

A Glance on Cases of Running Away from House in Afghanistan

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*A Glance on Cases of
Running Away from House in
Afghanistan*

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Introduction of the book

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Chapter One

Preliminary Discussion

1. Introduction

Running away lexically means: “intentional leaving of living place which is undertaken for the purpose of repulsion of threat and physical protection while this intention has not been planned in advance”.

Idiomatically, running away is used to show unusual leaving of house or accommodation without advanced notice and permission of the family members¹. But running away in this report mostly applies to the running away of girls and women for the purpose of freeing themselves from domestic violence imposed on them inside their families.

Women and girls who run away from their houses, after leaving their houses, are confronted with different types of problems and difficulties; people look at them as driven away from society and expelled; a safe place is found with difficulty for them to refuge there; they face different types of violence and abuses and more important is that these women and girls are mostly seen as criminals rather than victims of violence.

¹ Dehkhuda Dictionary, Tehran, Tehran University, 1341T page, 88

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The method of treatment with the cases of running away in Afghanistan has been based on ambiguity from long ago and as a result of these ambiguities there have been different perceptions from time to time that whether it is a criminal act or not. Investigation of running away cases has been done by justice and judicial organs, some time by other entities like the Ministry of Women's Affairs, and in most cases by tribal councils. There are numerous issues inside running away cases which take place on different reasons and purposes: running away for the purpose of escaping from continuous and unbearable violence; running away to escape from forced marriages and so on.

In this report, we have tried to analyze different aspects of the phenomenon of running away. These aspects include Sharia issues, formal laws in force in the country, and international Human Rights Law. This report tries to clarify and cast light on the issue of running away from viewpoint of the holy religion of Islam and formal laws of Afghanistan. Moreover, the report wants to find out whether running away solely is a criminal act or not. Also, this report investigates the approach of the responsible governmental departments in dealing with running away cases. In the meantime, this report tells some real cases and method and reasons of running away of girls and women.

At whole, running away in itself is a kind of protest and revolt of women and girls against domestic and social violence which is imposed on them. Clear examples of this violence are forced engagements, forced marriages, giving in Bad or exchange of women and girls for feud settlements, physical violence such as beating, psychological violence such as threat and abasement discriminatory behavior and other inequalities which are usually imposed on them by their family members.

This report has been prepared on the basis of researches carried out in Kabul city and its outskirts through direct interviews with 30 women and girls accused of running away from their houses and living now in the women ward of Puli-Charkhi prison, detention house of Kabul province, juvenile correction center, and safe houses, in charges of prisons and justice, judicial, and law officials. Furthermore, in this report the viewpoints of society in terms of running away have been reflected.

2. Importance of the Report

Telling the stories and painful life realities of women of our country which are the result of running away cases from their houses, can take us to the depth of the problems and difficulties the women have faced.

Moreover, this report explains the impacts of running away from house on the life of not only women and girls but also on the life of children, men, family other members, and society and also its negative impacts on the friendly and warm environment of the household.

This report can be a good experience for husbands, family members, and others who have played a role in making women run away from their homes and will be an alarm for them for the negative and unexpected consequences of their actions. Finally they will be able to be effective in reduction and elimination of violence and cases of running away from house.

This report also shall provide a turning point for the judiciary and judicial organs and provide the basis on which they will address the reasons and real problems of women in the time of investigating the cases of running away of women from their homes.

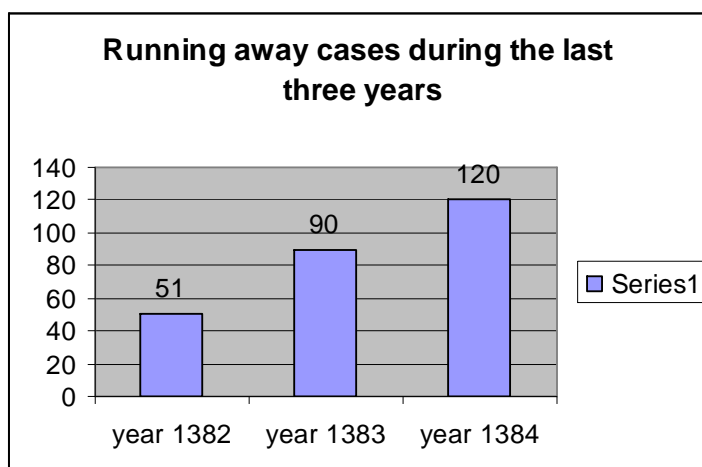
For political representatives and the parliament, the report might present a subjective and documentary evidence to be investigated carefully. Likewise it is hoped, that this report will cause positive changes in laws and the method of implementation of these laws in Afghanistan.

Finally, this report can be taken as a starting point for more investigations on women and children's rights from the viewpoint of Islam and of formal laws in force in the country.

3. Report Summary

This report shows that running away can be a kind of revolt of women against current intolerable violence imposed upon them or, in other words, women in most cases use running away from their homes as a last resort.

Moreover, this report shows that the majority of perpetrators of cases of running away from house are married women and young girls who are often illiterate or only little literate. Economically, a significant number of the runaways has been poor. More than that, this report presents specific figures and information in terms of running away in the last three years to the readers. The chart number (1) below clarifies this point.



Graph No. 1: Running away cases during the last three years

The above graph shows that the perpetrators of this action increase day by day: from 51 cases in 1382, totally 80 cases in 1383 and 120 cases in 1384 have been registered in the General Attorney Office².

² This figures have been **given** in the letter number 981/1831 dated 3/3/85 sent to the Research Foundation from the General Attorney Office

4. How people look at the phenomenon of running away?

"... A woman without the permission of her husband can not come out of her house, but this rule is not absolute and there are some exceptions. For example, if a man has not paid the dowry of his wife or if a woman goes to her parent's house to meet them or if she becomes sick and leaves her house for the purpose of treatment or if she runs away as a result of oppression and cruelty of a man..." (*Religious Scholar, Kabul*)

"...If a woman leaves her house as a result of force and coercion and curse words of her husband and takes refuge in another house, this type of running away is not considered criminal act and is not responsible, but if she runs away from her house for the purpose of lechery and pleasure-seeking, this type of running away is considered a crime and will be prosecuted..." (*Supreme Court Judge, Kabul*)

"...At present, domestic violence and other psychological and physical pressures and other types of problems make women run away from their houses..." (*35 Years Old Man, Kabul*)

"...Family rights not only have been clearly envisaged in Universal Declaration of Human Rights, but also they have been mentioned in the Civil Code of the country and this law has specified rights and responsibilities of the couples. But as far as it is seen most of men in their families, under different names which have been originated from society's beliefs which are in contradiction with the above-mentioned accepted principles and rules, prevent the rights equality between men and women and severely corrupt their rights and this pave the way for violence against women and make them run away from their houses..." (*Human Rights Activist*)

5. The Purpose of this Research

This research has been done for the following objective:

- 1) To know whether running away is a crime or not?

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- 2) To know how the justice and judicial organs deal with the cases of running away from house
- 3) To reveal and make known pains and misfortunes imposed on the victims of this kind of violence
- 4) Seeking solutions and make recommendations for preventing its frequency and continuation.

6. The Method of this Research

This research has been done to investigate real cases of running away using the method of interviewing with law protection organs, in charges of the prisons, department of scholars association of Ministry of Haj and Religious Affairs, in charges of Independent Human Rights Commission, the runaways, imams of mosques, and filling in the questionnaires trough contacting with intelligent and ordinary people, and victims of running away cases.

Since the research is quite confidential; names of victims of running away cases have not been mentioned and their interviews have not been referred for the purpose of keeping confidentiality.

Steps of the research were as follows:

Information collection

The information contained in this report has been collected using different methods of research such as interviews, observation and filling in questionnaires. The shortages and gaps of these methods have been corrected by the research after passing a pilot phase and then after correction the necessary information has been collected by the researches.

Resources

For the purpose of accelerating the process of information collection, direct contact has been made with the runaways in the women ward of Puli-Charkhi prison, Kabul province women detention house, juvenile correction center, and safe houses.

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Moreover, interviews with judiciary and judicial organs, Legal Department of the Ministry of Women's Affairs, Department of clerics Association of the Ministry of Haj and Religious Affairs, imams of mosques have been conducted.

Furthermore, legal and historical texts and other document relevant to the issue have been reviewed and the results have been reflected in the report.

Analysis of the information

The collected information has been analyzed comprehensively and as a result the main points have been specified.

