

Bad Painful Sedative





Women and Children Legal Research Foundation (WCLRF)

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Final Report

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Preliminary Part

1- What is WCLRF?

The Women and Children Legal Research Foundation (WCLRF) was established by a number of female lawyers in 2003. It was created primarily to respond to the injustices that were pressured under traditional and customary practices on women in Afghanistan. Long and heated discussions on women's rights among different organisations and individuals, was the first incentive to bring this Foundation into existence, especially because traditions and customs were deemed one of the causes of women's rights violations in such discussions. In the interim, few people confirmed traditions as a source of women's rights abuse and many others ignored the fact that every Afghan woman, irrespective of being urban or peasant, has experienced such violations in one way or another. This issue persuaded us to take individual and voluntary steps for the collection of information and statistics in order to: (1) establish the existence of such horrible violations, (2) identify the role and responsibilities of those who should play a role to resolve these problems, and (3) prevent the commission of oppression and injustice against Afghan women.

As mentioned above, this Foundation was built to struggle against the injustices and to remove the obstacles that concerned women and children and draw the necessary attention in this regard so that human rights defenders can be enabled to use this information and evidence for the promotion and protection of women's and children's rights.

Since the establishment of the Foundation, we believed that, *"The journey is long but there should be a start—there is rock and stone anywhere but there should be a cross"*. We are pleased to have begun our movement towards our destination with no sign of withdrawal and disengagement. We are of the opinion that the Foundation should say what has not been said and should show what has not been shown so as to uncover the bitter realities faced by a segment of our society.

Nonetheless, we knew that research in Afghanistan has been a means utilised by a group of persons for scientific purposes and merely restricted to book and library. Therefore, we had to acquire the necessary and basic skills for a good handling of our duties and then, produce quality research reports

that will give rise to public awareness. In addition, we had to consider the quality and professionalism of report as our first priority, whereas most people have conducted research projects with a lack of capacity and coordination with national and international individual and legal entities. What we were after was to raise women's capacities and capabilities in launching and managing research programmes after years of underdevelopment by Taliban rule. It was also problematic and sometimes impossible to find professional staff to implement the plan.

The Women and Children Legal Research Foundation began its activities under the said circumstances. Despite the difficulties, the Foundation is today setting its status and establishing the importance of its presence in the field of studies on rights and traditions.

During the short period of its work, the Foundation has taken and implemented the following measures with its limited facilities:

1. Research project on “Bad, a Painful Tranquiliser”, part one,
2. The commencement of a project entitled “Women and Politics”,
3. The printing of the magazine “Waqiat”,
4. Group training to prepare the launch of the preliminary research, and
5. The convening of a conference to discuss the impact of traditions on women's lives.

Moreover, the Foundation has become a member of the Legal Institutions Forum affiliated to the Ministry of Women's Affairs. The Forum members played a pivotal role in organising women's campaign to establish their equal status in the new Afghan Constitution. The Foundation has also actively participated in Gender and Law Committee led by the Minister of Women's Affairs. In the meantime, it is taking an active part in civil society meetings.

One of the major working areas of this Foundation is to pay due attention to the regional and local customary practices that unfortunately violate the rights of women and children. The country's oral history is full of sad stories on traditions and customs that have negatively affected Afghan women and children.

2- About the project

The Foundation as a newly-established but totally committed institution decided to take a practical action in disclosing one of the worst social injustices that is inflicted upon our sisters in the name of a tradition.

Yes! This tradition is called “Bad”. It is apparently one of the best conflict resolution and peace-building mechanisms between two tribes or families, but is a real practical form of the exploitation of women and children as slaves.

“Bad, a Painful Tranquiliser” is a report prepared by the Women and Children Legal Research Foundation. This report was once developed as a preliminary report based on limited data collected from Kabul City outskirts, which was fortunately interesting to a large number of readers.

“Bad, a Painful Tranquiliser” provides a description on women’s and children’s pains and sufferings that are caused as a result of customary practices.

The present report has been written on the basis of a research conducted by the Foundation in over 10 Afghan provinces.

This report has been drafted by a group of researchers including Judge Nafisa Kabuli, Abdul Hamid Razaq, Niloofar Qadiri and Maliha Mir and finalised by Hangama Anwari.

We also acknowledge the **HBF** for their generous support and assistance in completing the present report.

3- Importance of this report

This report gains importance from the fact that its stories and information are based on concrete realities and actualities. In addition, the present report has dwelt on the impact of Bad not only upon women but also on children, men, family members and the community as a whole. It uncovers the truth that not only women but the entire family system is disintegrated in the aftermath of such a customary practice.

This report can be used as an experience and a warning for members of local jirgas and shuras to take into account the consequences of their decision-making. In the interim, the use of pictures and posters to make public the

impact of these decisions can be effective in preventing the reoccurrence of these actions. The civil society groups and Non-Governmental Organisations (NGOs) can utilise the present report to further develop their social activities. The National Solidarity Programme (NSP) can make use of this report in conducting their educational and consultative initiatives. It can be used as a motive to encourage female participation in local Jirgas so that they can play a role in deciding their future and in stopping the injustices. Moreover, reports of this kind can be utilised by human rights institutions including the Afghanistan Independent Human Rights Commission (AIHRC), Ministry of Women's Affairs (MoWA) and civil society organs to advocate positive changes to be discussed and made by the country law-making agencies particularly the Parliament.

Eventually, this report can be a starting point for more research in this arena and for launching professional training programmes on research, especially for Afghan women.

4- Introduction and background of this report

We began our work on this report in September 2003, which was then followed by a series of discussions on Bad, its procedure and its effects. The report faced serious and positive reactions from government authorities. For instance, President Hamid Karzai regarded Bad as “a cruelty” in his speech on the occasion of Prophet Muhammad's Birth Anniversary. He further called Bad as “one of the worst non-Islamic and inhumane act” in his address on March 8th, International Day of Women. The President called upon religious personalities to combat such an act. Chief Justice, Deputy Chief Justice, Minister of Women's Affairs Mrs. Habiba Sarabi and Chair of the AIHRC Dr. Sima Samar have additionally considered Bad “a crime against humanity and a clear violation of human rights”.

Taking into account the value and importance of the report dissemination that was focused on victim examples and stories in the first phase, the Women and Children Legal Research Foundation (WCLRF) decided to expand and deepen its research programme to cover other aspects of this subject. In order to maintain the sequence of the materials, we present to you the initial part of the probationary report from Kabul and its outskirts on “Bad, a Painful Tranquiliser” along with the new parts of this report.

It is necessary to mention that this report is not only the property of the Foundation but also other colleagues including Mr. Sayed Masoom

Badakhsh, Mr. Ahmad Farid Hamidi, Mr. Ustad Garan and Judge Abdulwali Ahsem have taken major parts in producing the present report.

The report is made up of one introduction, two parts, conclusions and recommendations.

The first part that is composed of one introduction, two chapters and concluding observations, mostly reflects the harmful dimensions of Bad that are faced by young girls and even children. It encompasses the experiences of people who have been victimised as a result of this oppression.

The second part that is made of one introduction, four chapters and concluding observations, puts a focus on the factors that help such a practice occur. This part has discussed Bad from a legal perspective and has referred to the role of rights protection agencies in intercepting the advent of such an institutional practice.

The last part of the present report has included a number of recommendations, which can be used by various government and non-government institutions to reform the country's traditions and to raise public awareness, especially amongst members of local jirgas.

We hope that concrete measures can be taken to promote and protect the human rights of women through making and disseminating reports of this nature.

5- Report summary

As it is obvious from the title, this study has been conducted to further identify the customary practice "Bad". This report seeks to:

1. Reveal the performance of the pertinent organisations,
2. Discuss the role of jirgas and marakas and stress the importance of reforming the country's non-official judiciary,
3. Clarify the sufferings of victims, and
4. Find out ways to solve this problem and put forth preventive recommendations.

6- Research methodology

We used questionnaires to collect the necessary information and statistics. The questionnaires were accurately and concisely developed by our researchers and were used after a period of probation.

The present study has gone through the following steps:

- A) Personnel recruitment.** Paying attention to the sensitivity of the subject, a group of people familiar with the localities were employed as the research interviewers. Adequate training was provided for the questioners so they can be informed of how important the study is, how information should be gathered and how the questionnaires should be filled out. This was followed by sending them to the pre-defined places.
- B) Data collection.** A series of questionnaires were designed to collect the necessary data, which were amended after the pilot period. Using the amended questionnaires, we could obtain the maximum information. The questionnaires included open-ended and close-ended questions, which provided a broader context for data gathering. A questionnaire example has been attached as Annex I.
- C) Data sources identification.** In order to accelerate the research process, we have used both direct contacts to the localities and individual contacts. In addition to the dispatch of interviewers to different provinces, we have had direct contacts with a number of accused and convicted women and children deprived of liberty in correction centres. As a consequence of this, 486 people have been interviewed with.
- D) Data analysis.** The collected data has gone through a complete analysis process. The analysis has been utilised in determining the mainstream of the present report. The gathered information was analysed by a team of researchers.

7- Research population

A research population encompasses all the people to whom the research results can be generalised. The population for this research, hence, is all the women and men who have become victims of this ugly tradition. However, we adopted a geographical sampling approach to collect data on the population.

This geographical sampling included various points and one province was covered to represent each point. The points surveyed are listed below:

1. Paktia,
2. Logar,
3. Ghazni,
4. Maydan,
5. Kabul and its suburbs,
6. Balkh,
7. Baghlan,
8. Parwan,
9. Farah,
10. Kandahar, and
11. Faryab.

Whereas the research sampling represents all groups of people in different provinces in Afghanistan, it can be claimed that the research results can be generalised to the whole country.

