and district governors and designing of effective recruitment policies, but this institution plays a key and important role in the recruitment of women in governmental organs, making a ground for general participation of women, provision of a conducive and healthy environment free from violence against women in the government offices and preparation of action guidelines and procedures in this area.

This office with the financial assistance of the UNDP on the last days of the 1391, prepared a guideline in which the methods and effective means for prevention of sexual harassment and discriminatory treatment against women are written. In addition to prohibition of sexual harassment and prediction of punishment for the perpetrators of sexual assault and

discriminatory treatments, this is the first time that in this guideline the concept of gender discrimination and sexual assault is defined and specified.

This guideline not only deals with the form of awareness and information on the treatments (the treatments that are considered as harassment and gender discrimination), it will become a part of the staff agreement and all the staffs are undertaking to avoid doing actions which are deemed as harassment and gender discrimination. (BBC, 1391).

4.3.1.9 – Unit of Dealing with Family Cases at the Police Station

Among the abovementioned institutions, there is a Unit Dealing with Family Cases at Police Stations. They are part of official structure at the Ministry of Interior, which are active in 33 security police stations and organized in the framework of Anti- Crimes Department. The duties of this unit have been prepared in 13 articles by the Gender and Human Rights Department in the light of valid laws in the country, especially article 13 of the Law on Elimination of Violence against Women. After ratification by the Ministry of Interior Affairs, this guideline was disseminated to all of these units. These units register all cases of domestic violence, sexual assaults, forced and child marriages and then address them. (ibid, 1390)

4.3.2- Civil, Human Rights Organizations and Women Rights Protection Institutions

Civil institutions and women rights protection organs have carried out remarkable activities during the recent years in protection of women's rights and advocacy for victims of violence against women. From legal points of view, these institutions carried out their activities in various frameworks and have obtained their work permission from related ministries and institutions such as Ministry of Justice (Social organizations), Ministry of Economic (profitable or unprofitable NGOs), Ministry of Information and Culture and Afghanistan Investment Support Agency (AISA). Civil and human rights of women institutions as the state official structures have carried out tremendous efforts for insurance of human rights of women and elimination of violence against women. These organizations numbering more than hundreds usually are active in the areas of human rights, civil training, legal activities, health care, commerce, industry and other similar activities.

According to a list from the website of MoWA, since the establishment of this ministry until now more than 248 organizations and institutions related to women have been registered and obtained their license. The list of 248 organizations related to women is registered only by the Ministry of Women Affairs while the ministry of Justice and Economy have registered many civil institutions and human rights organizations and handed over license to them. Undoubtedly, a large number of these organizations are working in the areas of women situation and realization of their rights and freedoms.

Among the key activities carried out by the civil and human rights organizations in the area of prevention and fighting violence against women are scrutiny of the cases of violence, dissemination through media, advocacy, consultation, legal training, collecting of signature for launching struggle against violence, and holding of scientific training workshops, research and

investigation, creation of sensitivity against violence, making and amendment of the laws, launching protests and civil demonstrations, putting pressure on the related institutions to seriously follow up the cases of violence and designing of effective working policy for elimination of violence against women.

A large number of civil institutions have been active in this area during the recent years and carried out countless activities in relation to human rights of women, advocacy for victims of violence, awareness, following up the cases related to women and implementation of justice for women. By mentioning a small part of activities carried out by women's institution, as mentioned above, will not mean overlooking of other organizations active in ensuring of human rights and advocacy for female victims and elimination of violence all over Afghanistan. Their activities are praiseworthy.

Detailed explanation of activities carried out by each organization in the area of women's rights is a difficult task. Therefore, an overall picture of their effective activities in the areas of women's rights, ensuring of human rights and elimination of violence was presented. It is necessary to highlight the need and importance of their activities. The most important thing in this area is cooperation and coordination among state the institutions and administrations with civil organizations and human rights institutions in the area of women's rights. In fact, both institutions are established to achieve the same goal.

Chapter 5

Statistical Findings

One of the preliminary sources of data for this research were the forms that had been prepared to be used in interviewing the victims of rape and close relatives of the victims of honor killing. With the help of these questionnaires target groups were interviewed in most of the districts and provinces of the country and the required data on rape and honor killing were collected.

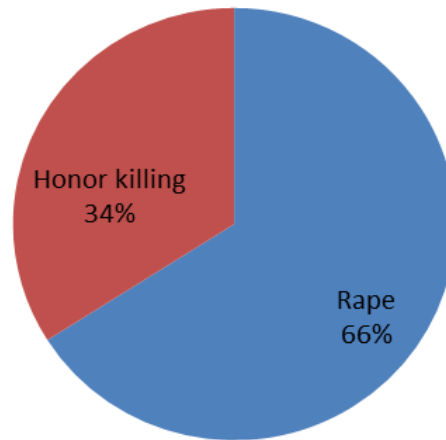
These data belong to 1390 and 1391. Due to time limitation, these questionnaires have covered a limited number of rape and honor killing cases; they have not at all covered all the cases rape and honor killing. On the other hand, since cases of rape and honor killing are extremely sensitive in term of culture and they are linked with families' honor and dignity, attempts have been made to conceal such cases and forget about them. Thus, the victims or their relatives do not want to or cannot register their cases or follow them up. This is how cases pertaining to rape and honor killing remain hidden. In case such incidents happen inside family relationship, owing to the family traditional expediency, sensitivity, and outcome that it would bring to the families, it is tried to traditionally solve the cases or even conceal them and forget about them forever.

5.1 – The widespreadness of rape and honor killing (based on the National Inquiry special research forms (NISRF))

From the beginning of 1390 to the end of Sawr 1392, 406 cases of honor killing and rape were registered by the AIHRC's office – 243 cases belonged to honor killing and the other 163 cases belonged to rape. Owing to sensitivities prevalent in these types of issues in the society and the limitations exist in this regard, it is obvious that these cases are not including all of such incidents that have occurred throughout the two years in the country; the actual statistics are definitely much more than this. Nonetheless, the abovementioned statistics indicate a shocking situation in terms of widely occurrence of such violations.

However, the NISRF do not cover all such instances. Out of the total cases, 127 of them have been documented in the National Inquiry Programs (NRP), which serves as the base for the statistical findings of this report. 66% (84 instances) of them are connected to rape and 34% (43 instances) refer to honor killing.

Incidences of occurrence of cases of honor killing and rape based on NI forms



Case type	Percent	Incidence of occurrence
Rape	66.10%	84
Honor killing	33.90%	43
total	100%	127

5.2 – Patterns of honor killing in Afghanistan

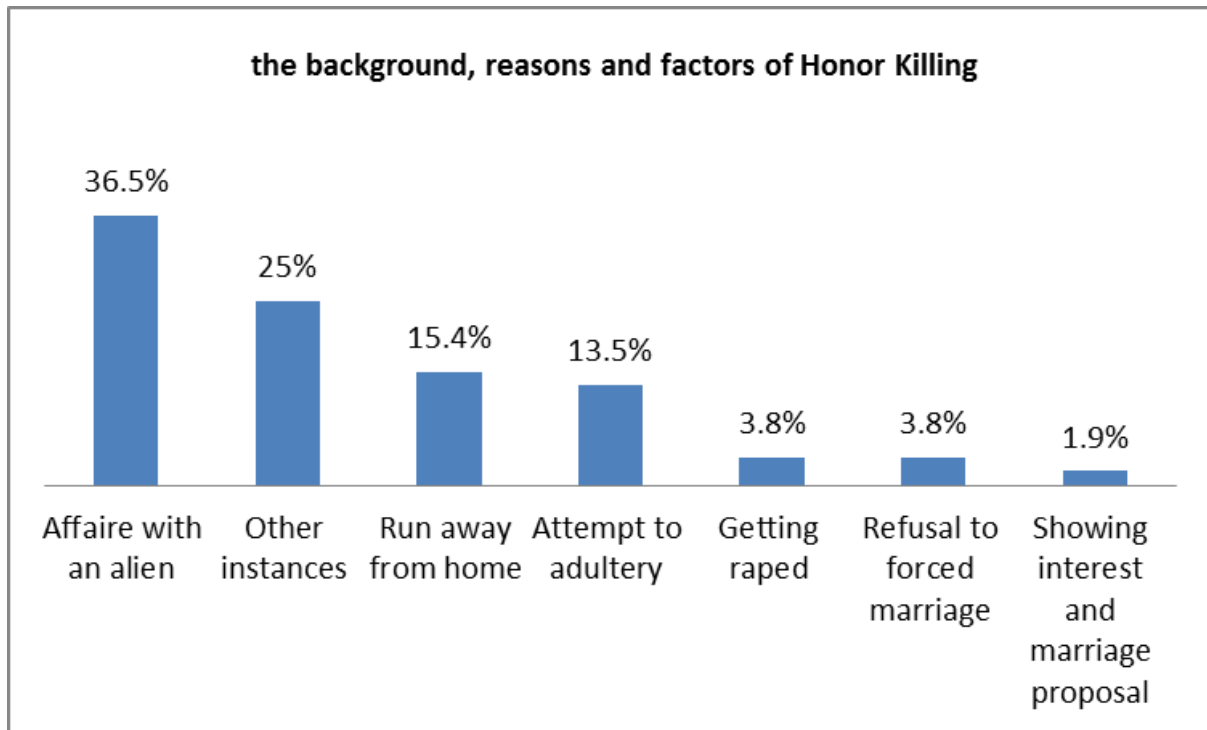
Honor killing is linked with the issue of extramarital affair. Thus, the most important factor that plays the basic roles in the occurrence of honor killing is a woman’s relationship with an alien man for the purpose of sexual intimacy out of marriage. Therefore, the most common form of honor killing, with reference to its background factors, is a murder that happens due to extramarital affair.

The data on honor killing cases in the National Inquiry show that 36.5% of these cases have happened because of extramarital affair. The reason for 13.5% of the incidents was “attempts to commit adultery”, which is the relationship with a stranger man.

At times, however, a woman or a girl who is raped (by force and without their consent) also becomes subject of honor killing. The investigations show that, in many instances, the Afghanistan justice and judicial organs consider rape victims as culprits and sentence them to some form of punishment. This is very common and rampant in most of the provinces of the country (UNAMA, Human Rights Unit, 2009, p-21)

Based on the traditional society norms and standards in reference to sexual issues, the women or girls who are raped are considered to bring shame and disgrace to the family or tribe; her presence in the society would continue to cause shame and disgrace. Therefore, killing these women is seen as a means to revive the family’s lost grace and dignity. About 3.8% of the honor killing cases in the National Inquiry have happened because the victim is raped.

Sometimes, even issues that are not necessarily connected to “illegal sexual affair” or “rape” could lead to honor killing merely because of a personal misunderstanding – without any proof. For example, run-away women may also be killed in the name of family honor. Running away from home is not a crime according to the Afghanistan Penal Code, but it confronts with the rigid reactions from the traditional society and its men; this may lead to committing an honor killing. The National Inquiry statistics show that 15.4% of honor killing cases have been documented, all of which are connected with women and girls who have fled from homes. In addition, refusing to consent to forced marriage or wishing to marry someone on their own will– that is part of women’s right – could also lead to honor killing. 3.8% of these cases are connected to lack of consent to forced marriage and 1.9% is connected to those wishing to marry someone of their choice. The graph below shows the trend.



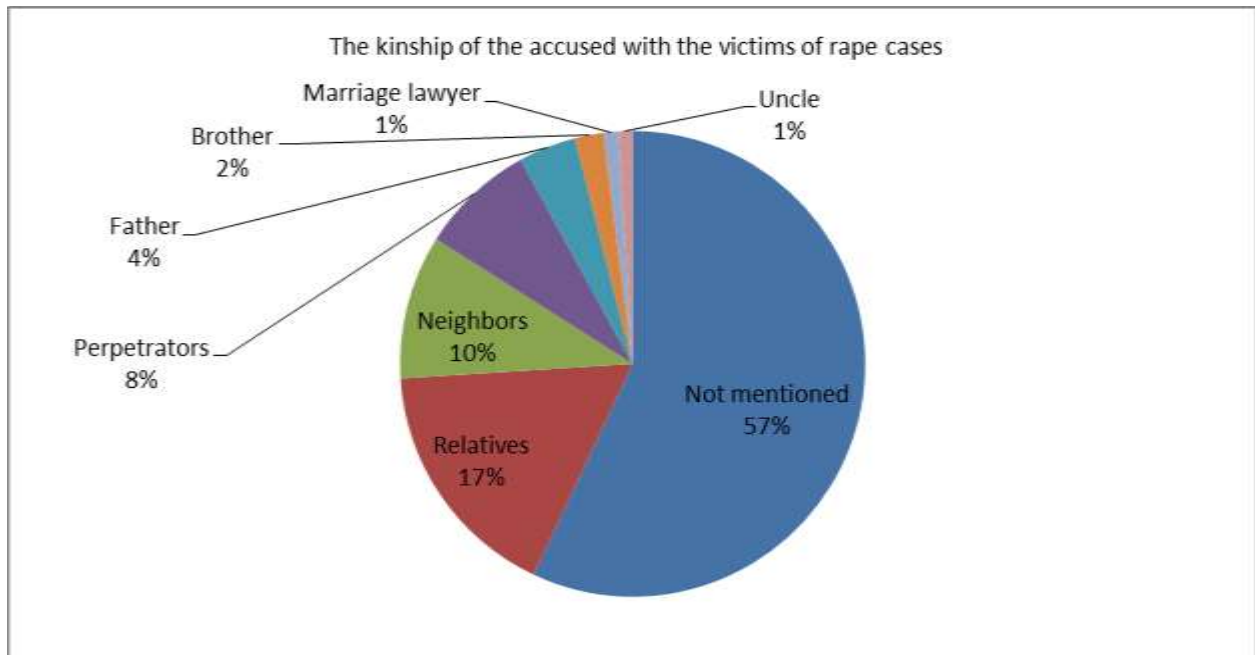
The traditions and the traditional society norms are very rigid and rough against women. However, they are more gentle and soft to men due to the view in which the men are considered higher than women and more dominant over women’s affairs. For example, almost none of the above mentioned cases would lead to men’s death. The said traditions and norms regard men’s wish to marry or refuse to marry as natural. Even if a man is killed in connection with illegal affair or rape, one can be sure that the murder has been committed by the woman’s relatives for revenge and restoration of honor. The findings show severe limitations for women and their high vulnerability in the Afghanistan traditional culture.

5.3 – The relationship of the accused with the victims of rape and honor killing

5.3.1 – Rape

The victims’ relationship or kinship has not been responded in a specific way by most of those who have filled up out National Inquiry forms. Thus, the type of relationship between the accused and the victims has not been mentioned in 57% of the cases. Likewise, in 8% of the cases, the word “perpetrators” has been mentioned. It is more likely that these incidents, which constitute 65% of the cases, are perpetrated by those who have not had any special relationship with the victim. However, the issue also signifies the fact that the tendency to deny such cases, wholly or partially, is rampant in the society, which makes research a difficult task.

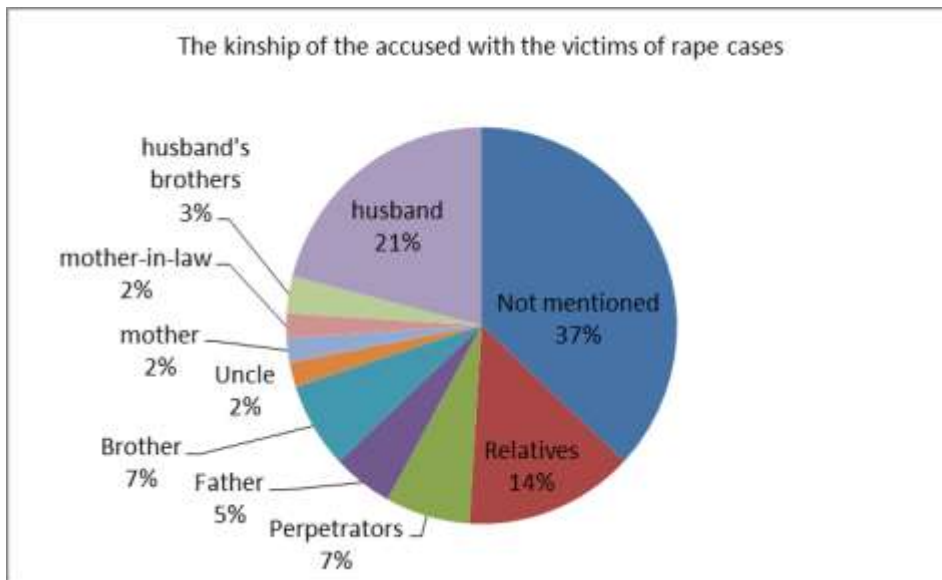
The shocking point is that the rest of the 35% of cases have been perpetrated by those who, in one way or the other, have had relation with the victims. For example, it is said that 17% of rape have been perpetrated by the relatives, 10% have been perpetrated by the neighbors, 4% by fathers, 2% by brothers and 1% by uncles and another 1% by the marriage contract lawyer. The graph below shows the trend.