7. Statistics and Figures

With the limited time and financial resources in hand, the research has been conducted only in Kabul city. this report has been prepared through filling in 200 questionnaires, carrying out 76 interviews, and conducting 18 observations and field visits as follows:

- A. About 200 questionnaires have been filled in by ordinary people
- B. 76 interviews have been done with the following officials:
 - 1) Ten judges
 - 2) Nine prosecutors
 - 3) Eight religious clerics in the Ministry of Haj and Religious Affairs
 - 4) Seven imams of mosques
 - 5) Five officials of Independent Human Rights Commission
 - 6) Four officials and staff of Legal Department of MOWA
 - 7) Three in charges and staff of the prison
 - 8) Nine women and girls within the safe houses(shelters)
 - 9) Nine-teen accused persons in Puli-Charkhi prison and Kabul province women detention house
 - 10)Two violators in the juvenile correction center
- C. Police and Attorney General Office districts departments' performance has been observed as follows:

- 1) About nine cases in the Attorney General Office
- 2) Eight cases from Police department

8. The Limitations of this Research

- 1) The perpetrators often tried during their interviews to hide those parts of their cases in which they considered themselves responsible and guilty.
- 2) Little access was possible to those who have committed violence and have likewise paved the way for running away of women and girls.
- 3) Access to religious outstanding clerics and experienced lawyers was difficult because of their business.
- 4) At present reliable references and sources related to the issue are very limited

9. Working Principles

At whole, it was tried during the research to comply with the principles and standard values.

- 1) Careful attention has been paid to the collection of real cases.
- 2) The analysis of the information should not be the result of mindset and thinking of the researcher. The principle of integrity has been observed.
- 3) The research has been done without any discrimination and bias.
- 4) The safeness of the interviewees has been one of the priorities.
- 5) The identification of the victims and interviewees has been kept confidential.

Chapter Two

Findings of the research

1. Narrating the cases of running away from house

"(L) is a 19 –year-old girl who is engaged to an old man without her will and consent . There is no way for her but to leave her father's house. A man guides her to apply to the Afghan Independent Human Rights Commission .

To find the location of the Human Rights' Commission she asks for help to anyone. In this between (L) is raped by a man promising her to take her to Independent Human Rights Commission."

"(O) was 9- years- old when her uncle married her to a 20- year- old man. She spent 21 years of her life under violence and beating with this man. She has two sons. Her husband is addicted to narcotics. The violence of her husband increases day by day. Life becomes difficult for her in the result of domestic violence and finally she is forced to leave her husband's house with her two children. She meets accidentally her cousin one day and he introduces her to Police. She is taken to Police 8th district department and from there she is submitted to the Ministry of Women's Affairs (MOWA). She is kept in MOWA for two months and then spends one month in Kabul detention house. Finally, her husband is summoned to Police department to bail her out from detention house. But her husband refuses to take her back. On the contrary, he charges her for having an illegitimate relations with another man and for that reason has run away from his house. Finally, she is sentenced to 5 years imprisonment in the primary court and two years imprisonment in the appeal court."

"(N) has been a 20 years old girl who was to be married to an old man without her will and agreement. She disagrees with this decision and is always faced with abuse and insult, harassment, and beating of her brother. Life is made difficult for her in order to become ready for marriage with the old man. Finally, the young girl finds no way but to leave her father's house and refers to the Human Rights Commission and asks for help. The Commission introduces her to MOWA and then she is sent to safe house. During her interview she says that '...I am certain that if I was married to that old man, my life would always have been bad (...) I think that, at present, I have been saved from that difficult life...'"³

"(M) An 8 –year- old girl is married by her father to a 35- year- old man whose first wife is dead and who has no children. She spends 17 years of her life with that man under violence and oppression, but does not give birth to a child. In the meantime, her husband wants to marry with his brother's wife whose husband has died. Clear age difference between them, marrying with another woman, and lack of children and finally violence and change of behavior of her husband are the reasons which made her run away with her neighbor's son from her husband's house. "⁴

"(M ,S ,R) are three sister whose mother has died and their father gets married with another woman. These sisters are always beaten and abused by their father and step-mother. To save themselves from this situation, they run away from their house and refer to Afghan Commission of Human Rights. The Commission sends them to MOWA and then the ministry introduces them to safe house.

One of the girls in her interview says that '... we want to live here in peace. We have not committed any crime and are sinless. We were always beaten and for that reason we decided to run away.... We were unhappy and discontent with our step-mother, because she sent her own daughters to school, but we were not allowed to go to school. We were to do all chores of the house...'"⁵

³ Interview of (N) from safe house(shelter), dated: 2/3/1384

⁴ Interview of (M) in Kabul Pule-Charkhi prison, dated: 29/10/1384

⁵ Interview with (M,S,R) in safe house at 10am, dated: 1/8/1384

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"(K) is a 20- year- old girl who is married to a 70- year- old man against her will. This forced marriage was an exchange marriage for her brother in order to get married easily and with less money to the daughter of that old.

It is clear that the future of this forced marriage which was against her will and there was a big age difference between them, leads to misery and misfortune. She was always beaten by her husband and his first wife and children. This oppression reached to the extent that some time she was kept with their dog with her hands and legs tied and this situation continued for hours. This girl makes relations with a neighboring boy and runs away from house with him. She is arrested after passing few days with this boy and put to trial. Finally, she is sentenced to imprisonment and sent to jail."

(k) Says: "...I do not want to return to my 70-year-old husband. I want to go to my mother's house after I serve my term in the prison...I wish I was literate. And that I could formally save myself from that old man. My husband is not ready to divorce me...."⁶

"(M) was a 20 years old girl who has lost her father and her step-mother and brother wanted to marry her to an old man against her will and consent. She did not agree with the marriage and tried to oppose it. This angers her step-mother and brother and she is beaten by them. To rescue from their violence, she runs away from her house and refers to Afghan Independent Human Rights Commission. The Commission introduces her to MOWA and then she is sent to safe house to be supported legally. (M) is very anxious for her return to her family and thinks that her return to family will be deadly for her."⁷

"(H) is a 13 years old girl who is married to a man by force against her will. She has 4 children and is pregnant, but she is divorced verbally by her husband. Her 9 years old son leaves the house as a result of domestic violence and now lives with his uncle. The woman, thinking that she is divorced by her husband, after giving birth to her child gets married with another man. Her former husband charges her

⁶ Interview of (k) from Kabul Pule-Charkhi prison at 9:30 am, dated: 7/8/1384

⁷ Interview with (M) in safe house, dated 1/8/1384

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for running away from his house after learning about her marriage with another man. (h) is now in the prison with her 4 children. "⁸

"A 12- year- old girl for the sin of being a girl was always beaten by her father from her birth time. When she was 12 years old, her father decided to marry her to a 45- year- old man who had wife and children. Encouraged by her aunt, she runs away from her house. With the help of a good man she refers to Police department and then she is sent to MOWA. When her family is informed through a TV announcement of her address, she is handed over to her family on bail. But she is murdered by her father on the other day pretending her death as natural."

"A 12- year- old girl gets married to a 30- year- old man after her father's death and remarrying of her mother when she was only 4 years old. She spends many years under oppression and violence and then when she is beaten brutally by her father-in-law, runs away with her broken hands and legs. A driver takes her to a hospital and then she is transferred to the nursery. The symptoms of torture are still vivid on her body after one year. This little girl is still concerned about her return to that house."

"(M) is a 15- year- old girl gets married to an addicted man. In spite of having six children including sons and daughters, she is beaten by her husband and even she is tortured by scorching her body with cigarettes. The woman, in full helplessness, decides to rescue herself and her children from this man who is addicted to narcotics. She runs away from her house and decides to go to her sister's house in Pakistan. As they get to the car, her elder son, on the pretence of drinking water, gets away from her and informs his uncle of their running away from house. Local police is also informed of the incident and she is arrested by police. Finally, she is sent to prison."⁹

"(N) was a 17- year- old girl. She was married to a man against her will and consent for a lot of money. After three years her father gets informed that his son-in-law is impotent. He decides to remarry his daughter to another man without

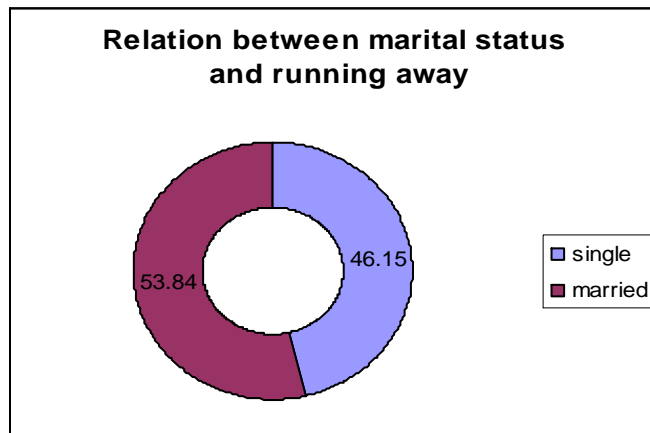
⁸ Interview with (h) in Kabul Puli-Charkhi prison, dated 7/8/1384

⁹ Interview of (m) at 9:30am in Kabul women detention house dated 9/8/1384

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taking into account legal and Sharia principles. He brings his daughter to his house without informing his son-in-law. He does not apply for her daughter's divorce from that man for his impotency. Instead, he sells his daughter to another man for a lot of money while she is yet a legal wife to her former husband. Her former father-in-law, after getting informed of the incident, charges her for running away from her house. The woman, who is illiterate and unaware of her Sharia and legal rights under patrimonial conditions, is now in the prison's cell for her father's personal interests in making more money¹⁰."