8- Research principles

In total, this study has sought to consider a set of principles in order to ensure a standard research. These are expounded as follows:

1. The study has sought to collect first hand information,
2. The data analysis does not reflect the opinions of the researchers,
3. The study has tried to be free of discrimination in all its forms,
4. The interviewee security was a top priority, and
5. The confidentiality of the interviewees and victims was firmly taken into account and maintained.

9- Research problems

It is vivid that all social studies have their own difficulties. But a study on highly sensitive issues like women and customary practices, which have today transformed into the principled beliefs of people in different parts of the country, has its particular problems. Women, who are the first victims of such customs, mostly do not enjoy the courage and opportunity to share their life experiences and to admit interviews. The study has faced the following common problems that have sometimes stalled its data gathering process:

1. The reluctance of families in uncovering the truth,
2. Problems in identifying victims, and
3. Lack of security in localities.

10- Interview methodology

In order to achieve the research results, various approaches were used to collect data. These include interview, questionnaire and observation. The questionnaire method was used in this study.

In this study, 486 persons have been interviewed. They belonged to different age groups, ranging from 3 to 50 years old.

Part One

Introduction and background

Traditions and customs have been an aspect of human life. These practices have existed since the advent of human beings. Mankind has dealt with traditions before they were transformed into written laws, principles and norms that derived from one ruling authority.

In order to bring about a study environment and understand this report, it is essential to attain a complete perception on what tradition is.

There have been varying definitions on the term “tradition”, each clarifying a few aspects of this phenomenon. We refer to a range of definitions in this regard:

Traditions as a set of non-written rules: Traditions are a *set of non-codified rules* that is transferred from one generation to another. These rules combine different principles and each principle can have its distinctive historical background. They rules mainly emanate from ethical and spiritual values and can be applicable upon a *societal approval*. They are actually a reaction to the events and incidents that have confronted a particular group of people and represent their lifestyle and method of compatibility with the community in which they live.

Traditions as a set of principles to establish justice: Traditions are a set of different principles and norms, some of which can provide a framework to ensure justice if accepted by the masses.

Traditions as a set of distinctive principles: Traditions are a category of practices that are applied with regional and ethnic variation. It should be highlighted that *the application of these principles and norms is usually the same if it concerns women*.

As it is obvious to all, Afghanistan has been a country of jirgas and shuras where critical disputes have been settled through these institutions. Glancing at the country’s history, we can find the signs of jirgas in the time of Bactrian Aryans. As Muhammad Alam Faiz writes in his book, “In addition to ‘Sabha’, Aryan clans had another Jirga known as ‘Samiti’”.¹

¹ Muhammad Alam Faiz, Jirgahai Boozorq-e Melli Afghanistan (Afghanistan National Grand Jirgas), (Lahore, Babrak Loodi, 1368), pages 15-16.

In another definition, we read, “Tradition is a rule that has gradually and spontaneously achieved an abiding status among a group of people and there has been no state interference in forging such a rule”.²

We should consider some issues when studying the above-mentioned definitions. The first issue is that these definitions reflect the perception of people from various societies concerning what traditions are and secondly, we see that perception on traditions is not just limited to the one in the Afghan society, but the majority of people have formed the same perception on traditions. Therefore, the common element in all these definitions that is the non-codified nature of the customary law is a topic deserving more discussion. This will be touched upon later.

Coming back to the Afghan context, we clearly notice that the element of *societal perception and approval* has changed into *male perception and approval*. The reason is that it is men who have occupied jirgas and who have made its decisions in Afghanistan.

Some other issues need to be contemplated in this respect. They are expounded in the following:

Differentiation between accepted and non-accepted traditions: It is of paramount importance to consider the acceptability and non-acceptability of traditions. The accepted traditions that are not in contravention with the principles of Islam and human rights have been used as a source of legislation, but non-accepted traditions have been prohibited and its perpetrators punished in accordance with law.

Non-written nature of customary law: The most fundamental factor that has caused a failure of justice, fairness and accountability is that these customary laws have not been codified anywhere. No organisation is hence mandated to monitor its lawful implementation.

Punishments for violators of Jirga resolutions: Specific and violent punishments are applied on people who disobey Jirga decisions. These punishments are called “Nagha” and include the arson of the violator’s house, continued Jirga enmity and revenge against him, his forced movement from the place and his isolation from the tribe.

The principle of time open-endedness in disputes and resolutions under customary law:

² Hussein Nojomian, Mabaani Huqooq (Basics of Law), (Tehran, Astan-e Qoods-e Razawi, 1376), Page 181.

The other noteworthy point is that these disputes do not have a time limitation and its enmity lasts for generations. For example, the animosities amongst Zadran tribe minimally take a period over 50 years.

Despite there have not been many studies on Bad background, it is obvious that people have to abide by this traditional practice.³ We here seek to shed light on its historical roots.

Bad is a traditional practice applied differently by local shuras in various parts of the country. This practice is against all Sharia and statutory laws made on the status of girls and women. This has much similarity with the story of the “Bride of Nile”. Ancient Egyptians annually threw a beautiful young girl into the Nile River in order to stop it from overflowing. It has taken another form in Afghanistan. The perpetrator’s family gives a girl to the victim family in order to stop inter-family conflict from overflowing and to put an end to the crisis.

Studying Bad as a traditional practice, we find out that traditions and customs have contradictory characteristics. Some are part of a society’s glories and some are plain infringements on the human rights of the people.

Considering this urgent concern that is a clear violation of women’s rights, the Women Children Legal Research Foundation decided to undertake a research on causes of such a Jirga decision-making, the preventive role and responsibility of the government, and the effects of this traditional practice on the victim and people around him.

The Foundation hopes that through disseminating information and raising awareness on these bitter realities, appropriate measures will be taken to ban these practices in the Constitution and other subsidiary laws.

³ For further information, refer to “The Dictionary of Pashton Tribes (Legal, Criminal and Social)” by Mr Muhammad Ibrahim Atahi.

Chapter 1

Overview on Bad

1.1. General profile on Bad cases in Afghanistan

Bad is literally an antonym to good. The book entitled “The Dictionary of Pashton Tribes (Legal, Criminal and Social)” reads, “Bad is the opposite of good; it refers to the crimes, and is a universal element of the crimes that ranges from insulting to murder and sexual assault”.⁴ The reactions to Bad are different and are called “Pur”, “Nagha”, “Sharm”, and “Chaam” considering the nature of the crime. Those who have the ability to take vengeance but suffice to receiving Bad are named “good people” by the tribes and if they refuse Bad and resort to revenge-taking, they are called “unfavourable people”.

In addition, Bad with the letter “a” in the middle means ugly and unaccepted from a Persian Language point of view and with the letter “o” in the middle means remedy and solution in Arabic Language.⁵

The practical procedure of Bad is that a girl is submitted by the perpetrator family to the victim family in order to settle disputes between two tribes, clans and even families. For instance, when a father or brother commits a murder, the tribal Jirga is summoned to peacefully settle the inter-family disputes through deciding that a girl from the perpetrator family must marry somebody from the victim family. Later on, the report will have detailed discussions on the type of such a marriage. These Jirga decisions are not just made to reconcile differences over cases of murder but are also made to solve very simple and commonplace problems.

Customary practices are applied in the Afghan society in a manner contradictory to the precepts and ordinances of the holy religion of Islam. In most circumstances, it is the traditions that are prior to the people of Afghanistan rather than the country’s formal laws. The vivid example can be the victimisation of girls and women under Bad practice.

This practice has taken a grim form and is compulsorily applied on defenceless girls with no attention to their age groups and their desires. For this reason, such a customary action may end in deplorable ramifications and

⁴ Mr Muhammad Ibrahim Atahi, “The Dictionary of Pashton Tribes (Legal, Criminal and Social)”, Kabul, Pashto Research Centre.

⁵ Hasan Amid, Persian Dictionary, two volume, (Tehran, Amir Kabir Publications, 1381), Page 322.

the misery and wretchedness of the victims. This has mainly led to the death of girls and women. However this practice has been criminalised in the Afghan Penal Code⁶, it is strongly implemented in our society where traditional law is fiercely dominant over the country's official legislation.

It is of regret that most cases indicate that a group of wise persons, the elderly and tribal influential figures come together and deliberately victimise a girl for the crime her father, brother, uncle or one of her relatives has committed. What is of more regret is that such a Jirga decision is superior to and its implementation easier than any other decisions. The research results show that even the government does not have the right to intervene in these cases.

Jirga decisions are put into effect in this condition. They not only do not ease the tensions between the two parties to the conflict but also expand its dimensions. In brief, we are witnessing women's slavery in the 21st century.

These disputes and differences are covered up in different points in Afghanistan. Nobody cares for the hardship and suffering of the person who has been used as a conflict resolution tool. These customary practices are even applied in the capital Kabul and we discussed almost 50 cases of Bad in Kabul and its outskirts in the first issue of the report. So the question of Bad is a critical problem in all parts of the country and is the most obvious violation of women's rights. Unfortunately, this problem has not received proper attention and no action has been taken by the people and government to overcome it.

People have narrated that Bad was first applied when there was no other option for Jirga members. So that Jirga concluded that, *"Informed that this is the worst remedy, we, Jirga members, are compelled to use it"*. This indicates the fact that this practice was not acceptable to the Jirga and came into existence due to a lack of attention and a misuse of national values.

On the other hand, the research results reveal that the two families to the conflict are obliged to accomplish Bad even if they do not heartily support it. This is because of the reality that customary practices have spread deep roots in many areas.

However, it is women and girls who are the direct and principal victims of Bad, our research indicates that this practice does include men and children in many cases.

⁶ Penal Code, Official Gazette, Ministry of Justice, 1355, Article 17, Paragraph 2.