5.3.2 – Honor killing

The respondents in the National Inquiry forms have not been specific regarding cases of honor killing. The relationship to the victims has not been notified in 37% of the cases; 7% has been mentioned as “perpetrators”. As honor killing is committed by close relatives and family members, it creates huge sensitivities; the case was to be forgotten within the family boundaries – publication and spread of the incident is prevented.

Out of other 56% of the honor killing cases, 21% has been perpetrated by husbands, 14 % has been committed by the mentioned relatives and 7% has been committed by brothers, 5% has been committed by fathers, 3% has been committed by husbands’ brothers and 2% has been committed by husbands’ mothers, uncles and mothers. The graph below shows the detail.

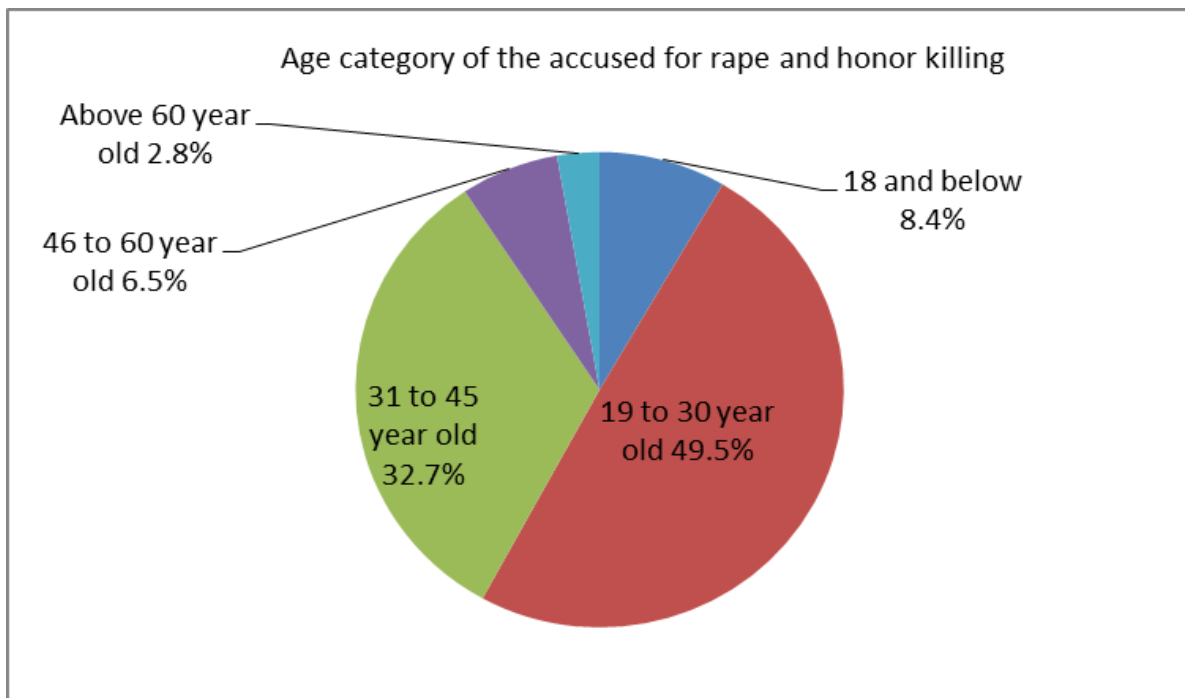


Being intertwined with sexual matters and extramarital affairs, honor killing causes sensitivities mostly in victims’ husbands and their families. The unequal and dominating relationship that the husbands have with their wives and the low status that the wives have in their husbands’ homes also make wives more vulnerable before the husbands and their families. That is why the victims of honor killing are usually married women. In addition, in most cases, the killer is a husband or his relatives. In respect to unmarried girls, honor killing is usually committed by their family members.

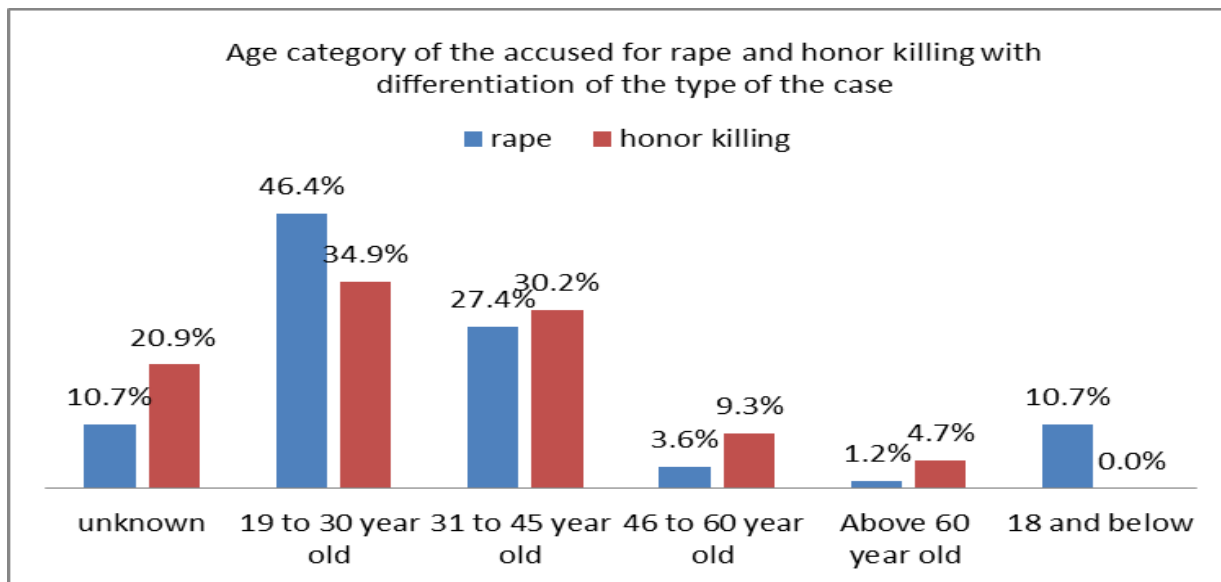
The statistics show that majority of the honor killing are committed inside family boundaries and by the relatives. This means that the traditional society and tribal system in Afghanistan consider honor killing as a means to make up for the lost honor and respect.

5.4 – Age category of the accused for rape and honor killing

There may not be a direct link between age and committing crimes such as rape and honor killing. However, the age categories of the culprits show that the youth are more prone to such a dilemma. The statistics obtained from the National Inquiry forms show that most of such offenses are committed by those aged 19 – 30, which comprises half of all the cases. The category of people aged 31 to 45 has committed 38% of honor killing and rape. The age categorization shows that only 6.5% such offences are committed by those aged 46 to 60. Those aging 18 and below are responsible for 8.4% of the cases. The graph below shows the detail. The statistics above show that the rate of committing the crimes in question is very high among the youth and the middle-aged – 82% of the total cases.



When the honor killing and the rape perpetrators are separated, more important information come to surface. The ones aged 18 or below have not had any role in honor killing; 46.4% of rape and 34.9% of honor killing cases have been perpetrated by those aged 19 to 30. The class of 31 to 45 years old has also been responsible for 30.2% of honor killing and 27.4% of rape cases. The graph has a downward trend when showing old age period (46 years old and above). The graph below highlights all the mentioned classifications.



The statistics above, however, show that the age of about 10% of those that have committed rape and 21% of those who have committed rape – their ages are not known. This means that the society does not pay much attention towards these cases and their detail. The difference in the cases of honor killing and rape is significant of the desire to neglect the detail. May be, the problem is because of the sensitivity that is in the illegitimate affair and the family’s honor as well as the fear of prosecution.

When the young and the meddle-aged accused of honor killing and rape are compared, a contradiction is seen in their behaviors; on one hand, they are responsible for most rape cases and on the other, they are most sensitive towards sexual issues and their spouses’ relationships – observed by the statistics on honor killing.

5.5 – Professions and socio-economic status of the accused and the victims of rape and honor killing

5.5.1 – Profession

There is no direct link between professions and rape or honor killing. However, this could signify suitable grounds for occurrence of such crimes and the ground for victims’ vulnerabilities. The ones accused of such offenses are usually those engaged in low income jobs. 17.6% of them are simple laborers; 14.5% are shopkeepers; 7.6% are farmers; 4.7% are drivers; 11% of the accused are jobless people.

However, 14.6% of the total cases have been perpetrated by the police – an organ that is responsible for public security and for protection of the vulnerable in the society. Such an issue could jeopardize the trust the people have for the National Police.

There is no information about the professions of 21% of the accused, because of the sensitivity that the issue has – people generally try to conceal some aspects of the matter.

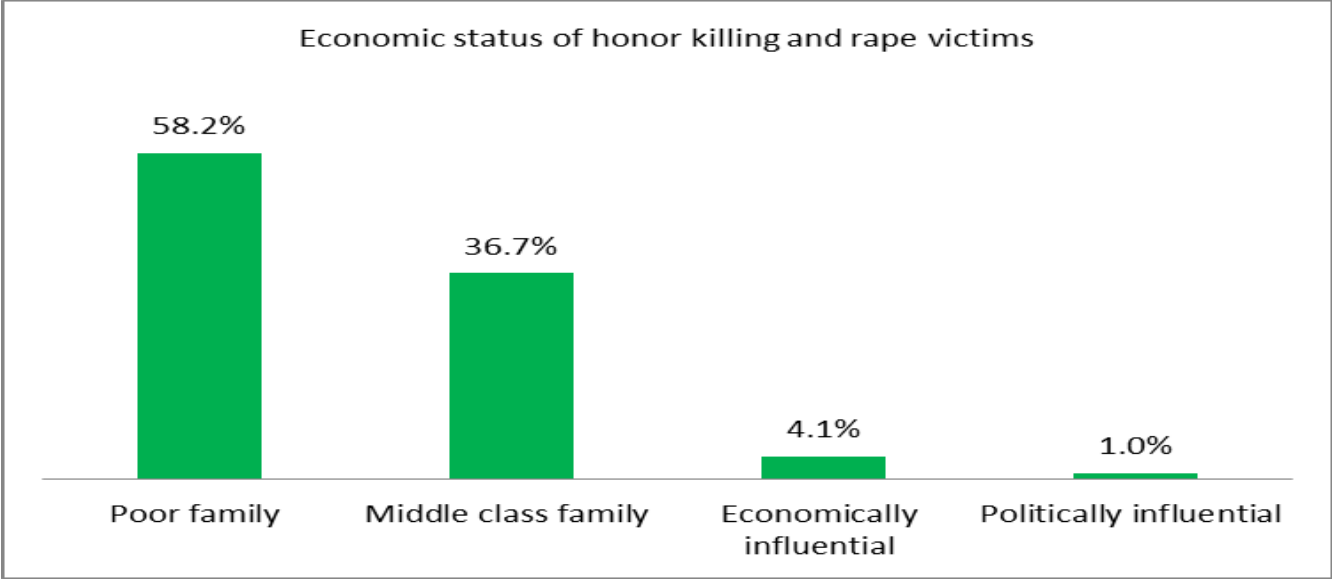
Nevertheless, the differentiation of the accused based on their cases, shows that there is a tendency to conceal honor killing more than rape. This is perhaps because honor killing, as an enviable act in the traditional culture - alongside rape and illegitimate affair, is considered a “shame” according to primitive customs and values; it is tried to be forgotten. This is aside from the fact that the perpetrators are prosecuted legally.

The statistics on the professions of the perpetrators show that the individuals who are busy in the low income and hard professions and whose economic situations are awful are more prone to committing rape and honor killing. Of course, one cannot find a direct link between type of professions and the said offences. However, the economic and financial shortcomings and severe condition of professions could provide the ground for such offenses or could further individuals’ vulnerabilities.

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5.5.2 – The socio-economic status of the accused and the victims of rape and honor killing

The data in the National Inquiry forms show that the rape and honor killing cases are more rampant among poor and middle-class families. The statistics show that the individuals who live in poor families are more prone to such offenses. As shown by the cases collected by the National Inquiry team, 58.2% of victims are those that live in poor families and 38% of them belong to middle-class families. This statistics indicates the severe vulnerability of women in the families facing poverty. However, the ones living in well-to do families are rarely prone to rape or honor killing.



One may not obviously claim a direct connection between poverty and honor killing and rape. Nonetheless, these statistics show that the individuals in the poor families are very vulnerable. The women and girls belonging to poor families are extremely exposed to danger being subject to most of rape and honor killing incidents. Human trafficking is one of the offenses that are done for sexual exploitation leading to rape and even killing of women and girls. The investigations show that the ones who are more exposed to being trafficked are the ones with severe economic and financial problems (The, 1390, p-67 and 68). In addition, as mentioned earlier, those accused of the offences in question have low income and insecure jobs signifying the fact that they are also suffering from poverty and vulnerable economics.

5.6 – Case follow up

Based on the data from the National Inquiry exclusive forms, about 91% of the registered rape and honor killing cases have been referred to the justice, judicial and other government organs. The judicial processes have satisfied 64.5% of the case holders who stated the proceedings in accordance with the law. However, the other 35.5% of the case holders have not been satisfied with the proceedings and processes. Based on the data in the forms, about 67% of the perpetrators have been arrested, but 32.6% of the perpetrators have not been arrested. The data also show that 60.5% of the perpetrators have been prosecuted and punished, but the other 39.5% have not. These statistics include all the cases; thus, in 7%, the accused have been arrested but not prosecuted.

It is mentioned in the AIHRC’s report on human rights situation in Afghanistan -1390, that 57% of the cases have effectively been attended to, but not the other 43%. (Group of writers, 1391, p-33)

Case follow up		
Questions	No	Yes
Did you refer to justice and judiciary organs or other state organs?	9.2%	90.8%
Have their actions been successful and in accordance with the law?	35.5%	64.5%
Are the honor killing and rape perpetrators arrested?	32.6%	67.4%
Are the honor killing and rape perpetrators sent to court and punished?	39.5%	60.5%

Chapter 6

The factors and grounds for violence against women with on a focus on rape and honor killing

6.1 – Legal-political factors

In this part of the report, the factors studied are the ones that form the roots of the problems in the standards of law and in the practical structures and treatment of the government organs and law enforcing agencies that pave the grounds for occurrence and continuance of crimes such as rape and honor killing. Since the rule of law is an important condition for observing justice and human rights, and since the weakness in the rule of law paves the grounds for occurrence of crimes and human rights violation. The legal- political factors could also be termed important and fundamental.

Therefore, the AIHRC has utilized various methods, while carrying out the National Inquiry, in order to identify the legal-political factors that serve as grounds for occurrence and countenance of the crimes in question. Through public hearing sessions, Focus Group meetings and by interviewing the victims and eyewitnesses, the AIHRC has tried to identify the aforementioned factors. It has offered, in the current report, specific recommendations in order to solve the relevant problems.

The AIHRC's findings in the National Inquiry show that the following are the most important legal-political factors for the said crimes. The participants in all of the Focus Group and public hearing meetings have also emphasized on the same, which each of the factors will be addressed separately:

6.1.1 – Lack of serious treatment with perpetrators and continuation of impunity culture

The AIHRC's findings in the National Inquiry show that the Law on Elimination of Violence against Women is in the belief that the lack of serious treatment with perpetrators and continuation of impunity culture are important factors for occurrence and continuation of crimes such as rape and honor killing.

The AIHRC's findings from monitoring detention centers and shelters for women and from the interviews with the victims and eyewitnesses in the National Inquiry also show that according to 32.6% of the interviewees, the perpetrators of the crimes in question have not been arrested by the relevant authorities. 39.5% of the interviewees have said that the perpetrators in question have not been prosecuted. The statistics agrees very well with the statements of those attended the Focus Group and public hearing meetings.