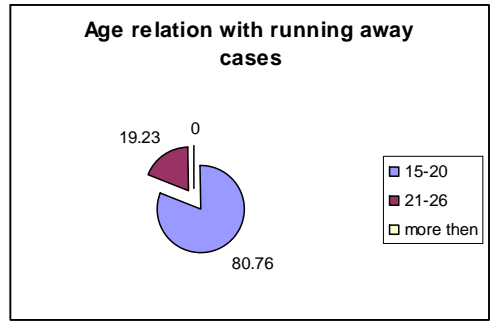
2. Statistics and Information about Running Away Cases



Graph No. 2: Relation between marital status and running away

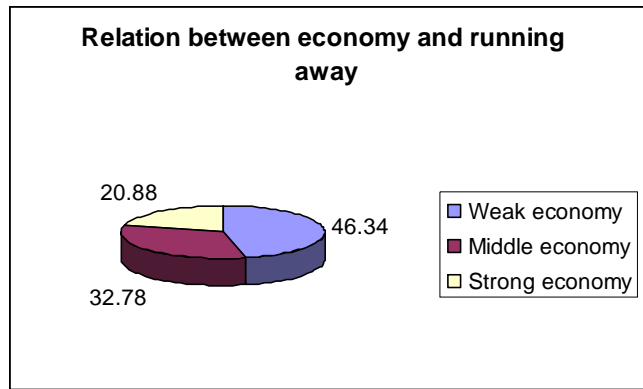
Graph number two shows that most of the runaways have been married and this implies that they have been under more pressure from the side of husband's family rather than the side of their fathers' family.

¹⁰ Interview of (N) in Kabul Puli-Charkhi prison, dated: 7/8/1384



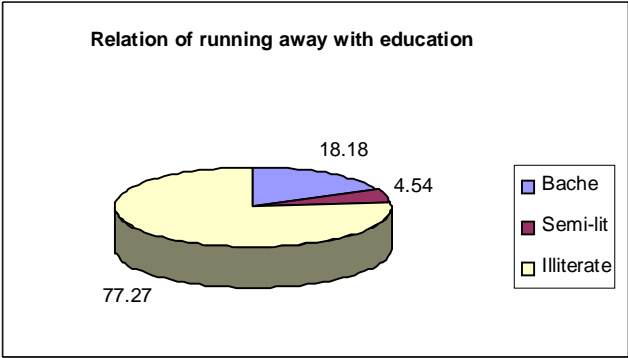
Graph No. 3: Relationship between age and the issue of running away from home

It is seen in graph number three, that the majority of the runaways have been young or too young showing their inexperience and immaturity.



Graph No. 4: Relationship between economy and running away cases.

Graph four shows that most of perpetrators of running away cases have been economically poor and only few of them belong to the wealthy parts of society. And this shows that poverty is one of the factors, among others, which paves the way for committing this action.



Graph No. 5: Relation between education and running away.

Graph five shows that the majority of runaways are deprived of education and literacy. Only 4% of them are secondary school graduates. This issue emphasizes on the importance of education.

3. Stories of Jailers and Responsible Authorities of Detention Centers of the accused of running away

Interview with one of the responsible persons of Kabul detention center:
“Some of the women are in the detention houses who have been imprisoned for running away from house. These women have good behavior in comparison with other prisoners. But their problems are more than others, because most of them have no visitors.”

Interview with one of the responsible of safe shelter:
“Women, who have run away from house as a result of domestic violence and taken refuge here, are always unhappy and their concern results from anxiety about their future.”

Interview with one of the authorities of human rights:

“During our monitoring and visiting from prisons we met women who have been imprisoned for running away from house. These women have had really many problems, because they are prosecuted and brought to trial for other crimes such as adultery. “

Interview with the authorities of MOWA:

“The accused of running away from houses have really many problems, because they have to prove themselves sinless and not guilty before justice and judicial authorities and also solve their family problems.”

4. Main Factors of Running Away from Houses

As it was mentioned in narrating stories of runaways, there are many factors for running away. The main factors are the following:

Forced engagement

Engagement is legally a promise for marriage and is done through proposal of a man to a woman for marriage who is not married to another man. This proposal is accepted by the girl or woman. This issue has been mentioned in article 64 of Civil Code as follows:

*(Engagement is a promise for marriage. Each one of the two sides (man or woman) can deny it.)*¹¹

Law has given the right to refuse this promise during their engagement. Based on this, the right of refusing will remain with both parties and the other party is not allowed to force her or him to marriage.

But in contrast with the clear rules of laws, many engagements in Afghanistan are forcefully imposed on women and girls and in some cases on men. Parents force their children to marry with people who are different in terms of age, social status, and education from them.

¹¹ Civil Code(Kabul, Ministry of Justice:1355), article 64

The result is that girls spend long time in discontent and finally revolt against the decisions they have not had any role in them. So running away is a kind of revolt against decisions made by others without their will.

Forced marriages

Marriage is a civil and religious contract and each contract requires the agreement and will of both parties and has special forms, elements, and conditions. On the other hand, each contract has some effects and outcomes.

Marriage means expression of agreement and will of a woman and a man to be a couple for formation of joint family life.

One of the basic elements of marriage is mutual agreement of both, woman and man which implies complete agreement of man and woman for the formation of joint life. Realization of this is equal for both parties of marriage, man and woman.

Article 66 of Civil Code provides as follows:

“Marriage contract is done without time limitation in a single session with express requirement and agreement which implies urgency and continuation¹².”

Furthermore, there is a condition in Islam for marriage contract that woman and man who are sane, adult and mature, can marry with each other. If a woman is a widow, she is totally independent in her decision in marrying with a man, but if she is a single girl then she is required to get consent and agreement of her father.

It is to be mentioned that this does not mean that father of the girl has ultimate power to give his daughter to anyone without her will and consent. It is necessary to get the approval of the daughter. And when the father or the grandfather, as a legal guardian, prevents marriage of the daughter and prefers his personal interests to the interests of the girl, then the right of legal guardianship becomes invalid¹³.

¹² Civil Code, first volume, ^{Kabul}, Ministry of Justice, 1355, article 66

¹³ Mohamad ^{Ashraf} Rasuli: marriage or holy contract(Peshawar, Quesa khwani, 1376, pages 125-126)

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In this regard the Civil Code of Afghanistan provides that the marriage of a minor between 15 and 16 is qualified to the consent and approval of their father or authorized through a court Marriage of below 15 years of age is not permitted. Applying any kind of pressure and force in this case is against the marriage law.¹⁴

Couple with age difference

In Islam there are clear instructions about equality of couples in marriage which as well includes the equality of age.

Moreover, if there is equality between two marriage parties in all deals and contracts, there is less dispute and error. Experience has shown that in most cases when there is an age difference between husband and wife, they feel ashamed to introduce their respective marriage partner to the public. In order not to face this kind of shameful situation, they prefer not to appear before others.

But unfortunately, when we go through these examples, it is seen that most of the running away cases have been the result of marriage in childhood when there is a big age difference between the two parties. This causes unhappiness and discontent of girls and, taking the least opportunity, many girls decide to run away.

Running away as a result of violence

The most common type of violence faced by women and girls in Afghanistan is domestic violence, beginning with using of curses and bad words to beatings which lead to wounding and killing of women and girls.

Women and girls are a most vulnerable part of the society having less protection from violence and related problems than men. If they feel that violence is continuing and incurable, they want to find a solution.

Some women or girls self-immolate or commit suicide in order to keep their prestige and prevent spreading rumors. Others decide to choose another way and run away from their homes. They think that being away from home can protect them from violence. By doing so, they want to make the other party aware of their

¹⁴ Civil Code, first volume, preparatory chapter, articles(71 and 80)

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mistake. But unfortunately in few families this happens. Instead of saying the truth and accepting the blame, husbands and families try to spread rumors. In order to exonerate themselves and blame the women, they usually use the weapon of immorality. In an Islamic society like Afghanistan, immorality is seen as one of the worst actions and proving guiltlessness is difficult. For that reason woman who has run away from home for seeking justice and release from suffering, become victims of accusations. This situation makes a peaceful and prestigious way of returning home for a runaway woman or girl impossible.

Of course, this kind of violence happens not only to married women. Differentiation and discrimination between girls and boys is one kind of violence which grows in the child as a problem and may come to the surface in the form of running away from home, turning to immorality, or committing suicide.

Exchange marriages

One of the common and bad practices and customs in Afghanistan is exchange marriages. In exchange marriages a girl from one family is exchanged for a girl from another family. Usually families embark upon this in order to prevent paying dowry and other imprudent expenditures. In this kind of marriages the consent of the girl is not considered serious and important and for this reason the practice of exchange marriages must be perceived as forced marriage. Exchange marriage is a kind of disrespect to the high human position of woman and girl, because in this kind of marriage women are dealt as a commodity.

The number of these marriages is high and they usually have negative consequences. One of the cases mentioned above refers to the issue of exchange marriage. In the result of that, the victim is forced to make relations with a boy in her neighborhood and runs away with him and finally is sent to prison.

Article¹⁵ 69 of Civil Code clearly forbids exchange marriages

(For marriage of a woman, another woman can not be exchanged and for every woman it is needed to fix the same dowry.)