Having a general profile on Bad cases in the country, we now discuss where this practice originates.

1.2. Contributing factors of Bad

As mentioned above, Bad exists as a usual customary practice among different segments of the population. Since marriage is not mainly optional and voluntary in Afghanistan, Bad has converted into a different form of forced marriage. Considering the research, we find out that various factors have provided the ground for victimising women and girls under Bad practice. Here we seek to clarify the contributing factors of Bad and we will talk on its negative consequences later in the report. We point out that these factors can be quantitatively and qualitatively different in various parts of the country. We here discuss the factors in the level of Kabul outskirts.

1.3. Forced betrothal

According to the Article 64 of the Afghanistan Civil Code, betrothal is a “promise for marriage”. From the perspective of the content and concept of this Article, engagement is a period during which the boy and the girl start to acquaint themselves and try to make a final decision for beginning their common life. This period is highly significant and is a cornerstone upon which a joint life can be founded. There are many couples who have not made an optimum use of this period and have spent a terrible life as a result. The Article 64 further says that, “Both persons can withdraw from the betrothal”.

It is regretful that appropriate attention is not attached to this period and betrothal is perceived as marriage in our traditional society. Many families have gone beyond this and have forced their girls and sometimes their boys to accept engagement.

Girls and boys have mainly surrendered to their destiny because they see no other way ahead. They mostly do not agree with Jirga decisions and this disagreement can have several reasons. One reason can be this that the right of girls and boys to determine their future is not respected. It is usual that the youth have admitted these decisions and parents have added oil to the fuel. For instance, the research on over 486 cases of Bad show that forced betrothal has been the major factor in 7% of the cases. Here is one of these cases.

X is a girl aged 10. Her engaged sister has escaped from the house and she has to marry instead. Her sister's engagement has been compulsory and she had already planned to marry her Mr Right. She, therefore, has eloped in order to refuse a forced marriage. Her ten-year-old sister has to compensate and she has been victimised by Jirga decision under Bad practice.

1.4. Killing

One of the heinous actions with harmful social consequences, which has been considered as a crime is killing. Although this action according to its violent and non-violent nature has been categorized and defined in the Penal Code of Afghanistan as intentional killing, un-intentional killing and killing for self-defence, the decrease and prevention of such crime has not been eye-catching. In a society where security and judicial organs are not sufficiently able to arrest and prosecute the perpetrators of such crime, it will not only affect the killer and the deceased, but the relatives of both sides too as a result of taking revenge. Research on cases of Bad indicates that 38% of such cases are resulted from killings committed by a family member of the Bad victim. In spite of the fact that crimes and punishments are accepted as personal responsibilities in the criminal justice system of our country, still in some areas including Kabul and its suburbs a sister is given as Bad to the deceased family when her brother commits killing. Unaware of the consequences of such heinous action that is more harmful than the murder itself, most of the elders and tribal leaders consider giving of Bad as a peaceful settlement for cases of killing. A research conducted on 185 victims of Bad as result of killing, clearly indicates the harsh consequences this action.

One of the interviews reads:

Miss X is a 14 year girl whose brother killed a person in a quarrel during gambling. She was given as a Bad to the deceased family for the crime committed by her bother. After many years of pain she was missed from her husband's family.

Another case reads:

Miss M a 20 year old girl was given as Bad to her uncle's family because her bother had killed his cousin in a dispute on water quota. After seven

years of painful life and bad living conditions she caught TB and passed away.

As a result of a fighting between Miss Y family and some Kochi families, one Kochi person was killed and Miss Y was given to Kochi tribe as Bad and her small brother as a shepherd by their uncle to end the animosity. But the animosity did not end. After sometimes, Miss Y's uncle, his son and finally her brother were killed by the Kochi tribe.

Or:

Miss Z is another girl of 22 year old whose brother killed a man in a dispute over water quota and she was given as Bad to the deceased family. After three years she managed to escape but was captured and killed by her father-in-law.

In another case:

A young boy had already fallen in love with a girl, but the family of this girl decided to engage this girl with another man. The young boy got angry and killed that man and fled away. The local council decided to give Miss Y who was not older than 13 years, as Bad to the brother of the deceased. More painful is that neither the girl nor the man was pleased about that decision and the girl was not even aware of this case. Miss Y was brought to the deceased family without any marriage ceremony and later through pressure by the local elders she was married to a brother of the deceased person. One week after this marriage, the husband got married with fiancé of his brother as a traditional requirement.

The above mentioned cases show some negative outcomes of giving innocent girls as Bad. Although killing and its punishment are clearly defined in the national Penal Code, innocent people are punished for it, while the real perpetrators remain at large.

1.5 Escape from home (Run away)

Escape from home is one of the actions or incidents that may not be considered as a crime in other countries. Likewise this action is not considered as a crime in the Penal Code of our country, but according to Fetwa (ordinance) of the Fiqah (Islamic Jurisprudence), if a girl runs away from home she will be convicted to Tazzyree punishment (the extent of Tazzyree punishment can be from advice to execution). In addition, escaping

of a girl from home is considered as degradation to her family. Since in most cases of escape, a man or a boy is involved it causes animosity among families and family disputes. To settle this dispute, the local elders in a meeting decide to give a sister of the man or the boy to the family of the eluded girl as a Bad. Around 15.3 % of the victims are those girls whose brother had run away with a girl.

Here is an example:

Mrs F is an 18 year old woman that we met in her house in a district of Kabul City. Seven years ago when she was 11 years his brother eluded with a girl he loved. So she was given as Bad to the girl's family. It is an exceptional case among 50 such cases that she was satisfied with her present life though she was not happy with his bother, because he had caused her separation from the family at the early age. Although she was satisfied with her life, she had been deprived of visiting her parents for seven years before her first child was born.

1.6. Beating and injury leading to death

If someone beats or injures another person to the extent that the person dies, it is called beating and injury leading to death. Researches show that in such cases also, instead of punishing the perpetrator according to the items 399 and 400 of the Penal Code, local jirgas decide on giving a girl from the family of the perpetrator to the family of the deceased or injured as a Bad. The research indicates about 17 of such cases. Following are the examples of these cases:

In a fighting among some young boys on the street, one of the boys was seriously injured and died. The Jirga decided that Miss Q from the family of the perpetrator should be given as Bad to the family of the deceased person. Both sides were not happy about it and the relations between the two families became tense. Those who suffer a lot are the husband and the wife.

Another case reads:

Mrs. R is a woman who was given as Bad five years ago because her father had killed his share holder on dividing their income. So the Jirga decided that Miss R should be given as bad and marry the son of the deceased person. Neither the wife nor the husband was happy about this marriage. That boy loved his cousin but he was forced to the marriage.

1.7. Dealings and transactions

Dealing or agreements are the commitments made by the two sides. If one of the sides can not fulfil his commitment it should be settled by law. Even the legal disputes and proceedings are settled by giving Bad and the Jirga decides that a girl from the family of the indebted should be given to the creditor. For example:

Miss S, 19 years old was given to a 50 year old man as Bad, because her father due to poverty was not able to pay his debt, so the Jirga has decided that Miss S be given instead of the money as Bad.

Or in another case:

Some sheep were killed by a wolf and the shepherd was not able to compensate, so he gave his sister to the owner of the sheep. The victim is much oppressed and she is used as a beast of burden.

1.8. Sodomy

Sodomy is a homosexual relation between a boy and a man that contradicts with public moral and culture. Researches show that even on this case girls are given as Bad.

For example:

Miss H was given as Bad because her brother had the illicit action of sodomy with the son of a neighbour and fled away. The husband of Mrs H says, "Whenever I look at my wife, it reminds me of that heinous action. I do not like to look at her."

1.9. Other causes

In addition to the above-mentioned actions as the main causes of giving Bad, there are other conditions and situations, such as disputes and differences among families, tribes and nationalities for the easiest settlement of which girls are considered suitable to be sacrificed. The research shows that in Kabul and its adjacent areas, girls are given as Bad for settling the disputes emanating from injuries, abduction, disputes on land ownership, cancelling an engagement and son on.

There are some examples:

During a quarrel between a cousin of Miss J and a resident of that village, the opposite side got injured. So the tribal Jirga has decided that Miss J a 15 year old girl should be given as Bad to the family of the injured family to settle the animosity. Although the injured person recovered, it destroyed the future of the innocent girl.

In another case:

A girl escaped from home because she was not satisfied with her engagement. Therefore the local Jirga decided to give her 10 year old sister as Bad to the boy's family.

Chart on statistics related to Bad cases

No	Category	Number/ percentage	Age	Comments
1	Bad against killing	38% 185	32-3	
2	Bad against cancelling engagement	7% 34	25-13	
3	Bad against escaping from home	15.3% 75	27-9	
4	Bad against injuries	13.5% 65	30-9	
5	Bad against abduction	13% 62	28-13	
6	Bad against rape	5% 23	27-12	
7	Bad against death due to beating	3% 17	30-16	
	Bad against settling the disputes	5% 24	16-12	
	Bad against sodomy	0.2% 1	15	
	Total	100% 486	32-3	

Chapter 2

Effects of Bad

Islam is a complete and comprehensive religion which has guaranteed numerous rights and privileges for its followers regardless of gender, age and racial differences. One of the main principles in Islam is the principle of freedom that human is born free and has the right to live in freedom and no one can deprive him of freedom illegally.

Unfortunately we witnessed that giving Bad deprive the women from their basic right which is insured by God. Of course its negative effects would not be limited to the victims alone, but it affects the life of the relatives as well.