The perpetrators are not punished, as they should be; they can easily find ways on how to avoid punishment. According to the mentioned participants, there are even cases in which the perpetrators have not been prosecuted at all. While carrying out the National Inquiry program, numerous cases of such category have been identified and documented. For example, when a man from Uruzgan Province doubted his wife, he wanted to kill her. Feeling the danger, she fled to Tarinkot. After a while, the husband's brother found out that his sister-in-law was in Trinkot.

He, along with three of his sons, kills the woman mercilessly. This case had not been followed up by the relevant organs and the perpetrator had not been arrested by the time this report was being made.

Lack of punishment of perpetrators and strengthening of the culture of impunity, on the one hand, cause the cases to be neglected – people would intentionally avoid justice and judicial organs, and on the other hand, the exonerated culprits get more courage to re-commit such illegal acts even more audaciously. In addition, the potential criminal is encouraged to commit such illegal acts. Thus, it is concluded that impunity from punishment is an important factor in the occurrence and perpetuation of the said crimes.

6.1.2 - Problems that exist in the law regarding crime of honor killing

Despite the fact that acts of rape and honor killing have been criminalized in the laws of the country and important guarantees have been stipulated for protection of the victims, there are still problems in the country's Penal Code hindering the necessary follow-up of the cases of honor killing. According to the participants of the public hearing and Focus Group meetings, Article 398 of the Penal Code⁶ is full of serious legal problems that, if not amended, would pave the grounds for honor killing. Based on most of the discussions at the public hearing meetings, especially the one in Bamyan Province⁷ based on the international instrument on human rights and based on the Constitution principles, the following problems have been detected in the Penal Code:

The first problem in this Article is its incongruity with the principles of the Constitution and the international instruments on human rights. Article 1 of the Convention on the Elimination of all Forms of Discriminations against Women (CEDAW) states, "For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." Article 2 of the convention has urged the member countries to condemn discrimination against women in all its forms and to, without delay, peruse a policy of eliminating discrimination against women and, to embody the principle of the equality of men and women in their national constitutions and to legally protect the rights of women and to refrain from engaging in any act or practice of discrimination against women and to modify or abolish the existing laws and regulations which constitute discrimination against women (UN 1979).

⁶ The text of article 398 of the Penal Code: When a person, in defense of his honor, sees his spouse or other close relations in the act of committing adultery or in the same bed with others and kills or injures one or both evolved in the act, he shall be exempted from punishment on charges of murder, but shall be imprisoned for a period not exceeding two years – as a "Taziri Punishment.

⁷ On 14 Jaddi 1391, the representative of the Defense Attorneys' in Bamyan and a law specialist there analyzed the said Article from every prospective in the meeting; the out of the discussions have been highlighted inside the report.

With regard to the Afghanistan government commitments in terms of the provisions mentioned in the convention, Article 22 of the Afghan Constitution stipulates that: “Any kind of discrimination and bias against citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law.”

Given the definition of the terminology of “Discrimination against Women”, Article 398 of the Penal Code is in contrast with Article 1 of CEDAW and Article 22 of the Constitution in two ways: First, in terms of reduction in punishment and impunity from punishment for murder and injury. (As mentioned, honor killing is an indicator of murder and the punishment for that is life imprisonment or execution. However, in some special form of honor killing which has been stated in Article 398 of the Penal Code, the perpetrators are exempted; their sentence is reduced). Secondly, these reductions are based on gender – only men are entitled to them; if a woman witnesses her husband copulating with another person or sees his lying with other’s wives and kill them, she does not get entitled for the reduction mentioned in Article 398.

Article 3 of the International Human Rights Declaration and Article 6 of the Convention on Civil and Political Rights have clearly prohibited arbitrary deprivation of life. The only exception is “legal permission” Article 398, however, has opened the social and legal avenues for arbitrary killing. According to the Association of Defense Attorneys in Bamyan, the Article is misused a lot. When people commit honor killing, they get help from this Article, even though the Article refers to special circumstances.

The number of victims of such killings is not limited. Based on Article 398, if a man kills not only his spouse but also all his family members, he would be entitled to this term reduction. Those who could be called family members are too many in the extended families; thus, this Article provides the ground for killing a big number of individuals.

Article 398 is also contrary to the principle of “Appropriate proportion of crimes and punishment”. After proposing the principle of legality of crime and punishment in the current laws, the principle of appropriate proportion of crimes and punishment has also been proposed. This principle states there should be appropriate proportion between intensity of crimes and the hardship implemented on the perpetrators by the name of punishment. The establishment of such a proportion, in the first place at the legislative stage, is the duty of the legislator in assigning appropriate punishment for every crime. In the second stage or at the judgment level, it is the duty of the judge to exercise justice in its most suitable form. Needless to state that this is based on the authority given to judges whether to carry out mild or severe punishment or lay off carrying out the punishment. (Ghulami 1385) however, in this Article, the mentioned principle has not been observed; a person who has committed murder is sentenced to two years of imprisonment. This means that no appropriate proportion between crime and punishment has been considered in the law.

The second gap that has been identified and discussed during the National Inquiry program is the fact that the crime of honor killing has not been regarded as a form of violence against women in the Law on Elimination of Violence against Women. The participants of the Focus Group and public hearing meetings have reasoned that honor killing is a most severe type of violence against women. This, however, has not been criminalized in the Law on Elimination of Violence against Women.

6.1.3 – Corruption and misuse of power

Based on Article 3 of the Law of Campaigns against Bribery and Corruption, Administrative Corruption is an illegal act that is undertaken by civil servants and other government public service employees for the purpose of personal or factional gains. (Ministry of Justice, 1383) All the actions and treatments mentioned in Article 3 of this law are patterns of corruption and are, thus, criminal acts. Based on Article 75 (3) of the Constitution, it is the government basic duty to eliminate every kind of administrative corruption. (Afghanistan, 1382) That is why, in order to render its duty and commitments, the government established the High Office of Oversight and Anti-Corruption. According to Article 2 (1) the Anti-Corruption Law, the institution is the principle source to investigate and regulate affairs regarding the fight against corruption and bribery crimes. (Justice, 1383)

However, the new report by the UN Office on Drugs and Crimes shows that administrative corruption is one of the many problems faced by the Afghanistan government. It causes the weakness in the rule of law and tens of other legal, political and social predicaments. Based on this report, the Afghans have paid 3.9 milliard dollars as bribe during past year. The amount is twice the amount of Afghanistan domestic income and one fourth of the aids committed by the international community at Tokyo Conference. The report states that 50% of the country's population had to pay bribes to receive public services at government institutions. (UNDODC, 2013) Thus, one can conclude that administrative corruption is a very terrible fact in the Afghan society.

The findings of the National Inquiry program shows that administrative corruption is one of the most important factors for perpetration and increase in crimes, including rape and honor killing. Most of the participants at the Focus Group and public hearing meetings stated that administrative corruption, including bribery, misuse of power and nepotism are the important factors in the rise of crimes graph. In addition, administrative corruption causes postponement in case follow-ups and even exoneration of criminals. This way, with the weakness in the rule of law, the grounds are paved for occurrence and perpetuation of crimes, including honor killing and rape.

6.1.4 – Interference of the influential people in the proceedings of the cases and resolution of cases of violence against women by non-official organs

Based on the principles of the Constitution, no individual or group can, without considering the legal bases, address the criminal cases and interfere in the process of case follow-up. Addressing of the criminal cases and punishing the perpetrators are duty of powers exercised exclusively by the government and its related and authorized organs. Article 134 of the Constitution has clearly specified stages of proceedings of criminal cases and the authorized

institutions involved in various stages: “Discovery of crimes shall be the duty of police, and investigation and filing the case against the accused in the court shall be the responsibility of the Attorney’s Office, in accordance with the provisions of the law. (Afghanistan, 1382)

Addressing of the cases, especially the criminal ones and issuing of verdicts in accordance to Articles 121 and 122 of the Constitution, is an exclusive duty of the courts; addressing of any kinds of cases by non-official organs and outside the judiciary system is against the principles of the Constitution. Article 27 of the Constitution states: “No one shall be prosecuted, arrested, or detained without due process of law. No one shall be punished without the decision of a competent court taken in accordance with the provisions of the law, promulgated prior to commitment of the offense.” (Afghanistan, 1382)

Therefore, it is every human’s right to have access to competent, free and legal court. Addressing of the criminal cases, pursuing, and punishing individuals outside the domain of judicial system and interfering in the legal proceedings, especially in criminal cases, are against the freedom of justice and judicial organs, the Constitution, other enacted laws of the country and the international human rights instruments.

The findings from the National Inquiry program show that, the influential and the powerful people interfere in the criminal and legal cases continue in a rampant and extensive way, although it is an illegal act. They solve the conflict among people in many cases. Since these people are not aware of the laws, they follow the harmful social traditions to solve the people’s problems; they solve cases in illegal ways. By referring to social traditions and mechanisms, they let the culprits go free and let the victims to suffer again. The participants in all of the Focus Group and public hearing meetings in provinces covered have collectively stated that solving cases via non-official authorities and the interfering of the influential people in legal matters are important factors for committing and perpetuating crimes, including honor killing and rape. On 21st of Qaws, 1391, in the public hearing meeting, Head of Appeal Court in Faryab Province said, “The powerful individuals interfere at the detection and investigation stages and threaten the Attorneys; they give their telephone numbers to the anti-government elements so they could threaten these Attorneys.”

The findings show cases in which the local elderly and the influential individuals have helped the culprits to escape and enjoy impunity from punishment. The following examples clarify the issue even better:

A) On 24/9/1390, a woman, whose soldier husband was on duty elsewhere, was raped by a stranger at the summer hut. The culprit fled the area afterwards. The victim got to the village the following night and tells the elderly about the ordeal. Her relatives approach the police. The husband came home and launched a complaint with Sar-e Pol Police HQ. The Chief of police in Sar-e Pol ordered for the arrest of the perpetrator. However, the elderly jotted down to the HQ that the accused had fled the village. Later, the same elderly decided to solve the issue through

talks with the victim's family, but the family would not agree. This way, the accused was helped to run away. He is still at large, and the case is yet to be followed up.

B) On 19th or 20th of Sunbula, a girl and young man who had run away together were killed through the verdict issued by the tribal elderly in Kusan District of Herat Province. According to the local police head and the Kuhsan District caretaker, a betrothed girl, along with a man, left her father's house for Kabul on 31st of Saratan. Eventually with the meddling by the elderly from both sides, the run a way couple went to Zandgi Saba Village in Ghorian District on 18th of Sunbula. Later, they were transferred to Chah Zirak Village. Moreover, on 19th or 20th Sunbula 1391, they were shot to death by the girl's cousin on the decision made by some elderly (girl's uncle, girl's father-in-law and a tribal influential person). The bodies were transferred to Qudus Abad to be buried there secretly. The local police, however, came to know about the incident, the Police retrieved the boy's body from the mosque and the girl's body from the house of girl's uncle. They were then transferred to the post mortem of Herat Hawzawi Hospital. The perpetrators have not yet been arrested despite constant follow-up by the AIHRC.



6.1.5 – Concealing of crimes and lack of victims’ referral to justice and judicial organs due to fear and distrust in the state organs

Given the National Inquiry findings, **concealing of** crimes and lack of victims’ referral to justice and judicial organs are important factors in the increase of crimes of honor killing and rape. The participants at the Focus Group and public hearing meetings have stated the number of such crimes is far more than the one highlighted by the media and a low percentage of the same are referred to the judicial organs.

119 of the victims and their family members have been interviewed, mostly on cases of rape, by the AIHRC’s officials. 9.2% of them have stated that despite the violation taken place against them, they have not approached the justice and judicial organs. The reason they avoided the said organs are the prevalent corruption, distrust in government organs, fear from the threats by the opposite side and loosing of the family honor.

The distrust in government and the justice and judicial organs is an important factor urging people not to refer to state organs. This significant point has been highlighted by the participants at the Focus Group and public hearing meetings. On 21st of Qaws 1391, Faryab Provincial Governor stated to the participants in the public hearing meeting in that province, “The society’s distrust in ensuring justice is another factor for violence.”

The participants at the Focus Group and public hearing meetings have said that lack of referral of the victims and their families to justice and judicial organs is one of the factors for the increase in such crimes; the crimes committed remain hidden forever and the perpetrators get punishment impunity. This leads to encouragement of those who potentially can commit crime.

6.1.6 – lack of precise detection and investigation of crimes due to non-professionalism in the justice and judicial organs and lack of modern detection equipment, including forensics techniques, in the provinces

Lack of professionalism in justice and judicial organs, especially in the detection and investigation organ, non-availability of forensics departments, doctors or female staff in the majority of the provinces are other factors for the crimes that have been mentioned in the said meetings as factors for committing and perpetuating of the crimes in question. These issues cause the fact to remain concealed forever.

The National Inquiry findings show that forensics departments are available only in nine provinces namely Kabul, Kapisa, Herat, Helmand, Badakhshan, Faryab, Kunduz, Kandahar and Balkh. The other 25 provinces lack such facility. On the other hand, the said facility in some provinces like Kandahar is practically nonfunctional. It is because it has only one member staff and lack laboratory equipment, too. In Kunduz Province, the forensics department at the Directorate of Public Health is active, but it lacks doctors and specialized staffs. The facility also

lacks the basic facilities. The doctors highlight their views and assessments of the cases merely based on the appearance of the dead bodies. At times, the bodies are transferred to Kabul. Concerning first problem, the hospitals come up with totally non-professional and imprecise views; sometimes, young girls are made to undergo illegal medical tests. Thus, their views cannot help crime detection. As for the second issue, the transference of dead bodies to the neighboring provinces causes the signs and evidences of crimes to be severely damaged.

Therefore, lack of forensics departments in provinces causes the crimes to be concealed and kept hidden which in turn cause impunity from punishment. All these pave the grounds for the continuation and increment of crimes especially rape and honor killing. During the National Inquiry program, numerous cases were identified that were supposed to have links with honor killing, but due to lack of forensic possibilities, they were termed as acts of suicide or even natural death leading to impunity for the perpetrators.

As an instance, on Hamal 30th, 1390, a woman was killed right after her wedding at her husband's house in a suspicious way. On the previous day when she had talked with her brother on telephone was threatened by her husband. The next day the brother was informed of her death. The dead body remained at Mirwais Hospital cold room. Later, the husband was freed; he married someone else.

6.1.7 – Lack of necessary coordination between the justice and judiciary organs, especially the police, attorneys' offices and the courts

Lack of necessary coordination between the justice and judiciary organs, especially among the detective and the investigative organs is the cause for ineffective prosecution of the criminal cases. Even some of the justice and judicial officials who had participated in the public hearing meetings acknowledged lack of necessary coordination between the mentioned organs.

Based on the resolutions of the High Court Council, a committee has been established to coordinate between the justice and judicial organs. The committee meetings, headed by the Directorate of Appeal Courts' Chiefs, are held monthly. In practice, however, there is no coordination between them. In the public hearing meeting on 14/10/1391, Bamyān Province Appeal Attorney acting chairperson stated, "There is no necessary coordination between the justice and judicial organs. The cases of the individuals arrested by the police are not dealt seriously by the Attorneys. And when the Attorney files a case against an accused, the court acquits him."

Lack of coordination between the said organs leads to incomplete investigation of the criminal cases, thus, sufficient evidence for the case to be termed as criminal are not provided. In addition, when there is not enough information, the courts cannot take the right decision and finally the perpetrators are exonerated and released.