¹⁵ Civil Code, volume first ,preparatory chapter, article 69

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By going deep into this article, it becomes clear that exchange marriages are in contradiction with the Sharia and Law and any contract can not be dealt in exchange for another contract, each one is independent by itself.

Running away resulting from giving in *Bad*

According to the custom of *Bad*, for the settlement of feuds and for prevention of requital (killing of a murderer¹⁶) and more killings and disputes in the area, girls of any age from the offender's family are given for marriage to the family of victim and thus compromise with each other.

According to the Penal Code of Afghanistan, giving a girl or woman in *Bad* is a criminal act and the committer will be sentenced to a 3 years imprisonment¹⁷. In practice however, giving a girl in *Bad* is one of the most common traditions in Afghanistan and is widely used.

For more clarification on *Bad* you are asked to pay attention to some examples derived from the WCLRF research report "Bad a painful sedative":

"(J) is an 18-year-old girl who is given in bad to the brother of a person killed in the dispute for irrigation water happened between her brother and the killed person. As a result of mistreatment of her husband's family members (J) runs away from house and faces a lot of problems. Finally, she gets involved in immorality and prostitution¹⁸."

"A girl runs away from house with a boy because her previous engagement was against her will and consent. The family of the boy (fiancé) gets 10- year- old sister of the runaway girl through the tradition of "bad" on the resolution and decisions of village jirga¹⁹."

¹⁶ According to researches conducted practicing and giving girls as "bad" is not only in cases of murder it also happen in very petty crimes, like minor injuries, damage of properties and so on.

¹⁷ Penal Code(Kabul, Ministry of Justice,1355(paragraph 2 of article 517

¹⁸ Bad, a painful sedative ,Kabul, Women and Children Research Foundation , 1383,page 26

¹⁹ The same book, page 23

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"(F) is a 22- year- old woman whom we met in one of the districts of Kabul city. This woman who has got married 7 years before, was given in *bad* to the family of sister-in-law (wife of her brother) when she was 11 years old. Because her brother loved a girl but as a result of disagreement of the girl's family with their marriage he ran away with that girl²⁰."

From this can be foreseen the uniting force of life of that woman which is the result of a deal and even it can be said that the children this woman gives birth to will be faced with an unknown destiny and with psychological problems.

We can conclude that one of the solutions of victims of this *bad* is running away from home and by doing so they want to show their protest not only against the tradition of *bad* but also against the violence imposed upon them.

5. Running Away from House and the Issue of Verbal Divorce

We have seen that in some cases running away from house has happened when a woman has been divorced verbally by her husband and the woman has gone out from home. Often, a result of her husband's claim that has divorced her verbally, she is accused for running away from home and is sent to prison.

In terms of divorce Civil Code of Afghanistan article 139 states as follows:

"(1) a husband can divorce his wife verbally or in written. when a husband lacks these two means, divorce can happen by usual gestures which clearly implies divorce. (2) Divorce happens with clear wordings which, in customs, convey the meaning of divorce without intention."

This section point out that since verbal divorce or even divorce by gestures has not been recognized officially in our laws, it is too difficult and in some cases impossible to prove whether a woman has run away from her home or if she has gone out as a result of verbal divorce of her husband. As a result the woman is put to trail for running away from home or she is accused on immorality.

²⁰ The same book, page 20

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Concluding this discussion, it has to be mentioned that women and girls, as we mentioned before, embark on running away from their homes as the result of psychological and physical pressures. But the important thing focus on is that this group of women and girls embark on this only to rescue themselves from an unbearable situation and that most of them for many reasons, undoubtedly, are not aware of their action's consequences.

The reasons are as follows:

First of all based on the results of this research, most of the women and girls who have run away from their homes have been illiterate and for this reason, it is natural that they are not aware of the consequences of their action. Those who have been interviewed in this research and even those who have run away from their houses with the help of another person ,were not aware that this action is a crime or, in other words, they didn't know that what will be the punishment of this action.

Thus, when researching the frame of mind of a woman or a girl who has decided to run away under unbearable pressures, we can see that despite they are interested in their house and property, they prefer to leave all their commodities and come out to the road with empty hands.: This shows that under such great pressure the women who run away do so without thinking about what the consequences might be for them.

6. Implicit Factors Contributing to Cases of Running Away from House

In addition to what was mentioned above as main reasons of running away, there are some other implicit factors which are not necessarily related to a person or a family, but have some structures and formalities beyond a family's borders. These factors, mainly a combination of specialties, social, economical, and cultural principles, may causes violence against women and as a result women may decide to run away from their house.. These factors have come into existence some time as a result of lack of interest of responsible officials and some time as a result of

some specific traditional textures. Some of the main implicit factors are discussed below:

Social principles and structures

In general principles may or many not have an advent origin. Also principles may have changing values over time. They can acquire new values or can lose their advent origin. Moreover, some time an action done for a need, quickly become a principle. There are at least two reasons for the survival of a principle in the society: At first people are getting accustomed to these principles trough trainings and social awareness programs and are not ready to get rid of them. The second reason is that even if some people are not interested following a certain principle, they are not able to quit them because of social pressures.

Traditions and customs are implemented by most of the people as strict laws for many years and they are gradually transformed into social norms and principles. In many societies, these principles do not exist in a written form. Though these principles are not in written form, they can specify right and wrong for the people and it is clearly understood when they are not observed. In Afghanistan, as in many other societies, there are social norms and principles which overshadow the participation of women in public life. Norms for marriage, norms for determining the role of men and women in society as well as within the family and others are among these social norms. One example: The appearance of men in public does not create any sensitivity, but when a woman comes out of her house, there should be a reason justifying her public appearance. Another principle is zeal and honor and in Afghanistan men are responsible to keep up the honor and zeal of their families by any means.

The traditional role of men in Afghan society including discriminatory treatment against women, in turn creates, further limitations for women. These limitations again can cause violence and lead to running away.

Because of above mentioned reasons the approach to review cases of running away in the judiciary can also originate from social principles enacted within the Afghan society. And, even those who judge these cases after they have been committed, are mostly affected in believing that running away of a woman or a girl

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has damaged the prestige and honor of her family and that likewise she has not obeyed the rule and order of society. Often they are not able to judge justly and exonerate the oppressor party, thus justice does not become dominant and injustice is supported.

Education

Education is an indisputable and accepted reality for improving human lives and in particular for improving women's situation. The first instruction of the Almighty God to his last prophet was learning and teaching in light of humans going ahead with knowledge and understanding and doing everything with intellection and discernment.

One holy *hadith* of the prophet (PBUH) "*Seeking knowledge or education is a must for every Muslim man and woman*" shows us clearly the importance of this issue. Access to education can be effective in building the capacities of humans and guide them to discernment and intellection.

Education as a single means can not bring changes in the situation of women, but, as one of the effective means it can play an important role in bringing changes. Inclusion of issues of prevention and elimination of violence against women in school curricula can be effective for bringing changes in attitudes and behavior of new generations towards the role of men and women in society and family. Moreover, education helps girls make them free from economic dependency from men by having access to employment opportunities.

In this regard, articles 28 and 29 of the Convention of Children's Rights have emphasized on access of children to education with taking into account the access to quality education which can be effective in growth of child's personality.

Although girls' enrolment in schools in Afghanistan has increased in the recent years, the figures of leaving schools after primary education for girls still are of great concern. These girls who often leave their education because of early marriages, poverty, and domestic pressures, far location of the schools from their houses, schools' expenses, and lack of appropriate environment for education are

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the main victims of violence. As a result they are made to run away from their homes or to resort to committing suicide.

Moreover, their parents' illiteracy and inability of correctly understanding the provisions of Islam and of established laws do play a role in spreading violent cases against girls. Again, they prefer to run away or commit suicide as main victims of this kind of violence.

Economic factors

The main factor in human life and wellbeing is economy as it greatly affects other spheres of social life. The role of economy is not only important in physical development of a society but also important in its spiritual development. Societies having strong economies, are able to have access to more opportunities, get educated, and, by using economic resources, to solve the main problems of their people's lives.

However, economy is not a main factor in terms of violence against women, as even in most developed countries of the world women are facing violence. It is women's economic independence which is different from human economic empowerment, that is very important. In the world including Afghanistan, the majority of women are poor and their poverty is more sustainable than in the case of men. Poverty can be a cause and also effect of violence against women. Women of all social groups can be threatened by aggression and violence. Economic dependence, deprivation of property rights and no access to abode, fear of losing supporter and children are reasons for many women to endure a violent environment and not to seek for justice.

Although contribution of women is very important in economic terms, their economic share and contribution and its economic value are often not taken into account. This is why women often think themselves in lower positions than men and men can be dominant over women. Women's work, to a great extends remains unpaid. And the great demand for the unpaid work of women inside the house causes that women lose their opportunities for developing their capacities for paid jobs.

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Most of running away cases, researched in this report, belong to women who have not been empowered economically. If the life of Afghan women is seen carefully, it can be understood that Afghan women undertake most of the economic activities to run their families' economies ahead. However, most if not all of these activities remain unpaid. Therefore, in the different situation explained in this report are treated as assets or commodities. They are vulnerable and exchanged for money by their fathers and brothers and this is the main cause for subsequent problems. Since their work has no economic value among their families, they are mainly considered as consumer beings (in comparison with their brothers) and in the result can not play a key role in determining their destiny.