In this way the harmful affects of giving Bad will not only damage the life of women, but covers a large spectrum of social life that we study and evaluate it in two sections: direct and indirect effects:

2.1. Direct effects

Practice of Bad tradition directly affects the living condition and future of Human beings and we can study these effects in three phases:

A) The effects of Bad on women

It is clear that the direct victim of Bad is the girl who is used as means of settlement and is given from the family of the perpetrator to the family of the victim. She has no role in this choice, but receives the most severe damage in her life. The result of research on 486 women discloses the painful and shocking realities and indicates the scope pain and miseries tolerated by these women during all over their life.

Read this case:

Miss “B” is a 14 years old girl whose brother killed his cousin and she was given as Bad to her uncle’s family. After 7 years of pain and oppression at her uncle’s home she got tuberculosis and died.

We see that in this case Miss B had no role and she should only compensate her brother’s crime and lose her life.

The above mentioned example is not only limited to one person, it depicts the miserable life of thousands if not thousands at least hundreds of women who have remained silent.

In addition, most of such girls while facing such cases have followed a worse way of living led to seduction and moral corruption which resulted in killing of the husband and some others.

Look at the following examples:

Miss “J” is an 18 year old whose brother killed a villager in a dispute over water quota and Miss “J” was given as Bad to brother of the killed person. As a result of bad treatment of that family, Miss “J” was forced to flee and faced numerous problems and moral corruptions.

Or:

Miss “A” is another victim of Bad who became fed up with the miserable live and resorted to killing her husband and was put to jail for live.

B) Harmful effects of Bad on men

In some case Bad victimized the men too. Actually marriage is a sacred and blessing tie between a husband and a wife that should be celebrated with joy and happiness, but unfortunately there no room for joy and happiness in marriages arranged by giving Bad. The research shows that most of the men resort to second marriage and face numerous problems, or become addicted to narcotics and in some cases the escape from home and choose a dark future.

Look at the following examples:

A 25 year old man, due to killing of his brother by another person on some family dispute, was compelled to get married with a 15 year old girl. To compensate this action, he married for the second time.

Or:

Mr. G whose engaged brother was killed by a man was forced by the local elders to marry a 13 year old sister of the murderer. Later on due to the tradition he was obliged to marry the fiancée of his later brother.

In another case:

A 35 year old man was obliged to get married with a 13 year old girl who was given as bad to his family. Due to the pain and suffering he became addicted to narcotics and their family relations scattered and the faced numerous problems.

In this way we witnessed that the effects of Bad cover a wider spectrum.

C) The effects of Bad on children

Bad is a heinous tradition which affects all the family members and those are involved in this case. The harmful effects of Bad on men and women were discussed and now it is necessary to evaluate and study the negative effects of Bad on children. It is noteworthy that the effects of Bad on children are serious from two points of views:

1. A small girl who is given as Bad
2. A child who is born as a result the marriage arranged by Bad

1. As we studied through out this report, more than 25% percent of the victims are the girls under the age of 18 years. This indicates the fact that female children make a big portion of the victims. The harmful effects of Bad on children such as deprivation from school, separation of the children from their families, limitation of their relations with parents and relatives, early and forced marriages, harsh treatments are evident.

2. It is clear that family is the first school for a child and it plays a tremendous impact on the future of a child. Marriages arranged by Bad, makes the atmosphere of the family dark and unpleasant. Since it is based on force and coercion, its effect on children will be very destructive.

Look at the destructive impacts of Bad on children:

Mrs. "Z" is a woman who has been given as Bad. Due to irresponsible treatment, the existing hatred and animosity between the parents, her four year old child became malnourished and died.

The abovementioned example clearly shows that due to the destructive dimensions of Bad a 4 year child was deprived of human rights and contrary to the international norms he lost (the right to life, article 9 of the Convention on Child's Rights, the right of access to health services, article 24 of this convention) and he was victimized as a result of conflicts between a husband and his wife.

In most cases children in such families grow up with complexes and create lots of problems and dangers for the society. He becomes a destructive element in the society.

For example in this case we read:

Mrs. “F” died of cruel treatment and oppression. She was given as Bad. Her son grew up with complex and left home and he was even about to kill his father.

We witnessed that the harmful impacts of Bad will remain limited to one generation. It continues for years and victimizes generations.

Another example reads:

A man, whose wife had died and left 5 children behind, started friendship with a girl. Since the girl’s family had no consent, the girl eloped with that man. Since the daughters of that man were small, the Jirga has decided that two daughters of that man should be given as Bad. This decision could not terminate the animosity and sometimes later the man was killed and three of his children remained uncared. One of them started work at a bakery, the other is missing and the third one became a street child and finally sent to the correction centre.

In that example we saw that giving Bad could not end the animosity, but caused killing of that person and a lot of miseries for the children and made their future dark.

The harmful psychological impacts of giving bad are worse on children. A girl who is given as Bad separates from the family by force and even some of the victims are under the age of seven.

The following case reads:

Miss “M” was 11 years old when she was given as Bad because her brother had killed a person. She was busy in making dough while his father with tearful eyes in presence of her terrified younger sisters and brothers gave her to some elders to implement the decision made by the Jirga.

This example makes you think about two things: (1) the feeling of an 11 year old girl who permanently leaves home without any previous information and (2) the panic of an 11 year old girl who is not aware of her future. *“In the previous case when Miss M was taken to the deceased family, they were still mourning and for one week no attention was paid to Miss M and she was treated with degradation. Later with insistence of the elder she was married to the brother of the deceased person. According to the tradition he also married with the fiancée of his later brother. As a result Mrs. M was driven out from both of the families and she worked as a servant in another family.”* Although the basic principle for healthy growth of a

child is to be with her family, we witnessed that this child was deprived of this right.

An addition a child has the right to enjoy her childhood otherwise she will be psychologically affected.

Whatever we mentioned above is applicable to a young girl or woman who becomes a victim of Bad. Every youth has the right to have access to a bright future. Instead of a normal marriage if a girl is sent to her husband family a criminal and as a victim, she will face a dark future. As a result of separation from her family and deprivation from society, she will be seduced and morally corrupted. The responsibilities of all these miseries will be on the institutions that simply make such a decision about a girl and treat her like a commodity.

Similarly a man who is forced to such a marriage will be psychologically affected which will have a negative consequence on his future life and he will lose interest in his family and resorts to violence, crimes and narcotics. The children who are born in such a family will be deprived of parents' love and affections which is very necessary for a healthy growth of a child. Therefore their children will grow up with social complexes.

2.2. Indirect effects

A) Impacts of Bad on the family

The present modern necessities in our country require reviewing and evaluating some of the issues. The traditions and norms which are not rational and victimize women such as giving Bad should be considered and their results should be studied. As we realized Bad is a heinous action that victimizes both man and woman and puts a negative impact on the family as a whole, it will be necessary to evaluate its outcomes on the family.

As a result of the experimental research made in this connection it is clearly revealed that the long term destructive impacts of Bad makes the family atmosphere dark and full of mistrust, hatred, and disgust. It will scatter the family structure.

Look at the following example:

Due to killing of a cousin by another cousin, Miss “Z”, sister of the killer was given as Bad to the deceased family. Since this marriage was imposed on both sides, there was no love and affection. Hatred and animosity between them prevented the establishment of a good family.

In such cases of marriage on the bases of Bad it usual ends up with a second marriage.

Another case reads:

S is an 11 year old girl who was given as Bad and she was prevented to visit her parents for 8 years (till she gave birth to her first child)

Since family is the cornerstone of a society, Bad inflicts destructive blows on family structure and in most cases this blow is so harsh that both man and the woman lose interest in the family and run away and they face a dark future.

B) The negative impacts of Bad on the society

The negative impacts of Bad on the family were evaluated and since the family is the nucleus of a society, the impacts of Bad is undoubtedly tremendous on the society. Here we evaluate in general the impacts of Bad on the society:

Taking revenge is one of the main effects of Bad that can disrupt the social order. Although Bad is considered as a way for prevention of taking revenge and animosity, but we clearly see that it increases those problems.

Although Miss F was given as Bad to the deceased family, but we witness that it did not end up the animosity and further killing occurred between the two families

The above mentioned example show that in spite of giving two small girls as bad to the deceased family their animosity and revenge taking did not settle.

Similarly, practice of the heinous tradition of Bad undermines the personal nature of the crime, it encourages the perpetrator to commit more such crimes because he is sure that some one else would be punished for his crime. Therefore it encourages crime and jeopardizes social security.

In addition it weakens the role of law and paves the ground for abuses. Mercilessness and ruthlessness and animosity will replace amnesty and forgiveness.

If we study the negative impacts of Bad from the social points of view, we see that this action damages the social spirit and can be considered as other crimes. If we look at Bad from the view points of those who are not involved in making such decision we can note the following:

1. Since the actual perpetrator is not punished, it increases the scope of crimes in the society
2. Irrational acceptance and obedience of such norms will cause the people to gradually believe such decisions without any reason.

Concluding remarks

Although tradition is the source of law in Roman Germanic legal system (our *legal system is affected by Roman Germanic system*) but it is clear that traditions and customs should be officially recognized by the legal system. The overlap of traditions and customs in penal codes in our country is eye catching. Bad can be counted as one of the main overlaps.

This tradition can be defined as a method of settling the conflict and animosity between the two conflicting sides through giving a girl from the family of the perpetrator to the family of the victim to maintain peace and tranquillity between the two rival sides. In contrary we witnessed that this tradition does not settle the conflict, but it creates further problems for both sides. Finally we can consider Bad as a painful tranquilizer, because the local Jirga makes this decision to settle the problem, but thee create further new problems. Therefore taking into consideration the above mentioned points we can conclude:

1. The holy Koran as the main guideline for the Moslems, in many verses has prevented dealing on women. For example in verse 19 of the Nisa Chapter we read: *The pious Moslem, you are not permitted to receive women by force as a heritage. Do not treat them harshly and make life pleasant for them.*

2. Implementation of Bad is in contradiction with Chapter A, article 6 of the Islamic Declaration of Human Rights and article 2 of the Universal Declaration of Human Rights and article 6 of the International convention on elimination of all forms of discrimination against women to which Afghanistan is a party.