6.1.8 – Women’s limited access to justice (courts, Attorneys offices for elimination of violence, detention centers for women and defense attorneys)

Based on the AIHRC’s findings and those of the National Inquiry program, the women’s access to justice in the provinces is very limit. They have limited access to justice, to organs enforcing justice and laws and to the legal mechanisms. The women, in the majority of the provinces, do not have access to courts, attorneys, special attorney for the elimination of violence against women, defense attorneys and detention centers for women

In the research report, *Citizens’ Access to Justice* that has recently been published by the AIHRC the level of women’s access to justice has been highlighted as follow:

- The Primary Courts in 86 districts of 23 provinces are not functioning; the judges, in most of these cases, the cases are addressed by the relevant judges in the centers of provinces. The new statistics show that the level of people’s access to the legal and competent courts has decreased compared with that in the previous year-1390. The number of non-active courts has increased to 45%.
- There are no detention and custody centers for women in any of the districts across the country. The accused women are kept in the houses belonging to the influential individuals or at the houses of government; officials or they are released or transferred to the centers of the provinces. The women kept under any of the three conditions are faced with serious vulnerability and problems.
- There are no female defense attorneys in 19 provinces (55% of the provinces). This causes issuance of unfair verdicts against female victims. In total, 1185 defense attorneys and legal assistants (199 female and 986 male) have been authorized to render legal services; this number of law practitioners, in comparison with the number of prisoners and detainees, is not enough – most of the prisoners, especially the female ones, do not have access to defense attorneys.
- The attorneys’ offices of 92 districts in 22 provinces of the country are nonfunctioning. The Attorneys at the Appeal Courts in most of the provinces claim that officials of these Attorneys carry out the jobs at the centers of the provinces; they cannot do their work at the districts due to security problems. It is obvious that lack of functioning Attorneys in the districts pave the grounds for human rights violation and the continuation of impunity culture.
- So far, Attorney Office for elimination of violence against women has been established in eight provinces of the country (Nangarhar, Kandahar, Bamyan, Herat, Kunduz and Balkh); the other 26 provinces have not seen such an organ. In a number of provinces like Bamyan, the Attorney Office for elimination of violence against women has not yet started its work; there are only male employees there. Such an establishment cannot be

effective in reducing violence against women. It is necessary for this institution to have professional female attorneys and staffs.

The said report says that courts and attorneys' offices are not functioning in districts. Thus, all civil and criminal cases are resolved by the unofficial institutions, tribal Jirga and even armed anti-government elements. Under such circumstances, there is no guarantee for human rights to be observed and justice to be ensured, especially regarding cases that belong to women.

Given the above information, the participants in all of the Focus Group and public hearing meetings have stated that women's limited access to justice is an important cause in increasing and perpetuation of violence against women including rape and honor killing, because not pursuing cases of violence against women put women in a most defenseless situation. The perpetrators, thus, resort to most heinous form of violence against women with great confidence.

6.1.9 – Availability of illegal arms with the non-responsible armed individuals and groups

Availability of illegal arms with the non-responsible armed individuals and groups is a serious problem impeding security, establish justice and observe human rights in the country. The said groups and individuals pave the way for committing crimes and interference with the handling of cases; they mostly resort to injustice and crimes.

These kinds of individuals and groups are available in insecure areas of the country; they engage in skirmishes and conflict with one another, with the Taliban or with the police forces. These forces are against any type of monitoring and control. In general, lawlessness, anarchy and absence of a central monitoring authority are in their benefit. That is why their behavior and actions against Taliban or against the government are not predictable; they may rise against both sides for their interests or even collaborate with one side to fight against the opposite side. Members of these groups commit numerous crimes in many areas hindering the way to ensure justice and the rule of law. (Afghanistan, report from Arbaki to local police - 1390)

According to research that has recently been carried out by the AIHRC, there are more than 616 non-responsible armed groups in various provinces of the country possessing different illegal light and heavy weaponries. Every one of these groups has 10 to 100 armed members. (Afghanistan report on citizens' access to justice)

Based on the Law on Firearms, Ammunitions and Explosives devices, all kinds of firearms, ammunitions and explosives in the country are government properties and other natural and legal personalities are not authorized to produce, import, export, receive, use and keep weapon without any legal authorization (Ministry of Justice, the Law on Firearms, Ammunitions and Explosives, 1384). And if a person produces, imports, exports, receives, uses and keeps firearms, ammunitions and explosives without legal authorization, he /she is punishable in accordance with the provision of Penal Code (Ministry of Justice, the Law on Firearms, Ammunitions and Explosives, 1384). Therefore, all forms of weapons in possession of armed individuals and groups have to be collected by the relevant authorities and transferred to the specified center exclusively meant for this purpose; after registration, these weapons are to be handed over to

responsible organs (Ministry of Justice, the Law on Firearms, Ammunitions and Explosives, 1384).

By carrying out the National Inquiry program, the AIHRC has found out that the existence of illegal arms and non-responsible armed groups are potential factors for the increase in the level of crimes including rape and honor killing. The participants of the public hearing meetings in most of the provinces have emphasized the importance of these factors. Furthermore, a big number of rape cases have been identified in which the perpetrators are local commanders and non-responsible armed individuals.

For instance, a woman from Belcheragh District of Faryab Province told the AIHRC's official as such: "My husband was in Iran in 1390. In addition, I was living with my mother-in-law. One day, Commander X came inside our house looking for some water pipe. I told him, "My mother-in-law is not home. I cannot give you the pipe without her permission." When he realized that my mother-in-law was out, he forced me inside and raped me. He threatened me not to disclose the incident. Later, I became pregnant. My husband came home after 4 months. I told him about the matter. When he approached the commander and asked him why he had committed such an act on me, the commander became angry and summoned my father and me. While threatening, he lashed me with his gun belt. My body still bears the evidence. Then, he threatened me and my father about the unborn baby; we were told to state that it belonged to ... who was actually innocent. The commander telephoned to the head of Crimimnal Department; he came in, arrested me and ... and introduced us to the Attorney. During the investigation, I told the Attorney what had actually happened, but to no avail; the actual perpetrator was never prosecuted."

6.1.10 - Insecurity and weakness in the rule of law in the districts and provinces

There is an inseparable link between human rights and security. Security is a necessary condition for observance of human rights. In case of insecurity, observing human rights and revering human rights cannot be guaranteed. In other words, not observing human rights or rather violating human rights perpetually pave the grounds for insecurity and destabilize human security. Thus, human rights protection guarantees human security.

Lack of security in a number of areas in the country is a major concern for those who attended the public hearing and Focus Group meetings during the National Research program. The participants in most of these meetings considered insecurity and weakness in the rule of law in some of the districts as the major factors for the increase in the level of crime. For example, on 11th of Jaddi 1391, a Kandahar Provincial Council member said, "The perpetual insecurity in some of Kadahar districts has paved the grounds for violation of women's rights hindering their access to justice."

In addition, the AIHRC has documented cases in which the perpetrators of rape and honor killing have been able to escape and join the anti-government forces, all due to weakness in the rule of law. The case below that has happened in Kunarha Province could serve as a clear example of honor killing:

Having been married for 6 years, a 23-year-old woman, originally from Kunarha Province, currently living in Behsud District of Nangarhar Province was killed by her husband on suspicion of having some affair with a man. The accused man too was killed by her husband.

A few months earlier, the husband had an argument with one of the area residents. While arguing, the other man provoked him by accusing his wife of having affair with a man in the locality. After the argument was over, the husband killed the man who had allegedly been involved in the illegitimate affair with his wife. Then he went into hiding for four months. On his return to his home, he abducted a young girl from Kunarha Province and took her along with him. Eventually at 11 p m. on 7/10/1391, he killed his wife near Dewarhayee Estenadi close to Behsud River in Gujran Village area of that district. Then he called the victim's father and informed him about the death saying, "I killed your daughter because she had an affair with another person. Come and get her body." The victim's father informed the police. The body was transferred to the forensics department. The culprit committed four to five instances of terrible crimes during four months. He has not been arrested yet.

6.1.11 – Lack of necessary protection of the victims and observation of their rights

Based on Article 6 of the Law on Elimination of Violence against Women, the victims of violence including those of rape and honor killing are entitled to a series of special citizen and human rights which are as such: the right to be prosecuted legally, to be provided with safe shelters, to be provided emergency free medical assistance, to have defense attorney or legal assistance, to be compensated for the loss, to enjoy confidentially in terms of his/ her case and other rights mentioned in the laws (Ministry of Justice, EVAN, 1388). These are the minimum rights to which victims are entitled. Observing these rights and protecting victims of violence against women could pave the grounds for protection against crimes. Moreover, not observing these rights or protecting the victims could lead to double losses on the part of the sufferers exposing them to serious damages.

As mentioned earlier, a big number of perpetrators of the said crimes have not been prosecuted. During the National Inquiry program, the AIHRC's officials held interviews with 110 victims of rape and family members of honor killing victims. It has been revealed that 35.4% of them were complaining of ineffective proceedings of their cases by the justice and judiciary organs. While legal prosecution of the perpetrators is the duty of government organs, it is also the right of the victims. In the same way, access to defense lawyer or legal aid provider is the victims' rights, as well. In practice, as mentioned earlier, most victims do not have access to defense lawyers. Being compensated for a loss is another right of the victim, of which even a single one has not been registered with the AIHRC. Other rights highlighted in Article 6 of the Law on Elimination of Violence against Women have been observed very little.

It was because of this that a great number of the participants of the Focus Group and public hearing meetings have shown their concerns as regards to victims of rape and honor killing are not being protected, and their rights are not being observed. They termed these as factors for the

rise in the level of such crimes. Numerous samples of such cases have been documented by the AIHRC.

For example, on 16th of Saratan 1391, a girl is asked by her classmate to help her wash some clothes by the stream. Trusting her, she goes with her classmate. Then she was fooled to go to house nearby. Once she got inside, she was locked up. Two men enter the room and rape her. The victim does not reveal the ordeal with the family. Initially, she decides to commit suicide, but then she decides to kill the classmate first. She does not succeed to carry out any of them, though. Eventually, the victim's family members get to know about the incident and lodge a complaint with the Criminal Department. The suspects are arrested and kept in detention. The case goes to province city court. However, the courts exonerate both of the accused stating that there is not enough evidence against them. Thus, the accused are set free. The case is currently being followed up at Bamyan Appeal Court.

The victim is not enjoying of any of the rights mentioned in Article 6 of the Law on Elimination of Violence against Women and she has not had access to any legal aid provider, either.

6.1.12 – lack of open trial of the perpetrators (lack of conduction of open judicial meetings)

Holding open hearing meeting is an important guarantee in order to have fair trial and treat the disputing parties alike. Open hearing meeting help avoid biased treatment of disputing parties. All hearing sessions (while bearing some exceptions in mind) should be public so that judges issue fair verdicts in the presence of people. Open hearing is one of the rights that the accused have, which should be observed by the judges. This right has been acknowledged in the international conventions and in the Afghanistan domestic laws.

Article 128 of the country Constitution stipulates that: “In the courts in Afghanistan, trials shall be held openly and every individual shall have the right to attend in accordance with the law. In situations clarified by law, the court shall hold confidential trials when it considers necessary, but pronouncement of its decision shall be open in all cases.” (Afghanistan 1382) Article 52 of the Interne Criminal Procedural Code for courts states: “Hearings shall be open to public, unless the court decides that all or part of the trial shall be run without the presence of the public for reasons of morality, family confidentiality or public order.” (Ministry of Justice, the Interne Criminal Procedural Code for courts, 1382)

Therefore, hearings should be held openly. However, majority of the hearings are not open. Perhaps one of the reasons for people's distrust in courts and judges is lack of transparency in their actions that are mostly due to being carried out behind the closed doors.

The participants of the Focus Group and public hearing meetings in various provinces have termed lack of open trial as one of the factors for the increase in crimes. They want the hearings to be carried out in public so that the people are informed and the culprits learn lessons from the issued verdicts.

6.2 – Cultural and Social factors and grounds

The spread of violence against women and its various forms are rooted in the social structures and relationships as well as in the cultural patterns in the society. These cultural patterns and norms present a special view of women. Based on this view, women are naïve, wrongdoer and untrusted; they are not able to good things – they would always go wrong. Thus, they should always be under man’s supervision. This inhuman view on women, coupled with men’s domineering relationship with women, has paved the grounds for violent treatment against them. In fact, these cultural patterns and social norms present a kind of double negative impacts on women: on one hand, by putting women in unequal position with men and considering them as the low breed in the society, they pave the grounds for violence and, on the other hand, by solving violence in a biased way and linking violence to specific factor and ignoring other factors, they help violence to perpetuate breath

Violence in its general meaning is a common phenomenon in the traditional and backward cultures in which there is little room for discussions and understanding. Given the fact that in the traditional society the social patterns and norms are rigid and inflexible, there is limited possibility of questioning and criticizing. Violence is institutionalized there. Tribal men consider social laws unchangeable. The “tribal values and believes” cover all parts of living; stability and lack of evolution, concreteness and violence are visible more than any other things. (Sociology of Tyranny, 1386, p-29). These issues contribute continuation of violence in the society: The tribal logic is not familiar with relativity maxim; anything judged in this context is either absolutely correct or incorrect. A tribal society does not easily accept things, but once accepted, it protects with the cost of their blood. Absolutism in social logic changes this negative phenomenon into behavioral patterns of political, social cultural and religious institutions. This is the reason why the tribal thoughts are turned into stones throughout centuries.” (Empire of Tyranny, 1382, p-316 &317)

Violence against women has become institutionalized in the society due to existence of such absolutism and unchangeable view regarding the women’s human status and value, the relationship between men and women and the social and cultural norms and patterns in the majority of the traditional societies. Therefore, the Afghan society is not an exemption; there are numerous and various phases of such views in the culture and the social relationship in this society.

Women are faced with the practical patterns of such attitude and various violent structure and behavior that exist in tribal society. Rape and honor killing perpetuate as the most severe form of violence against women in this kind of society. Existence of rape and honor- killing indicate a kind of internal contradiction in the behavior and ethics of the society. On one hand, raping women is “dishonoring others” and, on the other hand, by killing of his daughter and wife they protect their own honor. This is actually because of the prevailing distrust in the society, distrust in others and animosity as well as distrust in women in a tribal society. The sensitivity in tribal society against the appearance of women in public is also due to these problems. The fear that tribal society bears about women’s freedom and their public appearance side by side with men urges the people to lock women up indoors, and paint windows so that women do not see outside

and outside people do not see the women inside their homes, which is because of the animosity it feels around it. (Empire of Tyranny, 1382, p.267-268)

Lingual patterns of such attitude toward women are widely visible in the speech clichés and common proverbs in the Afghan society. The officials have collected these stereotypic words and proverbs, belonging to various areas of the country. With little variations in wordings and interpretations, most of them are commonly used across the country. In addition, as far as possible, the registered cases with the AIHRC have been utilized for documentation and explanation of the analysis made as the concrete manifestations of violence, rape and honor killing. The views of the participants of the Focus Group and public hearing meetings have also been used.

Here we explain some of the most important factors and sociocultural grounds for violence against women – with an emphasis on rape and honor killing, under different titles. Attempts are made to arrange the titles in a very organized and interconnected way and to save their organic connections, thus there is retrospection in every section.

In the continuation of this study this issues will be briefly discussed. Nevertheless, here, the lingual reflection of this attitude will be described briefly in a few examples of proverbs and sayings common among Afghan tribes. Some of these proverbs have explicit language and some innuendo and sometimes expressed with offensive interpretation.

6.2.1 – Women in the Afghanistan traditional culture

As in many other tribal societies, the culture and traditional norms in the Afghan society are full of negative views about women; it attributes to them numerous unbecoming specifications. Women, in the Afghan traditional society, are considered sinful, irrational, faithless and untrustworthy. These specifications are not looked at as cultural- historic phenomena, but as an essence of women’s wicked sinful nature. This negative and insulting definition of women has many aspects that affects the women’s human value, their social status and their relationship with men and finally leads in violence against women. At first, the negative definition and the insulting view will be highlighted as they justify the violent behavior against women. Such a view is due to anti-women thoughts in the Afghan culture.

6.2.1.1 – Women are sinful and ill natured

In Afghanistan, women are commonly known as sinful creatures doing bad things. Attributing negative traits to their nature turns them into uncorrectable beings. Thus, this negative view causes stabilization of this kind of attitudes towards them. The most important manifestation of this ill-naturedness is the relation those women are considered to have with devil; they are considered twins. Satan or devils, in the religious culture of the society, are counted as the meanest and the most sinful creature in the world – there are many proverbs in this regard.

6.2.1.2 – Women are considered short-minded and ill managed

The view that women are ignorant and short-minded is another picture of the female in the society, based on which they are considered mentally unable to distinguish between rights and wrongs. Because of such view, women are avoided to be consulted with. This view has also been reflected in the usual sayings and proverbs among tribes in the country.

6.2.1.3 – Women are considered weak and incapable

Being incapable and weak is another specification attributed to women in the common views of the tribes here. This specification is linked with women being “short minded”. Obviously, the idea of “incapable and weak” makes women dependent on men. A number of phrases such as “Zaeefa (weak)” and “Ajiza (incapable)” that are used to call women are also coming from this kind of attitude.