Family factor

The term "family" is used to describe a place where people feel secure and confident and "house or home" is seen as personal abode against pressures, and problems of the external world and is a place in which members of a family can live with each other in peace and security.

The family serves as headquarters and support place in which the equality of human personality is established. The most important role of the family is securing real and deep affection and love between its members. Family life also is important for its adult members and it may be more important for its female members.

The role of family and parents is very important in all periods of development of human being's personality, because a family environment or its equivalent environment is a farm in which all factors of socialization of people are nurtured.

One of the most important reasons of running away of young women and girls from their father or husband's house is the existence of control mechanisms or pressure systems which are imposed on family members by a traditional family and society. Controlling behaviors usually without explanation and persuasion are only methods which are imposed upon a disagreeing person, to a woman who is under pressure or not interested in a man who is forcefully imposed upon her. Such a person thinks her future is not secure, because she is forced to accept the situation which is unbearable to her and continue to live in these circumstances. In such cases, a woman or a girl is obliged to bear the pressure and feel herself helpless, because she is disregarded continuously. In this case there is no way for her but to

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run away from these geographical borders of social control. So, she tries to keep distance and run away from anyone and seek her destiny in another place.

As this research shows, family is one of the important elements within the phenomenon of running away, because almost 35% of the runaways have left their homes due to lack of parents or under pressure of their husbands.

Customs and traditions

Tradition is an act and exercise over time it is in our mind, it has been implemented, but it has not been introduced by law and only has acquired implementation power by continuation of its use. Some traditions have been reflected in the form of good traditions in our laws. In other words, for traditions and customs there is an origin in the nature but when they are used by society members, they become more powerful.

These traditions and customs include all life aspects of individuals of a society including religious, spiritual, legal and others. Principles and foundations created on the basis of traditions define relations of individuals with each other. For this purpose, traditions play an important role in organizing the life of societies.

Some traditions and customs put women in vulnerable situations. They give women little power and right in issues like right of marriage, access to property and others and in other cases they totally deprive women of their right.

Traditions related to marriage give more power and ad ownership to a husband or to men rather than to women which causes dependence of women from men.

Other traditions of this type prefer boys to girls within the family. As a result a girl has no equal access to health, necessary food, education and the right of choosing her husband.

In many societies including Afghanistan families are guided by boys. Keeping the generation and the name of a family is related to boys. A woman in many cases takes the family name of her husband after she gets married and gives up her family name. Fear of losing family identification causes the urge within all families to have male children. Some men get married for a second and third time to have

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more sons. Preference for having male children causes that in various cases families sacrifice their daughters for being able to keep their sons.

Giving a daughter for the crime committed by a male member of the family to the family who has lost its family member which, in turn create more problems and makes the daughters life miserable, is one of the clear impacts of preferring sons to daughters.

Marriage in an early age is another main problem which that is the result of traditions. Early marriage takes the time of childhood from a girl. This time of childhood is very necessary for her physical and psychological growth. In fact, early marriage is a dangerous blow to the mind of a child who wants to be beside her mother and father. Moreover the clear difference of age between a girl and her husband, who is usually older than her, causes that there is no similarity in the feelings, inclinations, and wishes of the two.

Today in Afghanistan at least 90% women are living in rural areas and suffer from many kinds of indecent traditions and customs which are imposed on them. These traditions and customs cause that women after bearing many problems finally save themselves by running away or committing suicide.

Moreover, it is seen that in the present situation of Afghanistan the main reason which strengthens the binding power of custom, is having interest in power and dominance. This is true whether this dominance is on the family level or within a region. For this reason people have strong beliefs in traditions and customs and applying of these traditions is used by men to keep up their power and dominance.

In conclusion, we can say that in many cases traditions and customs are implicit reasons for the incidents of running away.

7. Overview on the Position of Afghan Laws in terms of running away

Running away from house has not been defined as a criminal act in Afghan laws particularly in the Penal Code of Afghanistan. Therefore, the position of Afghan

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laws in terms of running away from house is mainly based on article 130²¹ of the Constitution which says “...when there is no provision in terms of any issue in the law, the case should be solved according to rules of Islamic Sharia....”

Also, there are cases in Afghan laws in which light has been shed implicitly on different conditions which can be linked to running away of women and girls. These cases shall be described below:

Running away from house for the purpose of marriage

Article²² 425 of Penal Code provides as follows:

“Whenever a person takes a girl of 16 years for the purpose of marrying with her and gets married with her with her own accord and according to the law, this act is not considered abduction. Referring to court for the purpose of getting married and obtaining marriage certificate is not considered crime.”

In the meantime, in this case article²³ 70 of Civil Code can also be used.

“A male of 18 and a female of 16 are capable of marriage.”

Also, article ²⁴80 of Civil Code provides as follows:

“When a wise female gets married without the agreement of her legal guardian, this marriage is valid and effective.”

Running away for the purpose of committing crimes of immorality

If running away takes place for the purpose of committing moral crimes, this issue will be investigated according to article 427 of Penal Code:

“If a person commits adultery or sodomy with a female or commits sodomy with a male, according to the circumstances will be sentenced to long imprisonment...”

Other aspects of running away from house including running away as a result of violence are not clearly reflected in the laws.

²¹ Courts during prosecuting the refereed cases implement the provisions of this law and other laws. Whenever there is no provision in ^{terms} of any case under prosecution in the Constitution and other laws, courts will decide according to Sharia law and within the limits established by this constitution in a way in which justice is secured in its best way.

²² Penal Code, Kabul, Ministry of Justice, Official Gazette, 1355, article 70

²³ Civil Code, Kabul: Ministry of Justice, Official Gazette, 1355, article 70

²⁴ Civil Code, Kabul: Ministry of Justice, Official Gazette, 1355, article 80

8. Problems with Dealing with Cases of Running Away

Although Afghan laws do not consider running away from house as a crime in its abstract concept, in practice this issue is pursued in Afghan justice and judicial departments. For the reason that this issue has not been specified in the law, it is referred to articles 130 and 131 of the Constitution.

Conditions and different circumstances in terms of running away which relate to this issue from the viewpoint of Sharia, appear in different forms. This report wants to state the method of investigation of running away cases on the basis of articles 130 and 131 of the Constitution from the viewpoint of some justice and judicial officials and comment on their practicability

a) “When the assigned prosecutor finds out in his investigation of a running away case that the runaway, in addition to running away, has committed a crime or other act, then, this is confirmed by the assigned prosecutor and his/her detention order is issued by the prosecutor. Within 15 days its bill of indictment is prepared and submitted to the authorized court. If the investigation of this case has not been completed during this period, then for the completion of the investigation the prosecutor asks the court for additional 15 days. After the completion of investigation, the prosecutor submits the file to the court and asks the court the type and size of punishment which is suitable for the accused. If the assigned prosecutor realizes at the end of his/her investigations that there are no sufficient and justified evidence, then s/he keeps the file of this case.”

b) “Of course actions to this case relate to the original case, which can be specified during the investigation. If a runaway has no criminal motive and her act is not against Islamic Sharia and effective laws, then in the light of provisions of Sharia and law, measures are taken to defend her right. The government and its legal departments will stand by her side to defend her rights.”

c) From the viewpoint of the principles of the law, and Sharia, when there is violence, torment, and torture in any family and this violence increases that much that the woman related to that family is forced to run away from her house; before running away, she should inform the justice and judicial organs of the reasons and

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motives of her running away and incurred violence. And, thus the relevant departments can stop and hamper the violence and mistreatment and find its reasons and motives. And if the runaway does not report to any legal authority for the violence and mistreatment committed against her, then the judicial officers will prosecute the runaway with taking into account the provisions of articles 130 and 131 of the Constitution. If running away from house takes place for the purpose of committing an immoral act and an action against the Sharia, then running away is considered a criminal act and according to article ²⁵427 or article ²⁶29 of Penal Code the perpetrator will be prosecuted and put to trial.

d) “In the Penal Code of Afghanistan there is no article in terms of disobedience²⁷ on the basis of which to decide about a disobedient woman. Not including this issue in the laws does not mean that the legislator mistakenly has not mentioned or has forgotten this issue, but since disobedience has many states and types and that in one of those types there is good will. For example, visiting parents or going out from house as a result of unjustifiable and unbearable pressures of a husband in which the disobedient woman is not guilty. Of course, the degree of responsibility with respect to the intention of disobedient woman for going out from her house becomes higher. And when the reason for going out from her house is to make illegitimate relations with unknown person and even in some cases leads to long- term and illegitimate relations and she takes her property and children with her, there is need to prosecute her and put her to trial²⁸.

e) So, on the basis of types of disobedience, the legislator knowingly has not included in the Penal Code. But Islamic Sharia has taken into account its different aspects .If the failure of a disobedient woman is not so big , it is possible to end the case with giving advice to her. And if a disobedient woman has failed severely and violated family sacredness and has not taken into account marriage relations and has acted against Sharia, in this case the judge will sentence her to prison according to the circumstances.”