3. Bad never changes animosity to amity.

4. Its harmful impacts will target the women in the first step, but consequently it affects men, children, the family and the society at large.

5. This tradition is in contradiction with Sharia norms, the universal declaration of human rights, international norms and standards, and the domestic laws of our country.

6. This action causes increase of crimes. As it is clear, the main purpose of punishment is to correct and rehabilitate the perpetrator, but according to this tradition, the perpetrator is not punished; therefore it encourages repetition of crimes.

7. This tradition is contrary to the personal nature of crimes, and lack of attention to this principle severely undermines the penal code.

8. Implementation of this tradition is unkind, cruel, nasty and brutal which is contrary to the Islamic orders.

9. Implementation of such traditions can never maintain justice and order, as law and Sharia can achieve this aim. Because law comes into force on the bases of needs and can be amended when necessary, while such traditions with historic roots are transferred from generation to generation with out any change.

10. As the reasons for implementation of Bad was explained, the elders themselves believe: *“Although being aware that this is the worst method of settlement, we are obliged to use it.”*

Part Two

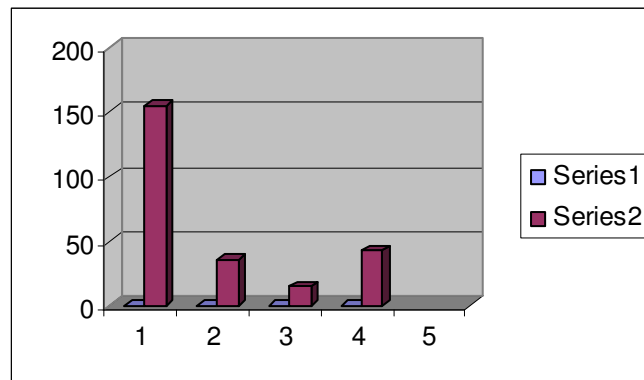
Chapter 1

Social causes of Bad

1. Education:

The importance of education is obvious to everyone. The outcome of a precise investigation made through collecting of cases indicates that education system in our society is weak. Out of 486 registered cases 155 cases relates to man and women who are illiterate; and in 43 cases men are literate and women are illiterate; in 15 cases women are literate but men are illiterate, finally in 43 cases it is found that both are somehow literate.

Both side illiterate	155
Women illiterate	36
Men illiterate	15
Both literate	43



In this case it would be right to study the importance of education from two aspects. Being educated will cause people not to commit crime easily and not to resort to argument and conflict upon rubbish or insignificant issues. Scientific criminological experiences and precise criminal statistic have proved that literate people are committing crime less than illiterate people doing. In this way if all members of a society are enjoying the advantage of literacy, lesser cases of crime and offences would be witnessed.

From the other side, the wise and educated people are aware of his as well as others rights. And they may not accept to hold someone in slavery for the offence committed by someone else and render him victim of traditions. Because crime is absolutely a personal issue and the principle of personal crimes is severely forbidding such acts.

Similarly, the literate will realize through studying of Sharia laws and enacted laws that obeying of such traditions are not instructed in any of the above mentioned laws. Thus, they will willingly consider these traditions unacceptable and may avoid practicing them.

As Bad is a result of illiteracy and unawareness of our people from the laws and in some cases registered as leading factor.

So it is worthy to review a few cases in this regard:

“Z” is a girl of 15 years who is living with her husband of 25 years describes her marriage as follows:

3 years before my father run accidentally his car over a boy, the boy was killed and the people of the village made a gathering Jirga and obliged my father to give a girl as "Bad" to the family of killed person. My father was a literate man and did not accept this decision and gave some money to them as blood money. But they in addition of money demanded my father to marry me as Bad. Despite my father's attempt not to accept them, they succeeded to force my father, and finally in my 14 I got married with a brother of the killed person. Z is very dissatisfied with her living, for the family of her husband is treating him as waiter. In this case one can clearly realize the negative effect of illiteracy, because, if they knew of laws they would not render the girl as a victim of her father's mistake.

In the second case:

M is 14 years old and it is two years that she has got married for Bad to recompense the offences of her brother. Her brother killed his friend in gambling and now it is M who is humiliated and condemned for her brother's offence. She says that her husband family has deprived her from any rights. And her husband P is not happy with this relation. In this case not the girl, nor the husband and nor the family of her husband are literate. If they were literate they would never imposed such cruelty on an innocent person who has nothing to do with crime.

2. Economy

Afghanistan is a mountainous country surrounded by land. The vast majority of population in the country occupy themselves with cultivation and livestock breeding and earning their live this way which is not meeting all their living requirements. And that is why many people are living in poverty and destitute.

Looking into the cases gathered from the provinces one can find out that low level of family living standards are another factor for Bad. The Low level of living standards from side, create the causes of offences and from the other side when offences are committed the offender is rarely able to offer the money decided by Jirga as compensation to the family incurred a loss. So that it is very easy to give his daughter (non expendable budget) for Bad and avoid reciprocal action. Almost 85% of the registered cases represent such facts.

Take note of the following examples:

A is a girl of 12 who is living with her husband of 13 since 5 years. Her father disagreed with his partner upon division of harvest and finally a conflict broke out and his partner's brother was killed. As a result A was given for Bad.

According to A her husband's family has not a good behaviour whit her and they can not put out of their mind the old hostility. Moreover, her husband having no interest in her is very discontent of this relation.

Have notice of another case:

P is 13 years old and it is 9 years that she is living in her 25 years old husband's house. Her father came to blows with her uncle over heritage when she was 5 years old. During fighting her brother hit her uncle with a stone and killed him on the spot. It is one year that he is married with her husband while her husband hates her and has no interest in her. She is always sleeping alone in the corridor whether it is cold or warm. And she is so disappointed to be alive.

Another case explains:

“H” a women of 19 is living with her husband of 50. She herself tells her story:

Our family was one of the poorest in the village. My father borrowed some money from my present husband to buy some land and give me to Bad when I was 15 years. This woman of 19 dislikes her old husband, while her husband is boasting of having a young wife.

3. Traditions and customs

Tradition and customs are the facts or phenomena existing in man's society. In one way or other they will affect the society. And the rule of tradition goes back to the very start of man's living and many factors are involved in its expansion and development. For instance repetition of an action in the family, tribe, clan and nationality helps the action in the society to be accepted as a tradition. These accepted traditions are justified in a way that people consider them better and important than the new actions happening in the society.

The other factor supporting the obligatory aspect of tradition is the control and influence of the Head of tribes and clans that some time turns to be against religious believes and appear as superstitions. Our country Afghanistan is not an exception here we can mention the pleasant Afghan traditions such as hospitality and many other acceptable and respectable customs in the country.

However, there are some other traditions which have no legal or spiritual base and always create problem.

In accordance with the study and investigation made in different parts of the country one can state that tradition and customs have given an open hand to men and they are allowed to marry their daughters without their consents and even regardless of their age. By conducting of jirgas they may render their daughters victim of offences committed by the men. All these situations are neither mentioned in Sharia nor in laws or human rights.

Let's review the following case to make the mater clear:

“N” is a girl of 6 who has been given to Bad since one year. Her father killed someone and then in accordance with the decision of Jirgashe was given to Bad. It is still not clear what will happen with this 6 years old child as she is too young to be married. How painful it is to hold a Jirga attended by 50 to 60 elderly and experienced people and settle to take an innocent girl from her mother's arm and make her sacrifice to her father's crime.

Social structure of region

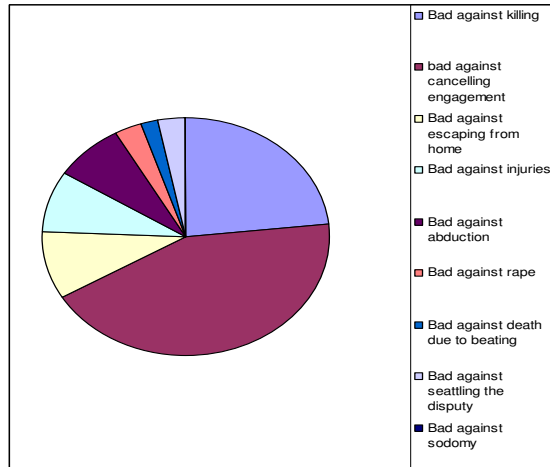
Afghanistan is a multiethnic country, and every ethnic group has its own independent language with different traditions and custom. Different region has different customs even some customs of a region are not acceptable for

others. This matter itself sometimes leads to dispute and clashes between inhabitants of different regions. But about Bad, however, it is common all over the country but the way how to exercise differs from one region to another. For example the cases collected from Nangarhar, Logar, Maidan Shahr , Ghazni, Faryab, Parwan, Baghlan, Kunduz girls are mostly given to Bad for cases such as murder and run away but in Nangarhar, Logar, Mazar, Faryab, Parwan and Maidan Shahr the figures indicates that girls are given to bad for some injury too. While in Ghazni and Baghlan this rate is running down.

Talking about jirgas in different region, it is realized that in some region the elderly, mullahs and influential people, representative of the region and sometime those people with military forces have important role in the jirgas, whereas in some other region this matter entirely relates to the parties of conflict or representative of the region.