6.2.1.4 – Women are considered cunning and crafty

There is a rather obvious contradiction between being short minded and imprudence on one hand and being shrewd and cunning on the other. Being crafty requires logical ability. However, this is not that important. What is important is that being crafty and cunning is yet another negative view about women in the society. Considering women the twin of Satan is actually because of their “crafty nature”. Thus, you are always told to be away from women and careful when dealing with them.



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6.2.1.5 – Women are considered unfaithful, disloyal and uncompromising

Another commonplace specification of women that exist among Afghan tribes is that they are “unfaithful”, “disloyal” and “uncompromising”. In most cases, these adjectives are attributed to all women as their inborn characteristics.

6.2.1.6 – Women are considered unreliable

Being “untrustworthy” is the outcome of the previous views about women. Women are not to be trusted; they are weak, short minded, ill natured, sinful, crafty, faithless and disloyal. Therefore, women cannot do anything properly. Rather, they usually do bad things. Thus, they should always be supervised and controlled by men. This view has sometimes been expressed in proverbs commonly used among the tribes in Afghanistan – often explicitly advising or implicitly stating in metaphors and ironic ways.

This attitude about women has caused that they are looked as naturally born offenders. Wherever there is a sexual crime, even if committed by force, women are blamed for that. Honor killing is also justified in the same manner; it is this natural tendency towards wickedness that women, even if raped, are considered as the main culprit. Thus, they are to be killed to save guard honor.

6.2.2 –Social status of women and their relationship with men

The characters attributed to women in the beliefs and cultural clichés of the society establish a special connection between men and women and defines a certain status for women. Such a view holds several implications. One- worthlessness and devaluation of women, two- dependency of women on men; three- isolation of women from society and social activities; four- domination of male gender over female gender.

6.2.2.1 – Devaluation of women

In the cultural context and tribal relationship, the female, in comparison with the male counterpart, are considered more valueless, something which is seen quite vividly right from their birthdays. The happy celebrations held for boys’ births are less seen for girls’; this is not a new phenomenon. Throughout the history and across the societies – old and new – women are treated as second-rate citizens. In some of the society in the past, having many daughters would mean more shame for parents. The view is still seen across the tribes in Afghanistan. The view has been portrayed in numerous common proverbs, too.

Another important thing is to know that women in their husbands’ homes are respected and valued for their children (especially with male ones) and not for being human being. That is why

childless women are deprived of their human dignity in families; at times childlessness leads to domestic violence and divorce.

Sometimes, the dowry and household items brought along to the husbands are considered more important than the women themselves. Based on the tribal tradition in some of the areas, the women gather to see and check the quantity of dowry and other items. In case the quantity is not noticeable, it questions the value of the bride, her mother and the family; they are indirectly insulted. This may even lead to separation of the two newly joined families. The issue affects the level of respect the brides deserve; it sometimes causes domestic violence against her.

6.2.2.2 – Woman dependency on man

As mentioned earlier, women are commonly believed to be ignorant, short minded; weak, incapable and imprudent that cannot perform her affairs properly. Therefore, she is inevitably dependent on man's judicious logic and physical abilities. This dependency is so much that women have to be accompanied not only in dealing the house affairs but also when they go out on journeys and picnics. This dependence exceeds after marriage up to full guardianship over women. This guardianship rules over decision-making, properties and possession. Women are deprived of possessing their own belongings; they are customarily aggregated under man's guardianship. The dependence in question also means that women are big burdens on men.

6.2.2.3 – Isolation of woman

Women's dependency on men and men's guardianship over women have led to inability of women to enter independently into business world and social interactions. In fact, even their presence in such activities is not felt necessary. This has resulted in deep segregation and negligence of women from the public sphere and decision-making areas.

Isolation of women in their houses has, on one hand, led to the continuation of their dependency on men and, on the other hand, to their deprivation from growth and learning, which in turn has perpetuated negative views towards women and their deprivation.

6.2.2.4 – Domineering manner of men

The patriarchal pattern leads to continuation and stabilization of men's domination over women in the family and in the society. In a patriarchal society, women are subject to men's rule; even the norms of their behavior are subject to men's wish. Thus, men feel the right to control women and reign over them.

This domination becomes so severe after marriage that the husband feels ownership right over women's body and mind making her be completely in his service. This ownership relationship is emphasized so much that disconnection from that mostly leads to women's death.

The said relationship is so rigid that even the women's human identity and value in the traditional society is connected with having husband and dying at first husband's house. Thus, if a woman's husband is dead or if she has separated from him, she is considered as a cheap woman. "Bewa" or widow is a word with a negative value that is attributed to those whose husbands are dead or those who have separated from their husbands. A widowed woman is equal to the one who has come out of control, that in this case, she is looked by suspicious and doubtful eyes and considered a bad woman.

6.2.3 – Treatment of women

The way women are defined in the traditional society affect the relationship between men and women; it looks at women as means of quenching sexual pleasures requiring special treatment. Imposing of limit, violent treatments, enslavement and domineering on women are the certain consequences of such attitude.

6.2.3.1 – Imposing limit and maintaining control on women

As shown, the Afghanistan traditional society considers women not only to be weak, ignorant and incapable creatures who are dependent on men to carry out their tasks, but also considers them ill natured and wrongdoer. Therefore, women ought to be dominated by men. This of course requires rigid monitoring and controlling, which in turn is due to female anthropology prevalent in the traditional culture of the societies – including the one in Afghanistan. Imposing of monitoring and control on them are used for political purposes, too. Monitoring and control over women are used in various ways – not only in Afghanistan but also across the world.

6.2.3.2 – Violent behavior against women

Violent behavior against women is due to the negative view on women and the domineering behavior of men towards them. Rape and especially honor killing could be due to this domineering relationship. Honor killing is a proof of violent behavior and a means of domination over women's bodies. Those who do not have blood and family relationship with the victims usually commit rape. Honor killing, on the other hand, is committed as a means of punishing women who come out of control wanting to have connections with others whether willingly or because of some compulsions. A woman has to remain connected with the relationship she has committed to until the end of her life – once she goes to a house (as a wife), she must not leave until her death.

6.2.4 – Sexual attitude towards women

Another important issue is the sexual attitude towards women, which means that women are merely viewed to be the means of getting satisfaction for sexual instincts. This point causes the type of human relationship with women be limited to satisfaction of sexual instincts only. That is

why, when a women is seen talking to others or when she goes out, she might even be thought as to have sexual relations with an stranger man – whether on her free will or by compulsion.

Sexual attitude towards women along with the pejorative definition of women prevalent in the cultural view of the society, define them as sex baits. As it was pointed out, sexual attitude towards women turns women to means of satisfying sexual desire. Such views, on one hand, intensifies the risk of sexual assault for women, on the other hand, justifies control and enslavement of women for the sake of “preserving honor”. That is why the biggest concern of fathers and husbands refers to this fear. It is such a concern that makes them always keep an eye on their wives and daughters. For such a mentality, any man – even closest friends – could potentially be a sexual aggressor. Thus, they could never be trusted. This distrust, in fact, indicates that “ the issue of Benamosy of lack of chastity is a common phenomena in the culture of tribal society”. (Qhalamraw-e Estebdad, 1382, p-270)

6.2.5 – Sexual and gender-based attitude towards chastity and modesty

The prevalent sexual sensitivity in the Afghanistan traditional society is due to sexual and gender-based attitude towards issues like “reputation”, “honor” and “chastity”. Such a view presents honor and chastity merely in terms of sexuality. Secondly, these ethical values, which are related to humankind, are termed as feminine issues as if only related to women and their domain.

On the contrary, manhood, honor and zeal of men are directly linked with women. The word “zeal” in the traditional society has been defined as “worship of honor” and honor means “the women and girls of a family” who are dependent on men. Therefore, men should always keep eyes on their “honors” to preserve their “zeal, reputation and honor.

Therefore, characteristics like chastity, modesty, purity, shyness and the like are considered feminine, as if men do not need to be garnished with. Instead, they are adorned with qualities like “power”, “valor”, “manly zeal” and “confidence”.

Sexual attitude and gender-based attitude toward the ethical values like “reputation”, “honor”, “chastity” and “manly zeal” on one hand, and sexual attitude toward women themselves on the other hand cause men to dominate over them. In fact, such attitudes guarantee and justify men’s domination and control over women. This domination and control over women is a part of traditional patriarchal culture.

6.2.6 - Traditional sensitivity and concealment of rape and honor killing incidents

Another important factor for rape and honor killing is the fact that these phenomena are taboo in the Afghan society; dealing with them is extremely sensitive. That is why, occurrences of such incidents are usually concealed and the flow of related information is blocked. Owing to these sensitivities, there is not a clear picture of the situation and level of rape and honor killing in the

Afghanistan society. In addition, by concealing such kinds of cases, the possibility to address the cases, to protect the victims and to punish the perpetrators becomes limited. As explained in the section discussing legal factors, not attending effectively and constantly to these cases would cause such crimes.

Additionally, showing sensitivity towards sexual issues has turned women to a big social dilemma for the tribal society. This dilemma is sensitive in the tribal society that it has even affected the architectural style in this society; high walls to hide women from strangers' eyes and the strangers from women's eyes surround houses and even the roofs. (Domain of Tyranny, 1382, p-269)

Another important point is that the social sensitivity towards sexual issues gives birth to extreme individual sensitivities, that women are the first victims of such sensitivities. For instance, if a woman is accused of sexual relationship with another person or even if she is doubted to have such a relationship, her family members take it as an honor issue killing the woman because of such relationship.

This shows there is a severe sensitivity toward gender and honor issues in Afghan society. Although the victim of rape is not a criminal and she should be taken under protection, but at times the victims of sexual assaults become victims of honor killing, too.

The documented cases show that not all honor-killing instances have necessarily been due to



relationship with strangers. In a society where women are considered sex objects and where men take it their right to rule and control over women, running away from home, refusing to accept a forced marriage and being doubted to have such a relationship also lead to honor killing. 15.4%-documented cases of honor killing have been perpetrated due to escape from homes, 3.8%

constitute the ones refusing to consent on forced marriages.⁸

⁸ For further information, refer to Chapter 5

These points are indicator of a severe sensitivity against sexual issues prevalent in the society; they lead to violence against women – at times even to killing women. They also lead to concealment of honor-related issues. That is why, a great many rape and honor killing incidents are concealed within family boundaries hindering both legal proceedings and awareness raising campaigns.

6.2.7 – From banality of evil to justification of evil

Tribal sensitivity in connection with sexual issues does not stop them from happening. Rather, it increases the intensity of violent behavior against women appearing in the form of honor killing.

One other point to be reckoned is that crime is turning into a common phenomenon in the society, thus, criminal act loose its obscenity in the society. As a result, neither the culprit feels the guilt – that he has committed wrong – nor the society shows any sensitivity. Hannah Arendt, a famous German political theorist calls this situation as “Banality of evil”, meaning that ordinary people in their daily lives can resort to most heinous crimes. This is possible when crimes are made common that people would think that whatever they do is part of natural process of life. (Ashtiani, `1391) she says, “The bitter fact is that most evils are committed by people who have never thought whether to be evil or not.” According to Arendt, banality of evil is the specification of a person who has totally lost his/ her ability to think and judge his/ her actions. (Jahan Baglo, 1385)

The trend of “banality of evil” is a cultural issue. Cultural norms and social structures play important roles in making crime a common phenomenon. As mentioned earlier, the special attitude towards women prevalent in the society and permitting specific treatments and giving special social status to women pave the ground for violence against women and its justification. In this cultural and social ground, violence against women turns into a common phenomenon and loses its obscenity.

Another notable point is that the society, by alienation or considering the culprits and criminals as strangers and giving them non-human identities, make such incidents acceptable and natural. Dr. Reza Kazim Zadeh, a psychology specialist on causes of violent gang rape on women and girls says: “Attributing such heinous incidents to strangers or giving non-human identities to those committing the crimes is, in fact, a defensive mechanism by the society against an incident which is not easy to accept. Initially facing with such incidents, emotional treatment is very important; the first step against such a terrible fact is to deny it. However, in the second step we accept the incident itself but give an inhuman identity to its perpetrators. That way, it becomes more bearable to accept it.” (Ashtiani, 1391)

A few points are necessary in connection with rape and honor killing. There is a great sensitivity against rape among tribal people, but not attending to these crimes by the authorities would turn this issue as a commonplace act. Cities, where traditional sensitivities do not rule extremely, play significant role in washing away the wickedness off the faces of such acts.

In connection with honor killing, though, the issue is different. In the cultural and social norms and relationship and under the shadow of the special attitude towards women, the phenomenon of honor killing not only has turned into a commonplace act, but even to a commendable act – especially when it comes to the need for monitoring and ruling over women. By such an attitude, honor killing is considered as an act to portray manly zeal and protection of family honor and integrity. This way, the notion not only reduces the degree of its criminality; but it also justifies and commends this act as the protector of honor and prestige. With all these explanations regarding honor killing, the issue goes beyond banality of evil; it could be called “justification of evil”.

The judicial and legal approach to this issue is also extremely traditional and proportionate with the unequal and domineering attitude against women. Article 398 of the Afghanistan Penal Code states: “A person, in defense of his honor, who sees his spouse or other close relative, in the act of committing adultery or being in the same bed with another person and immediately kills or injures one or both of them shall be exempted from punishment for laceration and murder but shall be imprisoned for a period not exceeding two years – as a “Taziri” punishment.⁹ (Penal Code – amended, 1355) This Article lessens the evilness of honor killing under the title of “Defense of honor” and turns it into a common crime.

6.2.8 – Illiteracy and the low level of public knowledge

Illiteracy and unawareness could be added to the aforementioned factors as well. An illiterate society is usually more vulnerable against crimes and offences. The way it handles them is also very irrational, unsuitable and of course very aggressive. The points mentioned above are also very widespread and acute in an illiterate society. For example, the belittling and insulting attitude towards women, the extreme traditional sensitivities against them, imposing of severe monitoring and control over them and the violent treatment with them are observed more among the illiterate. One should not forget that literate people at times might resort to committing such crimes. An illiterate and unaware society does not know much about preventive mechanisms from crimes and offences; the way it treats such incidents are also irrational and mostly vengeful. This is one of the reasons that encourages killing of girls and women for honor issues.

Further talk about violence against women is not necessary; most people are aware of that. Only one point is focused that most of those attending the Focus Group and the public hearing meeting in the National inquiry program have pointed that out as an important factor.

⁹ This Article has some legal problem which has been analyzed in the section “Legal and political factors and grounds for rape and honor killing”.

6.2.9 – Traditional marriage patterns and domestic violence in Afghanistan

In respect to marriage, the traditions and customs prevalent among the tribes in the country pave the grounds for violence against women. These kinds of marriages show the low social and human status of women. The prevalent patterns of marriage in those places are underage marriage, forced marriage, giving Bad and exchange marriage. Such kinds of customs have roots in the biased and discriminatory views regarding the role and status women have in the society. Traditional attitude of these suppositions are strengthened by wrong interpretation of Islam. The following is a summary of the marriage patterns:

6.2.9.1 – Early or Underage marriage

It is quite common in most areas in the country to agree to underage marriages. Based on the traditional beliefs, “The sooner a girl gets married the better.” Another famous proverb that justifies the early marriage says, “Daughters are other people’s property.” Thus, they should be given to their original owners.

This tradition is due to the same sexual attitude towards women and girls; a view that believes that everybody look at them through lustful eyes. This issue is a matter of concern for parents who have to bring them up. Therefore, they betroth their daughters very early so that to safeguard them from dangers of being raped or looked lustfully by strangers.

At times, girls’ underage marriages are also justified religiously. The traditional understanding of religious states that the girls’ age for marriage is nine; even their betrothal certificates are issued at this age. This happens despite the existence of Article 70 of the Afghanistan Civil Law that stipulates the marriage age for girls as completion of 16. Article 71 (2) states: “The marriage of a minor girl whose age is below 15 shall never be permissible.” (Afghanistan Islamic Republic, 1355). Article 94 of Shia’s status law also determined the age of 16 for girls and age of 18 for boys. (IRA, 1388).

Underage marriage could also lead to dissatisfaction and various types of domestic violence destroying the base of a joint life and cause the escape of women from home. The issue could also make them vulnerable against rape and murder.