²⁵ Penal Code of Afghanistan

²⁶ Afghan Penal Code

²⁷ Disobedience means that when a woman disagree with her husband and for that does not obey him

²⁸ Head of 8 district Attorney General office of Kabul province, interview has been done on 27/7/1384 at 2pm

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f) With respect to the above-mentioned opinion it can be deduced that if running away has taken place for the purpose of committing the crimes and immorality; the perpetrator will not be prosecuted under the name of running away from house. But she will be prosecuted on the accusation of a criminal act which has a legal definition.

g) “The performance of the Attorney Generals Office in terms of criminal cases is based on the principle of judicial justice. Though prosecution of criminals is the legal duty of prosecutors, protection of a sinless and defenseless person is an professional obligation. When it is proved during investigation that running away of a woman from her house has taken place as a result of physical torture and violence, the victim will be put under legal protection. The person who has violated the law and tortured his wife without any justification, will be prosecuted according to the law, provided that the running away of the woman has been done with good will. It means that she has not had any illegal relation with an unknown person; her close relatives such as parents ,brother and others are aware of this issue and the woman has taken refuge in her close relatives’ house or government relief institutions²⁹.”

h) “If a woman runs away from her house on the basis of a sound reason, first of all she should refer to an official office and complain about the issue to it, because Sharia and law will protect her. If she does not refer to official authority after running away from house and goes to her close relatives’ house such as brother, uncle, and others and takes refuge there, she will be accused for different accusations and suspicions and will be prosecuted legally. Of course, if her accusation proves before court she will be prosecuted and put to trial otherwise she will be acquitted and instead the violator for the violation committed by him will be prosecuted³⁰.”

i) “If running away has been a pretence for the purpose of committing an act against Sharia and ethics and the prosecutor finds out that the accusation is true,

²⁹ Head of discovery and investigation of Kabul province attorney department, oral interview dated:7/10/2005 at 10 am

³⁰ Head of Attorney General Scrutiny department of Kabul province, dated:16/10/2005 at 9:30am

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then according to the law the runaway will be prosecuted and will officially ask the court for her punishment. She will be punished according to article 427 and taking into account article 29 of Penal Code.”

j) “According to the law, the accused has the right to defend her in the court or hire an advocate to defend her in the court, and also has the right of appeal to an appellate court or even apply for cassation court.”

k) “The situation of force and coercion, if proved, removes the responsibility, though the action of running away is forbidden. This means that if a woman as a result of force runs away from her house will not be punished though the action is forbidden.”

l) “In the case of verbal divorce, it is quite natural that the women should think about her future and the binding brought to her by marriage is not there anymore so the women is free to leave the house of the husband and according to the religious rule of” needs remove obstacles” she will not be punished. But it is to be mentioned that harm should not be done for harm and running away should not be done for illegitimate purpose. In both cases she can leave her house either to plead for justice or go to her close relatives’ house³¹. “

m) “Using force continuously in the family by a husband against his wife is not correct and if it really happens so, the woman can complain to the Police and also she can tell to her relatives and they can inform the security forces. Coming out from her house for a woman to complain or inform her relatives is not a criminal act and instead it is her right, but going with an unknown person is a crime. If it is proved that a woman has been divorced by her husband, going out from her house is not considered running away from house. And if running away is committed under accusation, then the prosecutor finds out through investigation whether she is guilty or not. The stance of Judiciary is clear in terms of law and according to that if there is no provision in the law for a case, then the case is referred to Sharia³².”

³¹ Interview with Mr. Murad Ali Murad member of Supreme Court and head of Civil court of Supreme Court, dated: 18/6/1384

³² Interview with Mr. Zamen Ali Behsudi, the advisor for the Penal Dewan of Supreme Court

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n) “Women who run away from their husbands’ houses under force and compulsion if they take refuge in their close relatives’ houses, it is not considered a criminal act. Also, if they go to the houses of unknown people and live only with females not with males, it is not a criminal act provided that they do not have close relatives or they feel being with their close relatives is dangerous for them. But being with unknown people and spending night(s) with them is legally and by Sharia considered a criminal act and the perpetrator will be punished³³.”

In terms of running away cases for the purpose of marriage the comments are as follows:

“Role of parents in the issue of marriage of their daughters is symbolic in case of realization of the necessary conditions and mutual consent of girl and boy to the marriage and their attendance and agreement is not a condition for the marriage and not observing it is not considered a criminal act.³⁴”

According to the figures issued by the family court, almost 21 marriages have taken place on mutual agreement and consent of girls and boys without the consent and agreement of their parents during six-month time of the last year.

According to what was mentioned before, the report now will discuss the problems on the way to addressing the cases of running away on the basis of some cases presented by judicial and justice officials:

Informing judicial and justice authorities before running away case

As the results of this report show, women who embark on running away from house are mostly illiterate or little literate and likewise do not have access to any legal information. As a result, they are unaware of sources and opportunities which are to be used to support themselves. In such cases, when these women try to run away from their houses, it is not clear to them that they will face problems and barriers and these problems will mislead them.

³³ Mr. Muhamad Ali Amini, advisor to Civil Dewan of Supreme Court

³⁴ Mr. Barat Ali, judge for the family court, dated:9/8/1384

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Condition of informing close relatives and other family members

Talking about violence against women, it became clear that this violence is more an internal phenomenon which originates usually from within the house. Also, this report has shown that most cases of violence, in fact, are the result of forced marriages which have been imposed on girls of different ages through their families. On the other hand, the terms of zeal, dignity and values like these are mostly used against women. All these factors in themselves make it difficult for a girl or a woman who has run away under domestic violence to dare return to her house and trust on people who are responsible for her trouble. For this reason, most of the girls, without paying attention to this issue and sometime as a result of not being totally aware, run away without informing any one.

Condition of proving the issue of divorce

One of key issues in debates and discussion among judicial and justice officials of the country in terms of cases of running away is that if running away has taken place as a result of verbal divorce and this is proved; the woman will not be punished. But, by giving the right of verbal or gesture³⁵ divorcement, law has limited the possibility of proving it for the men from the very beginning. Moreover, since marriages and divorces are hardly registered officially, it is very easy for men to deny giving divorce to their wives. On the other hand, women, as it was mentioned before, are unaware of all these issues and do not know where to go when such happens. Thinking that the divorce has taken place, they come out from their houses. And in most cases, when they remarry for the second time after some time, their former husbands claim that they have not divorced their wives and finally they are punished for the accusation of running away.

Condition of staying in relief organizations and condition of accompanying a woman during her running away or accompanying her in her accommodation after her running away from house

The condition that when a women is running away should stay in a shelter or should be accompanying with a female is also possible and is an option but still taking into account the problem of lack of access of women to information and the

³⁵ Husband can divorce her wife verbally or in written. When he lacks these two means, divorce can take place by usual gestures which clearly imply the meaning of divorce). Article 139 of Civil Code

high rate of legal illiteracy it is possible that in most of the situations women are not aware that such opportunities are exist for them.

With taking into account the argument mentioned above, we can conclude that it is necessary, in the first instance, to treat women who run away from their houses as victims and then try to find and investigate the reasons which have forced them to run away so that justice will be implemented in its real meaning.

9. People's View on Running Away

Interviews have been conducted with 276 people of different backgrounds and related to various strata of society. Generally there are different viewpoints in terms of running away of girls and women; though many believe the runaways should be treated justly. Some other viewpoints reveal the belief of customs and traditions in Afghanistan.

Some of the people's viewpoints are as follows:

Some 205 people out of 270 people believe they support securing rights of women and girls by their families, legal guardians, and husbands and completely oppose any type of violence and violation of their rights resulting from discriminatory treatments between boys and girls in choosing their spouse, education and other rights and wishes. They think that running away of girls is the result of not observing these two important principles. This group of people thinks that, in the first instance, parents are responsible to send their children, including boys and girls, to schools and universities and pave the way for their education and try to make them aware of their rights and others' rights. Parents should avoid from unnecessary limitations and insults and consult with them in all issues, in particular, the issues of choosing the destiny of their future life and respect their opinions and beliefs.

"Unfortunately, most of the problems including running away of girls and women from their houses are created in the families in which most of its members are illiterate or are not sufficiently literate, they pay little attention to education and others' rights and this can be a motive for forced and early marriages which will

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have negative consequences. For this reason, a girl or a woman who has run away from her house, in most cases, is a victim rather than criminal. "

"Most running away cases are caused by forced marriages, age difference, early marriages, the existence of ill-mannered step-mothers and finally lack of consent and agreement in marriages. Women and girls who run away from their houses because of their helplessness and unawareness of their rights that Islamic Sharia and law protect and support them will certainly face many unwanted and unexpected problems such as separation and isolation from society and their friends."

"Our traditional society will not accept a woman and a girl who has run away from her house back with the same previous position and dignity and this is the blemish which will remain on the forehead of her social relations for longer term."

"While almost the majority of our society, on one had, thinks that forced and early marriages, disagreement of girls, harsh treatment of husbands and families, and finally violation of their rights and violence, and harsh treatment and abuse are the main reasons for running away of women and girls, they consider this act wrong and unjustifiable and insist on other solutions such as seeking appropriate ways of referring to law and other common and acceptable approaches."