Any way, what is very important is lack of involvement of police and courts in these cases; however, in most part of the country there are government administration, courts and security forces. About this tribal jirgas we are to say that these jirgas have realty historical background and has been considered as an accepted tradition of Afghans which conducted by the elderly and heads of tribe to solve the created problems or to settle down a critical situation in the society. We don't want to condemn or criticize jirgas as a general, but we want to focus and explain the negative impacts of jirgas on individuals as well as in our society. And we want to point it out that jirgas are solving the problems by creating another problem which is more painful than the earlier one. Therefore we address the involvement of responsible organs protecting the right of citizens (Police, courts) about which we will discuss in detail.

For better understanding of the matter we ask your attention to the following graph:



The above mentioned chart indicates that most of cases of Bad are as a result of murder and a little number of them due to sodomy and rejection of engagement while offences such as beating, kidnapping and adultery come second.

Nevertheless, it should be mentioned that although in Sharia and enacted laws "Bad" because of dealing and run away is not considered a crime, the jirgas are still dealing with these cases as usual.

Chapter 2

Disputes related to transactions and Bad cases

There is no doubt that the current Civil Code has the ability to settle disputes related to transactions and contracts. Based on this Code, the two parties can file lawsuits in courts of law and compel the debtor to pay off his debts.

In cases where the debtor is unable to stay out of debt, local jirgas have decided that a girl from the debtor's family should be given to the creditor's family as a Bad replacement.

The research findings show that 16 out of all registered Bad cases are about the inability of the debtor to pay his debts and as a result, local jirgas have obliged them to give one of their girls in accordance with Bad practice.

Whereas life is full of ups and downs, it is sometimes not feasible for some people to fulfil their promises. The law has also taken this matter into account. From a legal perspective, those who cannot pay off their debts as planned, their contractual commitment is invalid if they prove such an inability. Here is an example situation where a girl has been used as a means for debt payment.

A young boy was tending flocks for the chief of his tribe. One day a wolf attacked his flocks and lacerated the sheep, which led to the killing of almost 20 sheep. The tribal chief demanded compensation, which was beyond the shepherd's capability. Afterwards, the elderly and the mosque leader came together and decided that a girl from the shepherd's family should be given to the chief's family as compensation under Bad practice. The shepherd was then compelled to send his sister to the family of the tribal chief.

This is while Article 960 of the Civil Code enunciates that, "The contractual commitment is invalid if the debtor proves that it is beyond his ability to abide by the commitment".

Here is another example:

One poor village family borrowed an amount of money from a rich man at the village, in order to buy a house for itself. The creditor asked for his money after a while. The debtor, who was tricked and incurred financial loss in a land transaction, could not pay off his debts. The issue was referred to a local Jirga. The Jirga, after discussions, decided that a girl from the debtor's family should be submitted to the creditor's family as Bad.

These practices take place while Article 32 of the Constitution reads, “Indebtedness does not take away and limit one’s freedom. Issues related to the acquisition of indebtedness are regulated by law”.

This Article clarifies that being in debt does not take away and restrict a person’s liberty and that the law will determine ways to settle disputes pertinent to indebtedness.

Paragraph 2 of Article 851 of the Civil Code is very clear in this regard. It says, “The court can extend the deadline of the *movajala* debts upon the request of the debtor. It can also renew the deadline of *mosta’jela* debts if it is perceived necessary by both the debtor and the creditor”. It is essential now to explain *movajala* and *mosta’jela* debts.

“*Movajala* debt” is one in which the debtor is required to pay off the debt in a defined time framework. The debtor can, in a written format, request the court to extend the deadline for the debt when he feels unable to fulfil it. In this case, he should justify his inability. The court can renew the deadline if such a renewal is lawful.

“*Mosta’jela* debt” is one in which the debtor is required to pay his debt as soon as possible and fulfil his promise.

Therefore, one of the reasons for invalidity of Jirga decisions is that its members do not enjoy proper and adequate knowledge on the country’s Sharia and official laws. Their decisions are, therefore, against the law.

In the interim, Article 5 of the Penal Code reads, “Unawareness on law is not an excuse”. Paragraph 2 of the Article 517 of the Penal Code has defined a certain punishment for doers of these practices, saying, “If the crime contained in the above-mentioned paragraph is in the form of *Bad*, the perpetrator is sentenced to imprisonment that is not more than two years”.

Considering all Sharia and legal provisions on indebtedness, indebtedness is a personal matter and one should not be victimised for another person’s debt.

Local jirgas have made illegal decisions and have compelled the debtor to give one girl from his family to the creditor under *Bad* tradition.

Moreover, Article 32 of the Constitution guided by its Chapter 2 on the basic duties and rights of the nationals has enunciated, “Indebtedness does not take away and limit one’s freedom. Issues related to the acquisition of indebtedness are regulated by law”.

We discussed the criminal aspects of *Bad* in our pervious conclusions. Jirgas have made decisions on *Bad* for the crimes of murder, injury, adultery,

escape from house, sodomy, disability and so on. In the present chapter, we found out that such a customary action has even been taken to reconcile differences on indebtedness and restitution.

This unaccepted tradition has stepped beyond the border we taught. The reason for the growth of this negative custom is that the perpetrators have not prosecuted in accordance with Sharia and legal rules and regulations.

Chapter 3

Decision-making authorities concerned with Bad cases

Jirgas and tribal meetings are one of the graceful characteristics of Afghanistan. The people of this country have, throughout the history, convened jirgas and assemblies to resolve disputes. It is frequently seen in the history of Afghanistan that these jirgas and assemblies have brought about honour and glory for the people and established peace, stability and national cohesion in the country.⁷

The traditional practices are stronger in rural areas than they are in the urban centres

Despite the positive aspects of these local structures, it is sometimes witnessed that the decisions, which come out of these institutions, violate the rights of a group of our compatriots. The major reasons for such rights violations are as follows:

1. These institutions have been structured in a way that encourages more male representation. Hence, it is not remote from reality that women incur most losses due to their lack of representation.
2. There is no doubt that crime is a private matter and its effects do not transmit to other people. Despite this legal principle, the majority of Bad cases indicate that girls and women have been punished for crimes their fathers and brothers have perpetrated.

As written above, these structures, which have strong decision-making powers on a local basis, have taken different forms in diverse parts of the country.

For more information on how these structures function, we identified and clarified the role of the major forms of these local structures during our study. These are explained in the following.

⁷ One of these large jirgas, that has been very efficacious in our history, is the one organised in Kandahar in 1747. This Jirga elected Ahmad Khan Abdali as the king and put an end to increasing division, discord and the possibility of war in the country.

1. Jirga

Jirga is an assembly of people's representatives that sit to discuss and decide on issues of interest with equal rights. Jirgas do not have permanent structure and are summoned when necessary. Jirga structure may change to deal with particular issues, but its classic structure has frequently been used. Now we expound the process used by jirgas to resolve differences through Bad application.

A) The structure. Studies show that jirgas of this kind are composed of 40 to 50 persons that include *Wakil Goozar* (the local representative), the elderly, mosque leaders and influential figures. One, who is chosen as the local representative by the elderly and influential persons, should meet these qualifications: credibility, influence, wealth and literacy.⁸ Local representatives play important roles in making Jirga decisions because they have the authority to select all or at least the majority of Jirga members and make the litigants accept his favourite decisions either directly or through Jirga members. The local elderly and influential figures (landlords, the rich and tribal chiefs) also play significant roles in determining what jirgas should do. After the local representative, they have especial power to resolve disputes that lead to the advent of Bad. Mosque leaders also have high-level presence in jirgas and can present advisory comments. Almost 90 per cent of the questionnaires have confirmed the presence of mosque leaders in these jirgas.

B) The process. A meeting is held in an open area or a local mosque attended by the local representative, the elderly, mosque leader, women and landlords. They hear the words of the two parties and the final decision is issued by the local representative or his deputy in his absence after hearing. The problem is solved in this manner and the perpetrator is compelled to give a girl to the victim family under Bad. The perpetrator should give two small female children if he does not have a young girl.

C) The obligatory nature of decisions. Jirga decisions carry especial obligation. Non-compliance is not only regarded as an ethical crime

⁸ The purpose of our research is jirgas in which legal disputes are settled. National jirgas organised for electing a national leader, amending the constitutional law and etc are not the purpose of this study project.

but also lead to severe punishments for violators. For instance, the person who disobeys Jirga decision must leave the place. The research indicates that Jirga resolutions are largely compulsory and that the parties are required to implement the decisions. This compliance and obedience is felt in all cases relevant to Bad customary practice. The reason is that non-compliance culminates in severe punishments and sanctions for those who violate.

2. Maraka

“Maraka” is the second authority to settle inter-tribal legal and criminal disputes. The difference is that maraka decisions are made by a person entitled “Marakachi” (Maraka Operator) or “Narkhi”. It is worth mentioning that some specialists have exaggerated the role of Marakachi or Narkhi. For example, Mr Muhammad Taher Boorqi has said, “Narkhi is a Marakachi that is attained the Islamic degree of Ejtiḥad and is known to the members of the tribe”.

As it is clear, Ejtiḥad is an important source of Islamic Sharia Law and everyone cannot be a “Mojtahid”. The reason is that it is extremely difficult to become an Islamic Mojtaḥid. It is, therefore, too hard to find such a person in a rural region.⁹

- A) The structure.** Maraka is made up of 10 to 20 members that encompasses the local representative, the elderly, mosque leaders, Marakachi, and influential persons. The studies indicate that these people have strong influence in maraka decision-making. Marakachi or Narkhi is the one that settles the disputes in maraka. As far as it is seen, he is a non-literate person but it is conceived that he has enough expertise in dispute settlement. The litigants are also present in maraka meeting but cannot intervene in its decision-making.
- B) The process.** Maraka process is exactly the same as it is in jirga. The only distinction of is that the conflict is resolved by Marakachi.
- C) The obligatory nature of decisions.** The obligatory nature of maraka decisions is as similar as it is in Jirga.