6.2.9.2 – “Gahwara Bakhshesh”

“**Gahwar Bakhshesh**” is a custom that is common in some of the areas in the country. Based on this custom, when a girl is born in a family, the relatives come for congratulating and one of the relatives may cover the cradle of the newborn baby with an embroidered sheet. This way, the girl becomes the future bride of the relative’s son; the girl and boy would get married when they get young enough.

At times, even when two normal marriages take place in the same day, the couples may pledge on that day that in the future if one couple gives birth to a boy and the other to a girl, the boy and the girl will marry one another when get young.

Based on the tribal traditions, it is compulsory to carry out these commitments; neither of the sides can deviate from their pledges. The boy and the girl are betrothed without their consent; they would have to live together in the future. The commitment is compulsory for the girl; she cannot escape it. Such marriages may also cause different types of domestic violence; they may cause the women or girls to escape from home, which in turn may face them with rape and honor killing.

6.2.9.3 –Wedlock in the absence of boy

In these types of marriages, usually the boy's photo is shown to the girl in order to have her consent. In many instances, the photo is not original; it may belong to someone else or it may show the younger days of the boy. Thus, the joint living or the marriage may start with cheating. It is obvious that such kinds of marriages might lead to bilateral dissatisfaction; they may not sustain for long. They may cause domestic violence or may even lead to murder. Unfortunately, the traditional beliefs and betrothal patterns prevalent among various tribes in the country consider the boy and the girl's personal meeting as a taboo – a practice against their religious and traditional beliefs.

In one instance, a person who lived in Pol-e Khumri asked for the hand of a girl who lived in Badakhshan. He sent her a picture to have her consent. After the wedding, the girl realized that her husband was old. It is now 8 to 9 years since their marriage, but the girl lives in discontent feeling unfortunate.

6.2.9.4 – Badal (Exchange marriage)

Badal takes place due to bilateral agreement between two families in such way that they exchange their daughters in order to marry one another's sons. The method is more prevalent among poor families. By doing this, they prevent from spending exorbitant amount of money and dowry – thus preventing from being in debt. Badal is quite common among most tribes and in many areas of the country. Since Badal does not take place based on the brides and the grooms' consent or on their mental and physical agreement, it is not usually happy or long lasting. As a result, it may lead to various types of insults, domestic violence and even killing. At times, domestic violence in one family may lead to domestic violence in the other – to avenge. If a husband divorces his wife, the other one may also does the same to his wife in vengeance. The following is a sample of Badal's outcome:

“It is one and half year that I have been betrothed to a man called Gandum Ali s/o Afzal, resident of Burza wa Jalga-e Mazar Village of Shahrak District, as a Badal. I was at my husband’s house for six months, during which I was being beaten mercilessly many time; once they broke my hand and in another instance, they broke my head. Once, they cut my hair in a humiliating manner and shaved part of my head. – The signs are still evident on my body. My father, brother and mother in laws also took part in the beating. I was also forbidden to meet my relatives. Now, I have been living a year at my parents’ house without any clear future. I ask authorities to attend to my case; I want to be separated from my husband.”

6.2.9.5 – Bad

Giving Bad is a common custom among all of the tribal setups in Afghanistan. Based on this tradition, whenever a crime like murder, rape or other such offenses is committed by a man, a girl from the man’s family (usually his daughter or his sister) is given away as a bride to the aggrieved family’s male member. This person is, in most cases, very old – he may already be married. The given away girl has a very low human status in the husband’s family; she is usually subject to disrespect, harassment and violence. Since this girl has not entered the house through usually respected norms of marriage, she is banned to meet her relatives. Her husband’s family always looks at her dubiously; she may even lose her life even if slightly doubted on honor issue. She might even be forced into prostitution, though. The following case is a sample of the consequence giving as a Bad has:

“My father had committed murder 25 years ago. My aunt’s husband, Daulat, had given away his daughter as a “Bad”. Five years ago, Daulat claimed and said to my father, ‘Because of you, I gave away my daughter as blood money. Now you should betroth your daughter, Bibi Khan, with my son.’ My father lodged a complaint with Murghab Police HQ and Daulat backed away from his demand. However, one-month ago, Daulat along with a few Taliban forces came to our house and forced me into marriage with his son. Seeing no way out, I decided to commit suicide on Thursday 10th of Qaws 1390. I shot myself. But I was not killed; I got injured.”

6.2.9.6 – Giving away girls in lieu of debts

Another form of marriage that takes place is due to the poverty the girl’s family endures – she is given away as a bride to the son of the family from how the money has been taken. She is looked down upon at her husband’s house open to all forms of insults and domestic violence.

Such inhumane act might at times lead to addiction, gambling and things of that sort. See the example below:

“A person from Takhar Province loses in gambling her 12-year-old daughter to boy called Abdul Hafiz. He takes the girl along to Fazilan Village in Driyem District and forcibly gives her in

marriage to his brother called Abdul Nasir – Already married. It is known that the girl lives under terrible condition and exposed to insults and violence.”

6.2.9.7 – Forced marriages

Forced marriages are quite common in Afghanistan. Based on the AIHRC’s report, there were 172 instances of forced marriages registered with this entity in 1390. (The, the Report on Violence against Women, 1391, p-24) Instances of Badal, Bad, wedlock in the absence of boy or Gahwar Bakshesh and so on could all be termed as examples of forced marriage. However, the most usual form of forced marriage is the one in which a girl is wedded off against her will. Such kind of marriage is not based on love and affection between wife and husband. Rather, it is coupled with humiliating and violent treatment, because of which, a woman is compelled to run away or killed because of honor issues. The following case signifies the terrible situations forced marriages could cause. “In Layaaba area of Badakhshan Province, a girl is forcefully given away to a man. The night before the wedding, the girl runs away with the help of the brother of her own sister-in-law. However, her family is compelled to give away another girl to the groom. In addition, the family of the boy who had helped with the first girl’s elopement is also compelled to give away their 12-year-old daughter to the eloped girl’s brother so as to hush down the disagreement between the families.”

6.2.9.8 –Groom living in the house of his father in law

Based on this custom, the boy (mostly since childhood) lives with the girl’s family. He is usually there as servant or worker until he is old enough. Then he marries the girl, lives there as a groom and works for his father-in-law. Sometimes, the girl and boy are wedded at their early age. In such marriages, the groom sees himself as servant at his father-in-law’s home or feels indebted to the family the whole life. These kinds of marriages are not coupled with satisfaction taking away from the couple the opportunity to live independently and freely. They may lead to domestic violence, too. At times, the custom cheats the boy; he is refused to marry the girl; he is sacked from the house – with all services forgotten. For instance in Bamyān Province, a 12-year-old boy called Juma Khan is sent by his father to another person’s house as a household groom – it was agreed that he would marry his daughter in the future. The boy states: “While working hard, I was living my life in that man’s house. All I was being paid were my daily meals and a pair of clothes once a year. However, I was happy with the hope that I would marry his daughter. After a few years, they wedded off the girl to someone else; I was told that her sister would be given to me. Eventually, I was sacked from the house and I was told off about the girl, too.” Juma Khan adds, “I lived my whole live for that family, but I was sacked from there unrightfully.” (The, Women and Children Trafficking in Afghanistan, 1390, p-68)

6.2.9.9 – Polygamy

Polygamy is another harmful custom that is sometimes justified religiously. In Islam, polygamy is practicable only under very strict obligatory conditions. However, wealthy or influential men

opt for polygamy without considering the said conditions. Polygamy could also have many unwanted consequences for women making them exposed to various domestic forms of violence. Unless provisions of law are observed, polygamy is considered a crime as stated in Article 37 of the Law on Elimination of Violence against Women. “A person who marries with more than one woman without the observation of the provisions of Articles 86 and 89 of the Civil Code, he shall be sentenced to short term imprisonment that is not less than 3 months.” (The, Afghanistan, 1390) The verdict in this Article has not been observed the proportion between the crime and the punishment that is due to the coarseness of the tribal traditions prevalent in terms of this issue in Afghanistan.

6.2.9.10 – Heavy dowry and high wedding cost

Heavy dowry and wedding cost in the wedding parties are very unbecoming tradition prevalent across Afghanistan. Despite, widespread poverty, the custom leads to forced and underage marriages, wide gap between the ages of husband and wife and even selling of girls to the wealthy people. Payment of high wedding costs is heavy burdens on the grooms’ families. They go under debts. In order to hold the wedding ceremony, some are even compelled to mortgage their houses or shops as security for the debt. Given the widespread unemployment in the country, this dilemma is worsened. In most cases, the husband is compelled to migrate out of the country and work hard to earn enough money to pay off the debts. This in turn elongates the betrothal period and the after-marriage period for a long time causing new problems in the families – with women being the main victims. Domestic violence, rape and honor killing could be the consequences of such marriages. The following is an example of such cases:

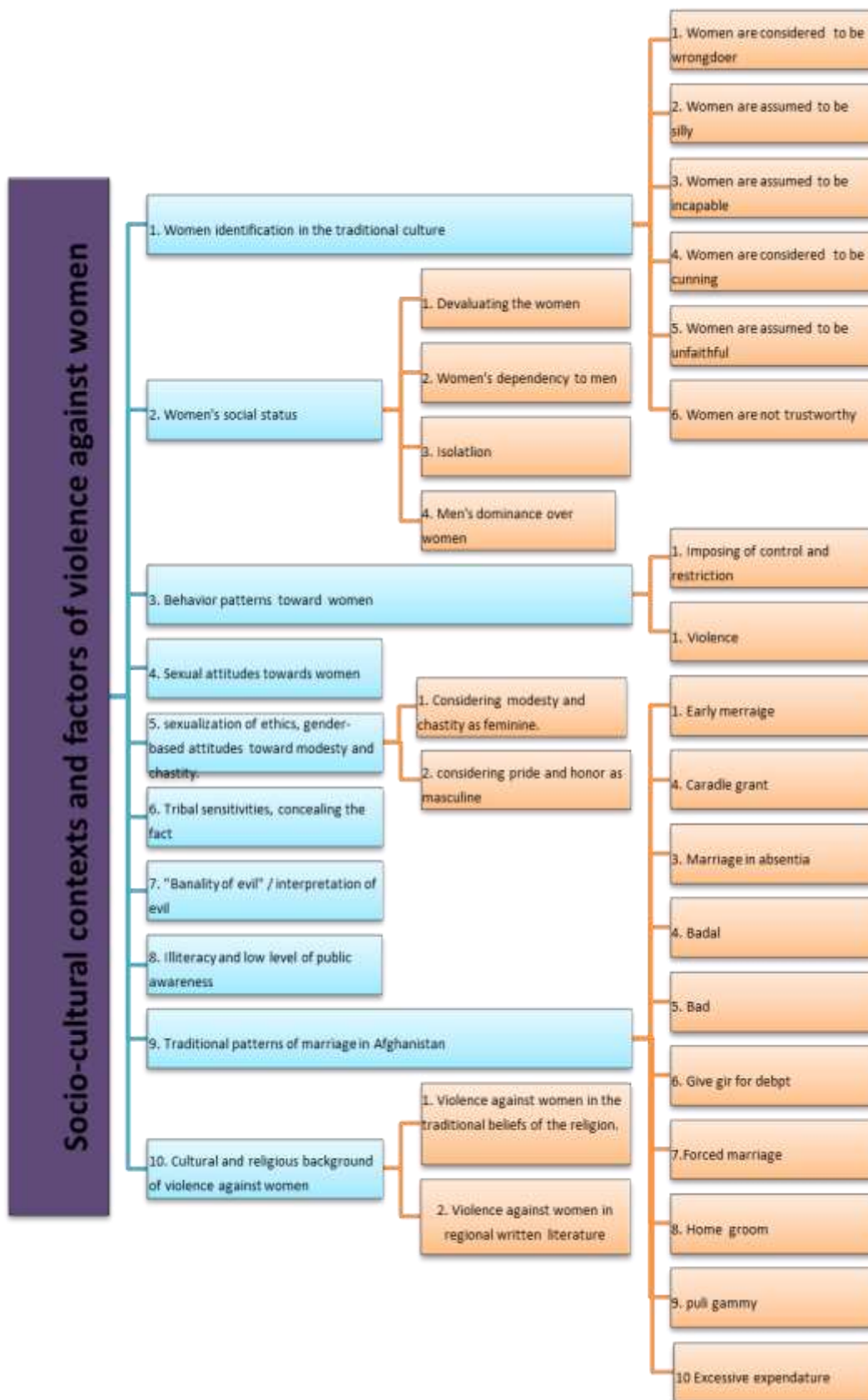
“I was 14 years old when I was betrothed. After a while my fiancé died. Then my family forced me to marry my dead fiancé’s brother who happened to be engaged with another girl (a child girl). My father accepted it because he himself had married a young girl from the neighboring village for a great deal of money; he victimized me for his own wish, forced me to get married in exchange with a big money. After I got married, domestic violence loomed on me and my husband left for Iran, In brief, owing to enmity between my fiancé’s family and another in the village, we left the area for a different province. After some time my husband divorced me. Later once again, my father decided to sell me for one million Afs. This decision urged me to run away from home.” (The, the Economic and Social Rights situation in Afghanistan, 1390, p-36)

6.2.10 – The Traditional-Cultural support of violence against women

As shown in the previous discussions, violence takes its root from the context of cultural patterns and social relationship in the Afghan society. The majority of these patterns and social relationships have neither been created in the present times nor they are exclusive to Afghan society; most of traditional societies in the past had similar views about women. It is important to know that the traditional cultures are usually previously justified and the religion gets weaved in the texture of tribal culture. (Sociology of Tyranny, 1386, p-29) In the traditional society, religion is affected by culture; it serves culture, because religion in the tribal culture turns passive and vulnerable. (The Territory of Tyranny, 1382, p-32)

Therefore, the same attitude similar to those that are traditionally common in the Afghanistan

society is observed in the written literature of the region. This shows both the antiquity of this inhumane attitude about women and its commonality in the entire cultural domain of the region.



6.3 factors and economic contexts

Economy is considered one of the essential factors to promote human life, and it has a significant impact on all aspects of social, political and psychological life of people, especially the joint life of family members. On the other hand, it causes criminal phenomena in the society.

The factors that cause occurrence of rape and honor killing are briefly pointed out as follows:

6.3.1- Poverty of the victims

Most of the interviewees of the national inquiry who have attended focus group and public hearing meetings have stated that poverty is one of the major economic factor that causes rape and honor killing. National inquiry statistics show that 58.2 % of the victims of rape and honor killings belong to poor family. 36.7 % of them belong to middle class families, and only 4.1 % belong to families with better economic conditions.

Poverty of the families of victims of rape and honor killing has two main functions: One - the perpetrators can allure the victims not to proceed with the case and not to refer the case to responsible organs. Second- if the victim and their families want the case to be addressed, still they cannot afford the financial expenses. And corruption in the state agencies has made the situation even more difficult

On the other hand, women and girls of poor families are forced to go for work. They usually are compelled to do the household works like washing clothes and cleaning their houses or work as servants for low wages in other people's homes. Alternatively, they have to work in various departments and offices as waiters. These women and girls who get very little salary are very dependent and needy. In such circumstances they may be pressurized and forced into prostitution or be raped.

Sometimes such incidents lead to killing of them by their family for the illicit sexual relation. Sometimes even tribal sensitivity and anger cause them to be suspected by their family and be killed by them.

6.3.2 The pressure of poverty and psychological trauma

Another important factor in the occurrence of honor killings is that the male members of the family under severe economic pressure get involved in psychological trauma. On the other hand, women in the poor family are forced to seek for employment. They are often forced to go to other people's houses for washing or cleaning their homes. Then domestic violence occurs in these situations, and sometimes it happens that the husband become suspicious of his wife and kills her. As one of the focus group participants in Samangan province on Aqrab 29, 1391 said that when a husband fail to support his family and satisfy his wife's demand, then he thinks his wife is going astray and this causes him engage in killing of his wife. In one case, a woman because of severe poverty referred to one of the relief agencies to receive some relief material from that institution. Her husband got suspicious on her for having illicit relationship, and killed his wife.