"According to old customs and traditions which are still common and effective, this act is so bad and coarse that in most parts of the country it is unforgivable and some believe that only killing can compensate it. And this has happened many times. Because men including father, husband, brother and others consider this act as a shame and disgrace for their families."

10. Method of Addressing Cases of Running Away by Independent Human Rights Commission

The Afghan Independent Human Rights Commission has the mandate of monitoring, promotion and protection of human rights according to the

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Constitution. Addressing cases of violence against women on a daily basis, it also faces cases of running away from home.

This report wants to go through some of the cases of running away and line out how the Afghan Independent Human Rights Commission deals with such cases:

The Afghan Independent Human Rights Commission addresses cases of running away from house in two ways, first, by addressing the received complaints of the victims of violence or their relatives and, secondly, through direct monitoring of prisons, detention houses, correction centers and so on.

In the first case, when a complaint is received by the Commission or a runaway refers to the Commission, the Commission introduces the runaway to a safe house through the Ministry of Women Affairs/MOWA. If the case is not solved this way directly, the Commission gives necessary consultations and instructions to MOWA and if needed to justice and judicial departments. In addition, the Commission tries to pave the way for the women or girls return to their families through effective mediation and gives appropriate advice to those who have caused the running away.

In the second instance, if the Commission finds proofs, through its continuous monitoring from prisons and detention houses, that a woman is in prison only for her running away from house, or if it is proved that her file is not considered seriously by justice and judicial officials, or if there are any other problems, relevant authorities are contacted directly and the Commission tries to solve these problems through legal channels.

11. Manner through which the Legal Department of the Ministry of Women Affairs/ MOWA deals with the Cases of Running Away

MOWA as a responsible governmental organ for the protection and development of women's rights also deals with cases of violence against women and also cases of running away from house. In 1384 the MOWA has investigated 118 cases of running away.

The Legal Department of MOWA expresses its viewpoints and comments in terms of dealing with cases of running away from house as follows:

From House in Afghanistan

Women and girls, who run away from their houses and come to the Legal Department, first of all are given good advices and are urged to return back to their homes. If their return is impossible, their cases are referred to justice and judicial organs. Generally, they are sent to the family court for investigation and settlement of the case and also according to the terms of reference they are sent to the Legal Department of Kabul province.

According to this department, the runaways are between 13 and 40 years old. The Legal Department of MOWA believes the following reasons mostly cause running away of women and girls:

- a) Lack of understanding between parents and their children;
- b) Lack of proportionality and coordination between social needs of youth and understanding of their families about their needs;
- c) Unawareness of girls and women about consequences of running away from their homes;
- d) Imposing of forced marriages on girls;
- e) Imposing of early marriages on girls when they are still too young;
- f) Poverty and low level of economy;
- g) Domestic violence

The Ministry of Women Affairs meanwhile has some problem in terms of addressing the cases of running away. When the cases are referred to the Legal Department of the Ministry, at first, this Department has problems in terms of their accommodation and protection. This is because, in most of these cases, the runaways are not able to return to their families. Secondly the Ministry faces problems for investigation of these cases, because, on one hand, the referee does not tell the truth and wants to hide the real story, and, on the other hand, when a case is referred to the relevant authorities or courts, there are many problems such as inappropriate performance of the relevant organs. The formal laws of the country are not implemented properly and for this reason most of the running away cases are not correctly investigated. The case is described differently and according to that, different punishment is given to the accused. For that reason women to date have been facing serious problems.

12. The Way Safe Houses Treat the Runaways

Safe houses which are also called shelters have been established by foundations of women rights' supporters. The main purpose of establishment of these houses is to create a safe environment and place for the women who become homeless and are in lack of support as a result of domestic violence and other events. Then women are taken in the safe houses to stay there. Of course, these houses are established to accommodate homeless women temporarily and when their problems are solved, they are handed over to their families under bail and warrant.

Although these houses are few in numbers but they still have been able to be a safe place for homeless women.

According to the figures and information given by the in charge of one of these safe houses, at present there were about 25 homeless staying in this safe house. The women had left their families due to domestic violence. Running away cases are referred to the safe houses through the Ministry of Women's Affairs. The files of these women are in process in the courts and justice organs. Some runaways have been returned to their families after reaching an understating with their families. Returning of the runaway to their families takes place only on the basis of the woman's consent and when she feels safe and protected. Moreover, before she is handed over to her family, it is ensured that the present problems have been solved.

One of the staff of the safe houses said in terms of main problems of these women and girls as follows:

"The main problem of these women and girls who are living in these centers is that their cases are pending. In other words, these women have been living for longer time in the centre unless their problems are solved and their destiny is determined. Some time it happens so that some of these women stay here for long time without knowing about their future, because their families are against their return to families and also the society is not prepared to accept them³⁶."

Also, there are women in the safe houses who have been put to prison after their running away from their homes, and after serving their term in the prison no one has been ready to accept them in their families. For the present, there are about 9 of these women in the safe houses.

³⁶ Mary Akrami, in charge of one the safe houses in Kabul, oral interview, Kabul dated: 13/4/2006

Chapter 3

Conclusion and recommendations

Conclusion

With taking into account the above-mentioned materials, the main reasons and motives for running away can be summarized as follows:

1. Reasons for running away from house are early and forced marriages, domestic violence, illiteracy and the women's and girls unawareness of their rights (legal and sharia) and others. These factors cause women and girls to run away from their homes.
2. Reason and motive for running away of girls from their houses is violence and violation of their rights resulting from sex-related discriminatory attitude towards boys and girls for choosing their spouse, education and other rights and needs.
3. Running away from house, in its abstract form, is not considered as a criminal act according to Islamic Sharia and also national laws and international conventions, unless the runaway has committed any other act against Sharia and law.
4. If an adolescent and sagacious girl gets married with her own consent and will, without the agreement and consent of her parents with a man of the same age, according to Sharia law, this is not considered a criminal act according to Shari and law.
5. Not observing articles 70-80 and first paragraph of article 71 of first volume of the Civil Code and article 517 of the Penal Code in terms of forced and early

marriages against the will and consent of girls clearly violate these articles and cause women and girls to run away from their houses.

6. Marriages done on the basis of dealings which have economic reasons (exchange and giving in *Bad*) without taking into account the will and consent of women and girls also cause women and girls to run away.

7. Careful investigation of recorded cases of the runaways suggest that the majority of running away cases are among illiterate and little literate groups and those who have had little information about their legal and Sharia rights.

8. Corruption in some security organs has created more problems for the protection and securing of all people's rights in particular unaware women and girls.

9. Review of recorded cases of running away shows that customs and traditions are preferred to Islamic Sharia and effective laws of the country among the majority of the people.

10. It is seen in most cases of running away that weak economy is the main reason for early engagements and marriages of girls and also widows.

11. Interviews with the Imams of mosques show that they are influenced by local traditions and customs in some cases and can not clearly describe the Sharia rules for guiding and instructing women and girls.

12. Violence deprives women of their mental independence and undermines their ability for creation of good and friendly family relations, it disrupts the rearing of children and the family order and when there is no help or protection from violence, running away might be a last resort.

Recommendations

1. In order to deal properly with the cases of domestic violence against women and legally support them, the government of Afghanistan should enact a specific law for elimination of violence against women. This law should have a clear definition for violence against women and specify legal ways of fighting against this phenomenon.
2. Justice and judicial organs should specifically prosecute the perpetrators and agents of early and forced marriages.
3. The government should pave the way for women to have access to security, justice, and judicial departments across the country by establishing local offices of these organs in the districts and sub-districts.
4. The government should take necessary steps for the creation and establishment of female police units, training and employment of advocates, and creation and establishment of legal and counseling entities across the country. Also, the government has to take serious measures in the field of training of police and staff of other department of rights' protection for the purpose of gender awareness of inequalities between women and men.
5. As a preventive measure, the government should pave the way for women to access education, employment, economic independence, and legal awareness.
6. The government should promote the legal and Sharia awareness of women and of society at whole in terms of personal and civil rights of women including their rights of marriage through broadcasting enlightening programs and launching effective propaganda in the mosques and religious gathering places of Shiites and

thus by making the society aware of women's rights about their life, and in the future enable them to get power of wise decision-making.

7. The government should pay attention to institutionalization of respect to women's rights and condemnation of violence against women in educational curricula of Afghanistan.

8. The government should make compulsory the registration of marriage and divorcement certificates in an official organ (in a simple and easy form) for all people.

9. Civil society foundations should promote the culture of respect to human rights by launching enlightening and awareness programs. Thus, those who choose running away from their houses as a last resort to save themselves from violence and force will not be obliged to put their life in trouble.

10. Civil society organizations, human rights protection organs, institutions, organizations, and the donor community should assist the Afghan government for the implementation of the above-mentioned recommendations and any other activity which causes the elimination of violence against women.