⁹ The local representative has literacy to the extent that he can read, write, sign and witness.

3. Family

Families may have the authority to settle the disputes that occur among them. Nonetheless, they are positioned lower than Jirga and maraka. On other words, it is rare for families to decide on these cases. The research has proved such a claim: 38 out of 249 questionnaires have stated that families have taken direct and indirect part in the decision-making trend.

A) The structure. This authority is structured in a manner that the local representative, mosque leader and the rest members are constantly selected by the families for conflict resolution.

B) The process. Both the victim and perpetrator families select two persons as representatives and these representatives decide on cases that lead to the application of Bad practice. The decisions taken by the families are different from those adopted by jirgas and marakas. These decisions normally take emotional aspects such as the age of the girl, polygamy and etc into account.

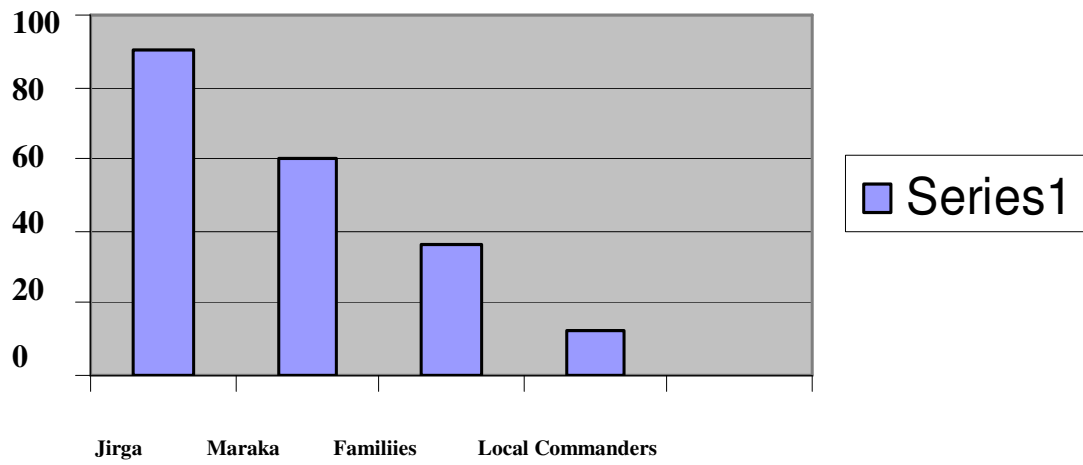
C) The obligatory nature of decisions. The decisions taken by the families carry particular obligation and compliance.

4. Local commanders

More than a quarter of century of armed conflict has not only caused economic, social and cultural damages but has resulted in the lack of rule of law, anarchism and disorder in the country. One of these consequences is the existence of irregular and irresponsible armed individuals and groups across the country. They have largely dominated the jirgas and marakas held in northern part of the country.

The information, obtained from these regions, indicate that Jirga and maraka decisions in these areas are not different from those in other parts of the country. These Jirga decisions have been made with no consideration to the status of the two parties.¹⁰ The studies reveal that there are cases in which a 40-year age difference exists between Bad victimised girls and their husbands. These issues have received little attention from jirgas and marakas all over the country. For more information, see the graph below.

¹⁰ The status of the two parties includes a number of points such as age difference, polygamy, interests and etc.



Chapter Four

Rights protection agencies and their treatment in regard with Bad cases

There is no doubt that the establishment of justice and protection of human rights are regarded as the highest aspiration of common people. On this basis, rights protection agencies, as guardians of justice and protectors of people's rights, are the most fundamental institutions to realise these objectives.

In a democratic order and a government with rights-based and justice-based policies, the mere sovereignty is the law that is codified pursuant to the beliefs and requests of the people. Considering its role in pre-empting the violation of and infringement upon the law and rights, fundamental importance and value should be attached to rights protection agencies. Unfortunately, these agencies have not functioned as foreseen by law and are just witnessing the anti-social and illicit movements of individuals in towns and villages. These institutions are waiting for Jirga and maraka decisions instead of punishing the real perpetrator.

Now we discuss the activities of the following administrative and rights protection agencies:

1. Local administration agencies,
2. Prosecutorial and judicial agencies.

1. Local administration agencies

As it is obvious, local administration is made of administrative units at province and district levels, which are created in accordance with the population, geographical space and social and economic conditions of regions. Governor and uluswal (district governor), who are appointed in pursuit of law, respectively lead a province and district. Here we discuss the activities of rights protection agencies at province and district levels.

A) Province. Governor heads a province. He has a series of duties and responsibilities, the most important of which appear as follows:

- Leadership of provincial administration,
- Observance of the principle of equality before law among all nationals including men and women,

- Provision of security and protection of the rights of nationals.¹¹

It is understood that a governor as the highest state representative in a province and due to his grave accountabilities can, through information the central government and its pertinent institutions, monitor the performance of provincial courts and attorney offices though these agencies are not subject to the governor. Nevertheless, the provision of security, defending the rights of nationals and prohibition of gender discrimination are high on the work plan of a governor.

Our study indicates that governors have been influenced by local customary practices and have not been able to perform their duties. Governors cannot protect the rights of Bad victims, charge the police to punish the perpetrator, prohibit jirgas to commit such an action and maintain the principle of equality among nationals. These are the major duties of governors. The reason is that this custom has undermined local administrative principles.

B) District. A district is smaller than a province in terms of population, geographical space and so forth. From an administrative hierarchy viewpoint, an uluswal is ranked below a governor. In addition, the duties of an uluswal are the same as those of a governor. The distinction of an uluswal with a governor in authority is that an uluswal's authorities and powers are more limited from a geographical context point of view.¹² An uluswal, hence, can play a more active role for the following reasons:

- A district is geographically smaller than a province,
- An uluswal is not as busy and engaged as a governor,
- An uluswal is closer to people than a governor.

Despite this, the country's uluswals have like governors been unable to stop this customary action and are only observing jirgas and marakas ordering decisions on Bad application.

2. Prosecutorial and judicial agencies

In order to simplify the study of this report, it is better to divide these agencies into smaller units as follows:

1. Crime discovery and investigation agencies,

¹¹ For further information, see Law on Local Administration, Ministry of Justice, 13th issue, 15 Mizan 1370, page 9-20.

¹² For further information, see Law on Local Administration, Ministry of Justice, 13th issue, 15 Mizan 1370, page 9-20.

2. Justice establishment agencies (courts).

1. Crime discovery and investigation agencies

Police officers and prosecutors are required to observe and investigate crimes and to discover the truth within their mandates.

A) Police

Police is an important law enforcer that is charged to maintain peace and order in a society. As a dynamic civil society cannot exist without a strong government, a government cannot exist without a national, professional police force that protects the rule of law. Therefore, police should:

- Establish justice and public order and arrest law breakers,
- Protect the community from dangers posed to its life, health, property and etc,
- Prevent the occurrence of crime,
- Perform its responsibilities as judicial arrest officer in accordance with the Criminal Procedure Code and take measures to identify and detain the accused persons.

It should be emphasised that there are police units in all parts of the country, which are functioning according to the organisation of the Ministry of Interior Affairs. Moreover, the duties of the police force have clearly been defined and one duty is “to take measures to identify and detain the accused persons”.

Considering the above-said legal provisions and despite the fact that there are police officers where obvious and undeniable crimes happen, police has not intervened and prevented situations that lead to victimisation as a result of Bad. Police is merely a spectator and cannot do anything to stop Bad cases. The research has confirmed this claim and questionnaires do not indicate a sign of police intervention in these cases.

B) Attorney office:

Attorney offices are mandated to pre-empt infraction and law-breaking and to establish the perpetrator’s crime in accordance with the principle of proportionality. Attorneys, according to law, are mandated to:

- Verify the evidence,
- Monitor the implementation of law,

- Nullify illegal instructions,
- Discover the crime,
- Conduct lawful prosecution.

Like police force, attorneys have adversely been affected by customary practices. As a result, they have failed to implement the official law and cannot interfere in these cases.

In addition, attorneys have ignored Bad in criminal cases in which Bad has been a factor for the accused persons to commit more crimes. For instance, the issue of Bad is clear in the case no. 802/12 of *Muhammad Na'eem son of Muhammad Jan in the Public Security Attorney Office*. Nevertheless, the attorney-in-charge states that this is a “customary practice”.

It is noteworthy that attorneys not only refrain from performing their duty for crime discovery and investigation but also they abstain from their task “to monitor the implementation of law”.

As an example, Article 517 of Penal Code reads, “If the crime contained in the above-mentioned paragraph is in the form of Bad, the perpetrator is sentenced to an imprisonment that is not more than two years”. We can understand that this legal provision has always been violated and the attorneys have not reacted to hamper this law infringement.

2. Judiciary:

As studied earlier, a criminal act should initially been investigated by the police and attorney. Afterwards, the attorney should provide the court with the complete dossier of the criminal act for trial process. Therefore, the courts have the mandate “to deal with all lawsuits in which real and legal entities including the government have become a plaintiff or a defendant”.¹³

From an organisational point of view, courts are divided into: (1) primary courts, (2) secondary courts and (3) high courts. Now we discuss the duties and authorities of these courts.

¹³ Article 56, Law on Organisation and Authorities of Courts, Official Gazette, Ministry of Justice.

A) Primary courts

There is one primary court at district, city and area centres. A chairperson leads a primary court and has the power “to deal with criminal and civil cases that are legally filed in the primary courts”.¹⁴

These courts, therefore, have the authority to deal with all crimes that occur within their geographical boundaries. Since they have closer relationships and ties with the local population, they can have a stronger role in fighting against Bad. These courts should seriously interfere and stop cases that culminate in sacrifice of girls as a consequence of Bad application, in order to ensure justice and legality.