6.3.3 Economic insecurity

It is a tragic paradox that poverty on one hand and richness on the other hand increase the risk of victimization. Those who are rich, especially women who have their own money, should be very

careful that mafia networks, criminal and kidnapper groups are going to kidnap them for their money and wealth. Kidnappers and mafia gangs use this approach to get access to money. The kidnappers demanding money from the victim's family abduct sometimes family members of rich people. Many incidents have happened in recent years in some parts of the country, including Kabul and Herat that sometimes the victim is killed. The women and girls who face such problems are inevitably raped and it is almost the absolute consequences of it. The following example from a plaintiff demonstrates this fact:

In 1391 on participating in Ganjina program of Tolo TV I won some money. After returning home on the way to Mazar Sharif I went to a hotel belonged to one of the local commanders, to have some food. There I noticed that a number of suspected people were frequenting there. At that time, four people entered the room, took our driver away with them, and killed him. One of the four people who introduced himself as the brother of the commander who owns the hotel initially took my bracelets from my hands and then tied my hands and feet and gang raped me one after the other. Then they took me to the corridor where there was another room and the river was behind it. A person who was in military uniform came in and they put me in a Ranger (police car), and took me away to the river side and throw me into the river.

6.3.4- Heavy dowry and heavy wedding expenses

The heavy expenses in engagement and wedding ceremonies and taking dowry (Toyana, Walwar, Qalin) and heavy Shirbaha cause disputes and even hatred between the families of both girls and boys and finally ends to hatred between both parties. These disputes pave the ground for domestic violence. In addition, may lead to accusations of adultery with a stranger man and honor killing. One of the focus group participants in Herat province on November 1, 1391 says. "The man is forced to go to the neighboring countries and endure hard and banal works to make money for heavy wedding expenses and high dowry. His long absences cause his wife demand for divorce. When a woman gets out of the house without the consent of her husband, and asks for the separation, the husband engages in murdering of his wife due to many problems he endured.

Likewise, sometimes-heavy dowry and crippling wedding expenses is unaffordable for young boys, and it causes them engage in sexual assault. It can also be one of the reasons for why girls run away from home. Girls who run away from home, they may also be raped. Another consequence of this is that the girl's family due to tribal sensitivities may kill the girl.

As Shawaliullah Adeb the governor of Badakhshan province also said in the public hearing meeting of national inquiry, on Dalw 12, 1391 that failures to pay alimony to women, forced marriages, heavy dowry provide the ground for the victimization of women and girls.

The participants of focus group meetings that were held in Balkh province, on June 15, 1391, said that one of the reasons for sexual assault is the high cost of wedding halls. Some of the fiancés who cannot afford the wedding costs engage in sexual assault prior to his marriage.



6.3.5 -drug addict

Drug addiction leads to a heavy poverty, because it imposes a high costs on families economy. Addiction destroys the family economy, and brings them into prostitution and result in sexual assault and honor killing. A woman from Ghor Province complains: "I could withstand all the problems of my husband, but now his addiction has become too much and he forces me to get engaged in prostitution and earn our living".

In another case, a person in his interview with the AIHRC's staff in Kabul said that. "My wife was a drug addict and had illicit relations with more than 10 people, this caused me kill her by knife".

6.3.6 -selling of female members of the family by their parents and relatives

The pressure of poverty and hunger may cause poor families to put their daughters at risk of prostitution. In this case, the case can be an evident case of rape. In addition, maybe the poor families are forced to marry their daughter to someone for money that most of such marriages

lead to domestic violence. In most of these marriages, the bride enjoys a lower status of dignity and respect in the husband's family, and she may be killed under some pretexts of adultery.

Selling of girls by their parents and relatives that largely taking place due to economic problems also result in rape and honor killing. Most of these girls are exposed to violence in their family, and are forced to run away from home. This way they may be killed by the husband's family or by her father's family under the name of "defense of honor".

The following case that happened in Kunduz reveals the sale of a daughter by his grandfather:

A 16-year-old girl whose father was dead 6 years ago. Her mother and her uncle are imprisoned for murdering her father. She is living with her grandfather. Her grandfather gives her to Abdul Samad for two hundred thousand Afs, the price of a house that he had bought from Qazi Abdul Wahed, the uncle of Abdul Samad. Of course, the girl prior to this incident was engaged without her consent to Abdul Samad based on the order of Qazi Abdul Wahed.

One night, during the time of engagement her fiancé with the help of her step-aunt came to girl's home and raped her by force and threat. The girl screamed as much as she could but no one hears her voice. Then her fiancé runs away. The girl filed a complaint with district police headquarter. As her grandfather considered her guilty, so he took her out of his home. Therefore, the girl was introduced to the safe shelter.

Selling of the girl by her grandfather for payment of his debt was the main factor that made the poor girl a rape victim.

Furthermore, the common perception for girl's engagement and marriage is that girl is sold for money to boy's family and this perception is apparently induced into the mind of girl's family too. It is prevalent in some parts of the country that when a family betroths a girl, they say, "The girl has been sold." Therefore, she is fully owned by the husband and his family and has no freedom and will of her own. The thing that plays a very important role in fostering this sense is the payment of a heavy dowry to the family of the girl's father. Even the word "Shirbaha" or *milk price* also functions as the same. Marrying the girls to boys for money and "Shirbaha" without giving any kind of choice and establishing any emotional relationship between husband and wife, it also creates a kind of feeling for the girl that she has been sold to the boy's family.

6.3.7- Lack of enjoyment of right to inheritance by women

The right to heritage is one of the religious and legal rights of women. By enjoying this right, the women can enjoy the right to dignity and have a better place in the family of her husband. Afghanistan's Constitution, civil law, and the law on elimination of violence against women, guarantee this right of women. Article 5 of the law on elimination of violence against women provides that: "prevention from acquisition of inheritance" is a form of violence against women, and Article 33 of this law states: A person who prevents a women from her inheritance, in addition to returning of her legal share, he shall be sentenced to short term imprisonment not longer than a month. (1390)

Unfortunately, women in the patriarchal society of Afghanistan, especially in rural areas are deprived of this right.

Therefore, women, especially when they are going to husband's home do not have the economic ability, and they are economically dependent on their husband, and do not enjoy a proper and appropriate place and status in the family.

In the following case, the plaintiff from Faryab province explains how his sister was killed "My father died 5 years ago, he was a landlord. I have no brother. We are two stepsisters, my sister and I are left from our father and mother. 19 acres of irrigated land was left as inheritance to us (two sisters), but our step-brothers were not willing to give us the inheritance left from our father. In addition, almost half of our inheritance (land) was sold. They were always creating problem to return the land. My sister was married and her husband loved her a lot. Powerful people abducted once my sister in complicity of two stepbrothers of mine. Her husband with cooperation of the Ministry of Interior found her in Kabul, she has been spending several days in a safe shelter in Kabul. The husband endured many problems to get her out of the safe shelter, and brought her home. My brothers were unhappy about it. In addition, considered it a disgrace for them. My sister a week before her death went to my brothers and begged them to return her the inheritance, the land left from our father. My stepbrother had promised her to come to her home next Friday and give her right. Right after a week, he sent his son and nephew to our house. It was 9 am, when he entered my sister's home and shot her dead. A 5-year-old girl is left behind her. Their motive for the murder of my sister was pretended to be the matter of abduction of my sister that they thought it as a scandal and embarrassment for them. While the main reason for the murder was depriving her from the inheritance. They showed it as honor killings to justify their criminal act" .

During the public hearing meeting in Badakhshan on Dalw 12, 1391, the provincial governor said, referring to the period of ignorance and said Arab had a discriminatory attitude towards the women and all spiritual and material rights and privileges of them were denied. When a woman's husband died, the wife had no right to take another husband or gain inheritance. In the pre-Islamic period, giving birth to a baby girl was considered shame in the Arab society. But after the advent of Islam, discrimination against women was condemned and women's right to inheritance become legitimate.

There are other economic factors lower the social status of women in the family and create favorable ground for the violence against women. A public hearing meeting participants in Daikundi province on 12th of Dalw 1391, pointed out the lack of opportunity for employment and sound work for economic independency of women in the society. Also, a public hearing meeting participants in Faryab province on 12th of Qaws 1391 stated: "The issues of patriarchy and the ruling position of men in the family and the community, especially in terms of economic, and monopolizing of the family income and monopolizing of the title of the head of the family by the men bring down the status and position of women in the family and society. Likewise, the husband often ignores women's income. This issue pave the way for violence against women, including rape and honor killing" .

4.6 -Psychological causes of rape and honor killing

Rape and honor killing in Afghanistan have been the most acute cases of violence against women, mostly young women in the family. These problems, in addition of having social, cultural, political, economic causes, it has psychological contexts as well. Although many of the points mentioned in this context, have been noted in previous sections, but for further

information on this phenomenon it is necessary that the psychological factors of this phenomena also be briefly pointed out.

6.4.1 Psychological causes of sexual assault

Rape in addition to having other factors, it has psychological factors and contexts as well. Social exclusion and isolation is one of these factors. Isolation can pave the way for psychological engagement of sexual violence; especially can pave the ground for rape. According to Reza Kazemzadah, an expert psychologist, being cut off from social institutions provides the psychological ground for offenders. According to him, someone does not need to be a dangerous criminal to take such actions. In the situation when a sense of belonging to a social environment goes down, such as the suburbs of major cities and in war conditions, it can be expected that the occurrence of these events (rape) are likely to go up.

Lack of employment, being jobless and the frustration resulting out these factors could also be involved in causing the problem .As Reza Kazemzadah says: "The urban communities need the availability of facilities like education and employment, and if social institutions fail to attract groups of individuals, the likelihood of violence, including sexual violence goes up".

Another important source is deprivation that can cause behavioral problems such as violence against women and rape. Kazem Zadah says, "In the big cities, especially in developing countries, some people feel that others have everything but they do not have anything. Things like the use of various commodities, and recreational facilities are before their eyes, but they do not benefit from them. "(Ashtiani, 1391(

Part of the problem is traced back to understanding of people psychologically. Certain groups of people, based on their psychological characteristics and their own personal histories, are more apt to engage in sexual assaults. Dr. Gardvn Hall, a psychologist who has done research in this area, for finding the psychological reasons of the problem of sexual assault has divided the perpetrators into four categories:

The first group - motivated: the first category consists of people who are not able to handle shocks (impulse) they are stimulated in an unusual way, for example, torturing and beating women to reach orgasm. Such people are never able to perform a normal sexual act, based on the consent of the other party. In addition, always think about performing of sexual activity in a fiercely way. They are motivated against women by this kind of anger and wrath and calm down this anger by attacking women. This group is considered as the most dangerous group of sex abusers.

Group 2 - Conqueror: The second group is people who think women like to be raped. This category of people if sometime is confronted with the soft treatment of women, they will immediately think about performing the sexual act, and try every way to have sexual contact with the opposite side. For example, if they are invited to a woman's house or somewhere to be alone with her, he comes to think that woman is willing to come to a closer contact with him, ,therefore the probability that such a man engage in sexual assault is very high.

The third group - furious: These people are motivated by their anger against women and them calming down their anger by attacking on women. This group is also considered to be in dangerous group of sexual abusers.

Group 4. Abused: fourth categories themselves are usually the ones, who have mostly been sexually abused in childhood, they are not able to maintain a healthy and long-term relationship

with a woman, and they have no commitment for establishing sound and healthy sexual relationship .Because they have been sexually abused in childhood, so as soon as they get a chance, they try to seek revenge. (Treatment, 2012)

6.4.2- Psychological causes of honor killings:

From the perspective of the psychology those men who commit honor killings are lower ranked people in term of attitude, knowledge and level of education and social status, and based on the reports of public hearings meetings this type of people are suffering from a mental illness. Therefore, in order to keep alive their sense of ownership and personification in the simplest case, a woman or a member of his family, including his wife, sister and mother is assumed as his property and imagine his psychological and emotional personality in them.This way as a result of slightest suspicion engage in honor killing. This type of people consider all the personality and human dignity of woman in her sexual affairs and obedience to husband. It is so normal for this group to engage in honor killing in case of having an anomaly sexual relation.

Mental disorders are the major factor in the incidence of honor killing. Men who suffer from mental health problems, based on traditional honor and sensitivities that arises form patriarchal attitudes, engage in rape. Honor killings also occur due to sensitivities and psychological ganglia. Women and girls who have had relations with male strangers, or even have been sexually assaulted, are considered a source of shame and embarrassment for the other family members even for the tribe. Therefore, to restore his honor they engage in killings of women and girls.

Suspicion and delusion is another important point that exists in the relationship of women and girls with male strangers. As we know, the Afghan traditional society has a hypersensitivity feeling against sexual issues and deal with it with strong intensity. This tribal hypersensitivity causes a slight suspicion on women and girls lead to honor killing. More than 240 cases of honor killing have been registered with the AIHRC's Offices across the country. The report of public hearing meetings and focus group indicate that approximately 90% of the men who have killed their wives have been due to suspicion and hallucinations. Personal identity in different societies varies based on the living conditions. In the developed and individualist world personal identity and individual need is a priority.Such people don't need to set their the priorities and needs based on what the community expect, unlike this, in primitive societies individual identities are not desirable. In such societies, the behavior of a family member is not attributed only to himself/herself, but to the all the family or society in general.

Here is that the wrong act of a person is considered a disgrace for the collective identity of a group to which he/she belongs. According to such individuals, the lifestyle of a person affects the prestige and reputation of the whole family. Therefore, the family and relatives of the victim may take similar action against the family of the perpetrator for revenge, and rape a family member of the perpetrator. In this case, a sexual assault due to this personality dependency and the sense of revenge would be responded by another sexual assault. It is also possible that due to this personality dependency of the members of a family and tribe a woman or girl who is accused of having sex outside of marriage is killed only to defend the dignity of the family or tribe.

Chapter 7

Social and psychological consequences of rape and honor killing

Rape and honor killing is one of the serious problems of Afghan society that undoubtedly leave behind many social consequences. Social and psychological consequences of rape and honor killing on the mental health of victims of rape and their family and friends are too much. Thus, it should be studied under separate topics.

7.1- Social and psychological consequences of sexual assault

Information collected from different channels, such as police, judges, prosecutors, the Commission database, group discussions, public hearings, interviews, and observations of the present national inquiry show that sexual assault leaves various social and psychological consequences on victims of rape, their family and friends.

The first social and psychological impact of rape on victims is isolation, abstraction from society, or even suicide. Although, social and psychological consequences of rape is directed to victims, but their families and friends are not immune of its impacts. The following consequences are described as follows.

7.1.1- Exclusion, isolation from family and community, and murder of victim

In the most backward societies that have a traditional texture, exclusion and isolation of victims of rape from the society, first starts from the family. Families attitude are often marred toward the victims of rape, and they regard them as a shame and scandal to the family, and assume that a rape victim has brought disgrace to the family. Families instead of protecting the victims, consider them as a matter of shame and disgracefulness in the society. It is here that a married woman, who is raped, is divorced by her husband, and a girl who has become victim of rape, plus beating that is imposed upon her by the family, is given to marriage to the rapist regardless of her consent. The forced marriage indicate that victims are perceived so humiliated and ostracized that to any price, even if the victim become victimized again and their lives become destroyed under oppression and violence, they should be pushed outside of the family circle away. The male members of the family believe that women after being raped will become as a damaged commodity that her survival will be the continuation of disgracefulness in the family. In addition, these people believe that by physical removal of someone who was raped or being accused of it the family respect and prestige will be restored, and it is here that the verdict of murder of victim is issued without being trialed in a court, and the victim is killed in a cruel and arbitrary way.

Most participants of public hearing and advisory groups in this study say that families of the victims of rape engage in rejecting and isolating even murder of victims, because they want to restore the shame and scandal brought to them by the victims of rape.

If a girl or woman who gets raped, or commit adultery, and in this case no family members take any action against her, most people taunt the victim's family members that they have not taken any action for the removal of scandal and disgrace from their family.

7.1.2- Fear, feeling shame, guilt and insecurity

Since rape is sexual, deviated acts take place more by physical force or for a desire to humiliate women, leave long-term psychological effects on the victims and the victim's personal life faces challenges in different areas of life.