Attachment 1

Women and Children Legal Research Foundation

Research project of running away from house

Questionnaire for intelligent people

Questionnaire number (1)

Address of interviewee:

Date of interview:

The province of interviewee:

Interviewer:

District/ city:

Time of interview:

1. In your opinion what are the main factors and motives for running away of a girl from her house?

2. What is the responsibility of parents towards their daughters?

3. How to prevent running away of a girl?

4. What will be the position of a girl after her running away from house?

5. What do you think about running away of a girl?

6. What do you think she will be accepted once again in the society?

7. From which viewpoint, running away of a girl is considered crime and sin?

- A .from viewpoint of Islamic Sharia
- B .law
- C. traditions
- D. parts a, b, c
- E. none of them

From House in Afghanistan

Women and Children Legal Research Foundation

Research project of running away from house

Questionnaire for intelligent people

Questionnaire number (2)

Address of interviewee:

Date of interview:

The province of interviewee:

Interviewer:

District/ city:

Time of interview:

1. Which factors and reasons cause running away of a woman from her house?

2. What is your opinion about a runaway and what do you think she will be accepted by her husband and respect by other people?

Yes

Explain the reason:

No

Explain the reason:

3. What the husband should do in order to keep her wife at home and not run away from her house?

Is running away from house a crime or sin?

Traditionally

By law

By Sharia

None of them

4. What is your responsibility in preventing running away of women and girls from their houses?

5. Who is considered guiltier for running away from house?

From House in Afghanistan

- Wife
- Husban

6. In your opinion which stratum of society more than others embarks on running away from house?

- Educated people
- Uneducated people

7. How to prevent running away from house? What is your opinion about this?

From House in Afghanistan

Women and Children Legal Research Foundation

Research project of running away from house

Questionnaire for imam of mosque

Questionnaire number (3)

Address of interviewee:

Date of interview:

The province of interviewee:

Interviewer:

District/ city:

Time of interview:

1. What says Islamic Sharia about a woman who runs away from her house as a result of her husband's oppression and torture?

verses of holy Quran

From viewpoint of Hadith

2. What Islam says about a girl who runs away from her house under the oppression and cruelty?

verses of holy Quran

From viewpoint of Hadith

3. What is the order of Islamic Sharia regarding a woman who has run away from her house and has committed an action against Sharia?

Verses of holy Quran

From viewpoint of Hadith

4. What is the order of Islamic Sharia regarding a girl who has run away from her house and has committed an action against Sharia?

Verses of holy Quran

From viewpoint of Hadith

Women and Children Legal Research Foundation
Research project of running away from house
Questionnaire for prisons in charges
Questionnaire number (4)

Address of interviewee:
Date of interview:
The province of interviewee:
Interviewer:
District/ city:
Time of interview:

1. How do you evaluate the crime of running away of women and girls from their houses in relation to other accused people? What is the difference?

2. What do you think their imprisonment will have positive implications or negative?

3. What corrective approaches do you think necessary for them inside the prison?

4. What will be the impacts of good behavior of the accused of running away from house on their release or reduction of their imprisonment term?

5. What is the number of the accused of running away from house during current year?

6. Who is responsible for supporting women other than their relatives and legal guardians and which way they are provided with this support?

7. What will be the decisions of courts about women and girls who are detained after their running away from houses?

8. Is there any other place excluding prison to rehabilitate and correct them?

From House in Afghanistan

Women and Children Legal Research Foundation
Research project of running away from house
Questionnaire for the in charges of safe houses (shelter)
Questionnaire number (5)

Address of interviewee:
Date of interview:
The province of interviewee:
Interviewer:
District/ city:
Time of interview:

1. What are the conditions of admission of a woman and girl who runs away from house?

2. What do you think the runaways should stay in safe house or prison?

Yes

Explain the reason:

No

Explain the reason:

3. Do they have the right to see their families and relatives?

Yes

Explain the reason:

No

Explain the reason:

4. How many girls who have run away from their houses, are in your center?

5. How many girls who have run away from their houses come to you at average?

6. Which way the girls who run away from their houses refer to you?

From House in Afghanistan

7. Do you consider useful, stay of the perpetrators of this action in the shelter or safe house?

yes

Explain the reason:

No

Explain the reason:

8. On the basis of what documents do you hand over them to their families and relatives?

yes

Explain the reason:

No

Explain the reason:

9. How long a woman or a girl can stay in a safe house or a shelter?

10. What places are good for the perpetrators of this action in your opinion?

1 .prison

2 .shelter or safe house

And please explain the psychological impacts of these places on women and girls

11. What do people think about shelter or safe houses?

Women and Children Legal Research Foundation
Research project of running away from house
Questionnaire for common people
Questionnaire number (6)

Address of interviewee:
Date of interview:
The province of interviewee:
Interviewer:
District/ city:
Time of interview:

1. What cause women and girls to run away from their houses?

2. Is this the result of wrong treatment of their husbands or interference of their families

Yes

Explain the reason: _____

No

Explain the reason: _____

3. Who is guiltier? Husband or wife?

Yes

Explain the reason: _____

No

Explain the reason: _____

4. What the husband should do that his wife not to run away from her house?

5. Will woman after her running away from her house be accepted and respected by her husband?

yes

Explain the reason: _____

No

Explain the reason: _____

From House in Afghanistan

6. Can running away from house in your opinion be a help and solution for problems of a woman?

yes

Explain the reason: _____

No

Explain the reason: _____

7. Is running away from house a crime and sin from the viewpoint of Islamic Sharia?

Yes

Explain the reason: _____

No

Explain the reason: _____

8. What will think about running away of a woman from her house?

9. Is running away legally considered a criminal act?

yes

Explain the reason: _____»»»»_____

No

Explain the reason: _____

Women and Children Legal Research Foundation
Research project of running away from house
Questionnaire for common people
Questionnaire number (7)

Address of interviewee:
Date of interview:
The province of interviewee:
Interviewer:
District/ city:
Time of interview:

1. What are the causes of running away of a girl from her house in your opinion?

2. What people will be thinking about this action?

3. Will a runaway be acceptable and respectable to people?

yes

Explain the reason:

No

Explain the reason:

4. What will be your reaction to a girl who has run away and come to your house?

5. What is the main reason for running away of a girl?

6. What families should do to prevent running away of their daughters?

7. Is running away a crime and sin according to Islamic Sharia?

yes

Explain the reason:

A Glance on Cases of Running Away

From House in Afghanistan

No

Explain the reason:

8. Is running away a crime legally?

Yes

Explain the reason:

No

Explain the reason:

9. How families will treat a girl after her running away from house?

Women and Children Legal Research Foundation
Research project of running away from house
Questionnaire for the girls inside safe houses (shelters)
Questionnaire number (8)

Address of interviewee:

Date of interview:

The province of interviewee:

Interviewer:

District/ city:

Time of interview:

1. What is the reason for your coming here?

1. How old are you?

2. How many people are in your family?

3. Who you were living with? Mother, step-mother, father, step-father, or uncle?

4. In your opinion can running away from house be a solution for solving your problems?

Yes

Explain the reason:

No

Explain the reason :

5. What were thinking when you left your house?

6. Who was with you when you left your house

7. What caused you run away from your house?

8. How was the treatment of your family with you?

Good

Explain reason:

**A Glance on Cases of Running Away
From House in Afghanistan**

bad

Explain reason:

9. Who is not in good terms with you in your family?

10. What do you think about your return to your family?

11. How were you detained?

12. Does any member of your family come to see you?

13. Did you know about the consequences of running away from house?

14. What will be your future after your release?

15. Who has guided or introduced you to this place?

Women and Children Legal Research Foundation

Research project of running away from house

Questionnaire for women inside safe houses (shelters)

Questionnaire number (9)

Address of interviewee:

Date of interview:

The province of interviewee:

Interviewer:

District/ city:

Time of interview:

1. What is the reason for your coming here?

1. How old were you when you got married?

2. How old was your husband?

3. What type was your marriage?

1 . Early marriage

2 . Exchange marriage

3 . Widow marriage

4 . With consent

5 .giving in bad

4. How many children do you have?

5. Did your husband have another wife?

Yes

No:

6. How old are you?

7. Which kind of life did you have?

A :were you living with your husband's family?

B :independent

8. Was the attitude of your husband usual, violent, or friendly?

9. Who do you think is responsible for your running away from house?

From House in Afghanistan

- yourself
 - Husband
 - Husband's family
10. Who do you want to live with after your release from prison?
- husband
 - Your father
 - With other person
11. Whom did you run away from your house with?

12. Did you know about the consequences of running away from your house?

- Yes
-

No: _____

13. Does any one come to see you from your family?

14. What do you do if your husband does not accept you?

15. Who has guided or introduced you to the safe house?

16. Can running away be a solution for your problem?

- yes
-

No

17. Did you know about the consequences of running away from house?

- Yes
- No

Attachment 2

List of references:

- 1) Dekhuda dictionary, Tehran: Tehran university,1341
- 2) Civil Code , Kabul: Ministry of Justice,1355
- 3) Penal Code, Kabul: Ministry of Justice,1355
- 4) Mohamad Asharaf Rasuli, Marriage or Holy Contract ,Peshawar :
Kesakhwani bazaar,1376
- 5) Human Rights international documents, Kabul: Human Rights
Commission,1382
- 6) Bad: a painful sedative, Kabul: Research Foundation for Women and
Children Rights,1383