Mostly people often believe that rape victims themselves underlying the ground for this problem. When the authorities such as the police, judges and prosecutors during the interrogation and obtaining statements from the victims asking them questions such as what time they got out from home, and for what reason they got out from home and how were they dressed, create a kind of negative attitudes before the victims and they are thought to be responsible for the incident. A criminal look at victims of rape will convince the victim that she is the main perpetrator. Therefore, a feeling of extreme fear encircles her, lest it is possible that others get aware of this issue, and she feels embarrassed. Moreover, the victims may fear that the police will pursue the matter, or punish the criminal, or be an accomplice or collaborator agent, or the victim don't know the right way to communicate with the security forces or think that with her reporting their family will be dishonored, or be threatened to repeatedly raped. Generally, rape incident leave a heavy psychological burden on the victim's mind and body. A rape scene may be recalled at any time by the victim, in the dream, experience numbness and dizziness, insomnia or having nightmares, worried, vigilance, and lack of concentration, may get angry very frequently, stay away from activities that are reminiscent of the rape, avoid going to the place where she had been raped, would limit social activities, and finally go to the anxiety and depression. This psychological disorder may be so severe that the victims suppress their sexual desire for months or years, lose sexual pleasure, and avoid from the physical and sexual relationship with the opposite sex and develop feelings of resentment and hatred of the opposite sex. Another problem is the issue of pregnancy. After the rape most of the time the victims become pregnant and this inflict another heavy pressure on her. As in this situation, they have double stress. On the one hand, becoming pregnant from a rapist, and on the other hand very difficult to abort the baby, because she found a sense of belonging and motherhood toward the fetus. Even if she wants to abort, the child there will not be the possibility to do so.

One of the participants of the public hearings from Badakhshan province said, "Probably because rape victims are feeling shame, guilty and fear being rejected from the society may hide this painful experience, in some cases instead of the offenders the victim are punished for this crime. Based on the witnesses and statements of the participants of public hearing and advisory groups in National Inquiry the cases of rape is much higher than what is published though official reports. The victims for safeguarding the dignity of their families refuse to disclose the rape issue. This happens for various reasons.

Beside shame, fear of lack of socially supported shelters for the victims of sexual assault, as they are considered guilty, is the feeling that never fails to make the victims of sexual assault suffers. Lack of addressing the complaints of victims and releasing of offenders is the issues that are constantly increasing fear and feeling for a safe shelter for the victims.

This panic and fear is not only the psychological fear, but also a real fear arising from the look of people. This kind of fear and horror creates a kind of silent socio-phobia in the mind of victims.

7.1.3- Enmity and revenge

Other social and psychological consequences of rape is creating and expanding of revenge and enmity. If you do not address the implementation of justice among families and ethnic groups, revenge and hostility arise among local groups and people associated with the victim and the perpetrator. Over the past two years (1390 and 1391) covered by the present research, numerous cases of enmity and revenges have happened amongst families of victim and perpetrators. In some of these cases, sexual assaults have caused many other violence and revenge in the society. The example of this can be seen in the statement of one of the participants of public hearings. In the center of the province, a man allegedly claimed that a man raped his brother's wife. However, this case was not very clear to many people, but after a while, in the winter of 1390, this man engaged in raping of a 12-year old girl of the man who was accused of rape. The perpetrator who had two wives had promised his second wife that if she invite the girl to his home under some pretext and provide the ground for rape, he would divorce his first wife. For this reason, the girl was invited by the woman to the man's house. As soon as she entered the room, the woman locked the girl in the room and the girl was brutally raped by the man who hidden behind the curtain. In addition, his first wife recorded the noise of girl in the mobile. Then neighbors got aware of the incident. However, it is still not legally addressed.

The above case clearly shows that if the case is not followed up and the perpetrators are not brought to justice this definitely leads to further perpetuation of the vicious cycle of violence. Vengeful feeling and aggressive behavior is the apparent result of rape. However, in family relationship and tribal culture that exists in Afghanistan this is not only the victims that feel shame but also all the friends, their families, and their dependents are affected and are ready to get revenge.

The social effects of rape are not limited to the above-mentioned cases, but a wide range of problems is imposed on the victims. Therefore, we can point to depression, abuse, violence, aggression, low self-esteem, feelings of shame and guilt, anxiety, running away, suicide, sexual dysfunction, cognitive dysfunction and the impact on family relationships that tend to be cold as negative consequences of rape. The above-mentioned consequences have a direct effect on the social life and relationships of the victims. Therefore, we cannot consider them mere individual or psychological consequences.

7.1.4 Social and ethical deviations

Most rape victims are young girls. The assessment of the situation of women in Afghanistan conducted by the AIHRC shows that 90% of rape victims are young girls under the age of 18. In addition, the Commission database shows a number of victims of violence against women have turned to prostitution. Research by psychologists and researchers shows that the majority of the victims, who are sexually abused in childhood, are involved in unusual sexual relationships. Sometimes these people are not capable of establishing sound sexual relationships as normal spouses.

7.1.5 Suicide

As it was also mentioned above people, who are exposed to sexual harassment the victims that without their will and consent become the victim and are sexually abused.

Such as accidents or unexpected earthquake or other factors that affect a person's life. However, unfortunately, in a society like Afghanistan, especially within the family of the victim it is viewed that the victim herself has been the cause of incident. Even in the judicial authorities, some of the responsible officials have had the opinion that the victim herself has been the cause of rape. Such an opinion means that the victim herself is guilty. In this case, she is suffering from guilt and it contributes her psychological pain and trauma and psychologically become isolated and frequently blaming herself, why she got out of the house, or would wish not be alive, and she is angry about not being able to defend herself and did not show enough courage, some of the victims commit suicide.

7.2 Social and psychological consequences of an honor killing:

In traditional and tribal community, an honor killing is one of the consequences of rape taken place by the family members and relatives. Such cases are more in insecure provinces and districts of Afghanistan where the rule of law is weak. In Afghan society because of strong discrimination, honor, and skepticism about the girls, when girl are raped they themselves are considered guilty. Therefore, the father, uncle, brothers and cousins and even sometimes his nephews, according to tradition, engage in killing of girl or woman who is raped or accused of being raped, without any trial run. On the other hand, there is a close resemblance between the social and psychological consequences of rape and honor killings. Since these two phenomena have the same origin, they have a lot of common roots and motivations so the consequences of sexual assault may be attributed to the honor killing as well. However, in an honor killing some unintended consequences are imposed on families, relatives, friends and children of victims that certainly had a harmful effect on them. In the following, we will describe the consequences of honor killings:

7.2.1 Sense of hatred and revenge in relatives of victims

As noted above in the example of explicit rape, sense of revenge, hostility and violence in cases of honor killings is much higher than other types of crimes that occur in the society. Statistics show that the husband and family members carry out most honor killings. The men who engage in murdering his wife, in fact, see himself rightful to do this. In term of social affairs, honor killing inflict many unexpected consequences upon the family and relatives of the victim.



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First of all, a member of is killed for the family dignity and honor - or as it is called in Afghanistan, for removing stains from the family, and secondly, this issue leads to long hostility and revenge, in the victim's family and the family of perpetrator. According to National Inquiry findings the victims

children often find themselves exposed to humiliation, insults and sarcastic words and feel embarrassed and humiliated and a sense of revenge and hatred develop in his mind against the society, families and the perpetrator of the crime. Therefore, one of the most serious consequences of honor killings for children of victims is that feelings of hate and aversion enter in their mind. Unfortunately, this causes further problems in the personality and behavior of children of the victims of honor killings seeking revenge, aggression, delinquency, and other characteristics first arises from psychological ill effects of honor killings that always remain in the character and behavior of the victim's children

Therefore, social consequences of honor killings not only intensify sense of revenge, violence, inferiority and complex in victim's children, but it transfers to future generations.

7.2.2 Restrictions on women's access to education, work, social activities and other essential human freedoms

As mentioned, honor killing takes place because women are considered as “honor”. Therefore, when a woman or women of the family step out of the cultural and traditional circle and dignity privacy and break their traditional credit she will be doomed to death and destruction. Then , prior to the scandal, and killing, women and girls should be confined inside the four walls of home. The consequence of this issue also causes exclusion from education, employment and participation in social, economic, political activities, and other fundamental freedoms. Therefore, honor killing cause exclusion of women and girls from participation in the cultural, social and political activities. This problem is more acute and serious in rural and tribal area.

7.2.3- strengthening of harmful traditions

The word Namos or "honor" and taking one's life because of this concept leads to the establishment and continuation of wrong traditions and misconceptions.

In Afghanistan, the concept of Namos or "honor" is synonymous with a series of moral virtues such as honor, chastity, modesty, and other behavioral characteristics. However, the existences of such characteristics are not considered honor and chastity to other members of the family and society, but only for women. When a man is doing wrong in the family all the members of the family are automatically accused of not having a family honor. But when a man is doing wrong in the family other people do not accuse him for "losing the family honor" With a closer look we found out that this primitive tradition target both sexes (male and female) and inflict unwanted effects on them. So that the right of woman "as an individual" will be taken from her, and the male is forcibly assigned to control and guard all ethical behavior of women. In this case, even a man who is not interested in exploring the personal affairs of his mother and sister, and his daughter will be forced by the community to deprive his female members of the family from many things for fear of "losing the family honor". (Sadeqyar, 2013), as it was observed, obedience of and adherence to such harmful tradition, in fact will cause further perpetuation and continuation of such tradition and then its victim will not only be women but all human being.

Chapter Eight

Conclusion and Suggestions

8.1 - as it is indicated in this report honor killing, rape is one of the most serious cases of human rights violation, and violence against women and escalation and growing occurrence of such cases has caused the AIHRC to launch the first National Inquiry in Afghanistan regarding these two issues.

In different phases of this national inquiry, more than 2000 people from different groups in the society including representatives of state organ, civil society organizations, justice and judicial organs, media, associations, provincial councils, in charges of safe shelters, elders and influential figures in the society participated in consultative sessions, joint focus group meetings and public hearings to discuss about cases of sexual assaults, honor killings and their causes in the society. Similarly, during this program, interviews were made with 136 accused persons, offenders, victims, eyewitnesses and family members of the victims. Almost 127 cases of sexual assaults and honor killings were documented.

As it is pointed out in this report, many efforts are made over the past few years to protect women's rights and to fight violence against women. The government has undertaken specific responsibilities in this regard and has developed numerous strategies and programs and implemented in some areas, but still violence against women continue to be one of the most serious problems in Afghanistan. Commission database shows that 12,000 cases of various forms of violence against women have been recorded in recent years. Numerous legal, political, social, cultural, economic, and even psychological factors play role in arising and perpetuation of this big social problem. Weak rule of law, impunity continued failure to deal decisively with offenders, women's lack of access to the judicial authority, misogynist traditions prevalent in

Afghan society, and the inhuman attitude towards women in society, corruption, poverty and unemployment are considered to be the major causes of violence against women, particularly rape and honor killings in Afghanistan. These issues have caused victims of rape and honor killings not to receive necessary and adequate protection; on the contrary, the number of such cases and incidents is increased.

Honor killing and rape have harmful and devastating consequences. Victims of honor killings and rape are mostly women and young girls. These events, in addition to physical, emotional and psychological injuries for the victims of such cases have many negative social consequences too. The majorities of the victims of such cases are placed under severe physical and mental pressure in their families, and often are looked at as criminals. This cause their rejection and isolation from the society.

However, the main reason for an honor killing is illegal sexual relation, however, Afghan Independent Human Rights Commission studies show that there are other issues that are not linked with illegal sex, issues like running away from home, being raped, lack of interest in marriage, forced marriage and expressing of interest to a man aiming at getting married with him, is part of the reasons. In the majority of cases, the perpetrators of honor-killing are the victim's relatives and family members, especially her husband's family.

Growing statistics of violence against women including rape and honor killing requires comprehensive and practical programs and projects to be developed and implemented by the authorities to reduce and prevent occurrence of such incidences and the relevant cases be followed up and handled seriously, and the victims of these cases should be supported. It is possible to provide support for the victims of honor killings and rape if the authorities speed up reformation process in judicial system of Afghanistan and fight corruption and impunity, review and amend the current laws.

8.2- Recommendations:

- Fair and accurate implementation of laws, and the establishment of special courts to deal with cases of violence against women in all provinces, and implementation of the Law on the Elimination of Violence against Women and close monitoring of it in the Courts,
- Establishing of branches of family courts in all provinces
- Criminalization of honor killing as a murder, and appropriate punishment for the perpetrators of such crimes
- Reformation and amendment of criminal law concerning cases of rape and sexual assault, and definition of sexual assault and honor killings in the law
- Criminalization of rape and sexual violence by a marriage partner, and determining of appropriate punishment for the perpetrators of this crime
- Elimination of impunity, and punishment of perpetrators of honor killings and sexual assaults through establishment of monitoring and management system of judicial system by the Supreme Court
- Development of national sovereignty, and prevention of the development of informal and traditional justice systems (especially in the case of criminal and punitive offenses) and creation of opportunities for victims to access justice;
- Planning and implementation of specific and regular programs aiming at raising public awareness about honor killings and rape cases, and emphasis on the innocence of victims of

these crimes, and the need to empathize with the victim seeking to preserve the respect and dignity of victims and reintegrate to her family and social life;

- The creation of clear policies and measures aimed at the protection, rehabilitation and compensation for the victims of rape;
- Review and amendment of laws that are in conflict with the human rights of women and especially women victims of honor killings and sexual assaults in accordance with the constitution and international human rights instruments;
- Strengthening economic, social and cultural infrastructure through the creation of education, employment opportunities, and fight against poverty, illiteracy and superstition
- Creation of legal facilities in marriage by eliminating undesirable customs such as obtaining dowry (Toyana) and things like that,
- Prevent forced and early marriages and observance of the condition of girls' consent in marriage and free choice of spouse for girls,
- Providing necessary facilities for registration of marriage and divorce in the country and monitor its strict implementation;
- Accuracy in hiring police and other security agencies, and raising awareness and professional capacity and knowledge and teaching of human rights and humanitarian law standards to boost morale, accountability and respect for human rights in the minds of all the employees appointed by these organs;
- Approving of regulations and ethical codes for all officials of the government agencies to deal appropriately with women employees, and monitor its implementation;
- Prevent street disturbs, created for girls and women, by law enforcement agencies and the creation of simple mechanisms to address complaints of street disturbances.
- A serious fight against bribery and corruption, strengthening of monitoring institutions specially bodies monitoring the implementation of laws in the judicial system, and the strengthening of trust between the people and the government
- Restoration of social culture and elimination of culture of violence in the family and social life in the country
- Promoting human attitudes toward women based on the equality and dignity of human dignity among men and women and the struggle for the elimination of stereotypes and degrading beliefs toward women by the government agencies, institutes, university, mass media and civil society organizations. And strive to avoid using abusive or degrading proverbs and sayings against the women;
- Strengthening civil society and media activities in order to promote public awareness concerning women's rights and the fight against all forms of violence against women in the family and community level;
- Development and implementation of criminal, legislative, judicial, and administrative policy by the government for the protection, restoration, rehabilitation, compensation and rebuilding of dignity of victims of sexual assaults and their families,

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Appendices

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Appendix 1:

Table of honor killing and rape recorded in the offices of the Commission in the years 1390, 1391 and 1392 splited by the Offices of the Commisson:

No	Offices	Honor killing	Rape
1	Bamyan ¹⁰	2	9
2	Mazar	20	30
3	Badakhshan	2	1
4	Qandahar	12	6
5	Gardez	48	5
6	Herat	83	24
7	Kunduz	14	17
8	Faryab	17	12
9	Ghor	3	6
10	Kabul	3	23
11	Jalalabad	33	17
12	Urozgan	4	4
13	Helmand	2	-
14	Daikundi	-	9
Total		243	163
Total of cases (honor killing and rape)		406	

¹⁰. therefore cases probably occurred in the province during this quarter is not included in these statistics.

Appendix 2:

Table of focus group and public hearings meetings based on the Offices of the Office

No	Offices of the	Focus group meetings	Number of Participants in each FGM	Public hearing meeting	Number of Participants in each hearing meeting
1	Badakhshan	3	36 people	1	74 people
2	Mazar	6	78 people	1	50 people
3	Jalalabad	5	71 people	1	31 people
4	Helmand	3	43 people	1	128 people
5	Daikundi	4	45 people	1	75 people
6	Kabul	7	153 people	4	277 people
7	Herat	6	275 people	1	68 people
8	Ghor	2	30 people	1	45 people
9	Bamyan	6	68 people	1	52 people
10	Kunduz	6	84 people	1	70 people
11	Faryab	3	30 people	1	70 people
12	Qandahar	3	26 people	1	60 people
13	Gardez	6	67 people	0	0
14	Uruzgan	3	70 people	0	0
Total	14	63	1078 People	15	1000