The research shows that the courts have not intervened to hinder these cases. This non-intervention may have been caused by confusion on duties and authorities entrusted by the Law on Organisation and Authorities of Courts. For instance, Article 58 of this Law states, “Chambers of secondary courts can, as primary or appeal courts, deal with criminal and civil cases pursuant to the provisions of law”.

This can be deduced from the term “as” that the authorities of primary courts to deal with criminal and civil cases have been entrusted to secondary courts. As a result, primary courts refuse to interfere in these cases claiming that this is out of their area of responsibility.

Therefore, this conclusion can be drawn that there is a sort of responsibility confusion in the Law on Organisation and Authorities of Courts and both primary and secondary courts can point the finger of responsibility to one another as a result.

B) Secondary courts

There is one secondary court in each province that is composed of:

- A general punishment chamber,
- A public security chamber,
- A public civil and legal chamber,
- A trade chamber.¹⁵

Looking at a secondary court organisation, we can notice that General Punishment Chamber is the chamber within a secondary court that is charged to deal with all crimes that take place within a province.

¹⁴ Article 71, the same Law.

¹⁵ The same Law.

The studies indicate that local jirgas and marakas have occupied the space of official courts and deal with all cases that occur in the localities. They leave the perpetrator unpunished and force him to pay a girl from his family to the family of the victim. This practice violates the principle of the personal effect of crime.

It is frequently seen that the judges recommend the litigants to settle their disputes through reconciliation. They normally reconcile if a Bad practice can be accomplished. They return to the judges and say that they have reconciled. Eventually, the judges write that this dispute has been settled and terminated by the reconciliation of the litigants. What is of importance is that the litigants are not asked on how they reached reconciliation. This issue indicates that if litigants are asked on how they made a compromise, we can to some extent prevent the occurrence of these violations and crimes.

C) High courts

It is the authority of high courts to deal with cases in the last level. It means that the high courts issue their rulings if the litigants are not satisfied with the decisions of lower courts.

Like other organs of the judiciary, high courts do not intervene to stop the application of Bad. The Afghanistan Supreme Court's letter no. 242/560 dated 1383/4/31 in response of our letter no. 211 dated 1383/4/9 reads, *"It is premature to take action against local traditional practices in provinces where no woman enjoys her civil and political rights. The reason is that tradition has replaced the official law of the country in those areas. It takes a long time."*

It means that the country's courts have refrained from preventing this traditional practice and regards any action against this as "premature". It is not clear how long the victims of this practice should wait for redress.

Chapter 5

Concluding remarks and recommendations

Concluding remarks:

Based on the subject arranged together, the following conclusions are drawn:

1. The number of cases settled and dealt with in jirgas, is more than the cases settled in the state organs.

2. The decision-making persons are different here it means that in Jirga decisions are made by the local representative or his deputy. In maraka a person who is called Narkhi or Marakachi can take the decision. And in the family the representative of the family is doing that.

3. All decisions are covered by a specific obligation.

4. The sentimental aspects of Bad (to decide on the age of girl and boy, polygamy) are not often regarded in jirgas and marakas but in the decision made by the families this matter is somehow taken into consideration.

5. In the decision made by local commanders, the sentimental and favourable aspects about the parties are not regarded at all.

6. Although mosque leaders of the region are always present in the jirgas and marakas but they can never apply Sharia Law as they themselves are influenced by traditions.

7. In case one of the parties rejects to fulfil the taken decision he will be subjected to severe punishment.

8. The role of rich people is always valuable and important in fulfilment of decisions.

9. Jirga and maraka have been turned into court and enjoy the same authority as courts.

10. Traditions and common laws are regarded higher than Sharia Law or enacted laws when obligation is addressed.

11. Most of the agent and enforcers of legal organs protecting the rights of citizens are totally influenced by local traditions and common laws.

12. If the mentioned duties are fulfilled duly by the enforcers, the importance of this tradition may possibly diminish.

13. Lack of access or incomplete access to education may cause horrible impacts on people's life.

14. It is witnessed in many cases that poor economy gives way to Bad. This matter is true when we discuss about Bad arising from dealing.

15. The precise investigation of the registered cases indicates the main role of jirgas in settlement of disputes and conflicts in different regions.

16. In the cases arranged together police have had no preventive role in Bad.

17. The registered cases indicate that despite the existence of court in the region courts have had no role and effect in decisions taken by jirgas.

18. Our research in these provinces proves that 90 % of jirgas are held in mosques and decisions are taken in presence of mosque leaders.

19. The decisions of jirgas enjoy particular obligations.

20. It is shown in the cases which are registered, that most of the cases of Bad are because of murders.

21. The investigation of the registered cases demonstrates the rule of tradition and common law over the law of the country.

Recommendations:

With regard to the above-mentioned subjects and the defects and shortcomings that our customs and traditions have, we present a series of recommendations for preventing the expansion and repetition of such traditions.

A) Recommendations to the international community:

1. Although numerous reports about traditions and customs violating women's rights in various countries are published by the UN, but unfortunately reports that can explain the situation of Afghan women in the framework of these traditions have not been universally exposed. The UN should provide an opportunity for a UN scrutinizing mission to present a worldwide report on Afghan tradition and negative affect of it on Afghan women.

2. The UN institutions such as UNICEF, UNIFEM, UNDP, UNESCO, WHO and UN Census Programme, are to include in their daily activities the matter of traditions and the negative effects of traditions on Afghan women particularly the "custom of Bad". And try to study this problem and find the way of solution for this.

3. UN institutions are to provide financial and technical cooperation for the local entities to find out the practical way of elimination of problems.

4. UN and international NGOs are to cooperate with the government to bring amendment to non-official judicial system and to give awareness to Afghan judicial officials and police.

5. The matter of Bad and other unaccepted tradition which are not based on Sharia should be discussed in the conference of Islamic countries.

B) Recommendations to the national government:

1. The Universal Human Right Conference conducted in Vienna in 1993 highlighted that, "Women and young girls rights are the indivisible component of the universal human rights" and calling upon the countries and UN to guarantee the enjoyment of these rights for the women and girls. Moreover the resolution of this conference put emphasis as a Human Rights obligation on elimination of all forms of violence against women in their social and personal life. Therefore Afghanistan as member country of world

society is obliged to provide women an effective opportunities of enjoyment of their rights.

2. Based on the international obligations that the states have for the commitments of international treaties, the government will seek the legal ways of combat against Bad.

3. The state will provide equal access for the women to enjoy their rights and defend their rights.

4. As only the impartial and professional jurisdiction can maintain justice and a powerful jurisdiction mainly can prevent Bad, therefore it is essential that state should pay a serious attention in this regard.

5. The new constitution of Afghanistan has underlined the most basic rights of man pointing at principle of non-discrimination and equality between man and woman; it is necessary that the state, as a priority, tackle the problem of lack of implementation of laws regarding Bad; and considering it as an obvious violence to the women rights, deal with it legally.

6. Amendment of second and third paragraphs of article 517 of penal code, meaning increasing of the proportion of "Bad" punishment. Or in other word the punishment acted out in the penal code of Afghanistan should be amended relying on the proportionality between crime and punishment the scale of punishment should be increased.

7. Bad should be recognized as an evident crime and like other crimes should be pursued.

8. The issues of tradition and custom specially the custom of Bad should be integrated in the curriculum of literacy programmes.

9. The organs protecting laws should take serious measures and run certain programmes to control the decisions taken by non official sources.

10. Since this tradition is against Islamic principles, and realizing the importance and influence of religious preachers the Ministry of Hajj and Religious Affairs, Ministry of Women's Affairs and Ministry of Culture and Information and civil society groups should arrange broad-based programmes with mosque leaders and religious leaders to condemn this unaccepted tradition and explain the negative effects of them through mosques and other sacred places. Moreover these issues are to be reflected widely through mass media.

11. When a case of Bad take place in some region in presence of one of responsible judiciary official and the responsible official ignores to prevent Bad, he is to be inquired about.

12. Extension of rules of law all over the country and presence of professional judges in provincial and district courts will cause reduction of the cases.

13. In the areas of crime and punishment when the court call on disputing parties to make peace and reconciliation it should not result in Bad. And moreover if the parties of dispute are encouraged to compromise and the dispute settle down on the basis of reconciliation, the content of the decision should be recorded in the file of parties in the court.

14. The local councils and jirgas should not treat a mishap with another, instead it is far better to refer to their knowledge and find a peaceful way and take the human rights into their consideration.

15. Expansion of the rule of law and providing facilities to have access to justice and courts can limit the authority of jirgas. Speed up of the process of amendment of judiciary system is also important in this regard.

16. National committees with broad based power should be established to defend the rights of women. These committees should be able to call upon the responsible sources to prevent Bad and to raise claim for the victims of this tradition.

17. The government should take necessary measures to raise access of man and woman to education as a serious need to prevent repeating of Bad in the society.

18. Tradition and customs are mainly brought about by men and men's point of view is reflected in these traditions. Furthermore, the women have no role in the structures that are making decision regarding tradition and customs. Therefore it is necessary to avail the present opportunities and pave the way for women to participate in such local councils and jirgas.

19. Traditions mostly exist in verbal forms. There is no source in writing to refer to. For that reason it is required to give an orderly system to jirgas.

20. With due attention to the importance of economy in man's life and with the perception of the fact that independence and economical ability can help women to show reaction against cases as Bad, the government is to

provide suitable opportunities for women to get access to iconological and financial sources.

21. The states should support all those institutions that are working to help women, the victims of Bad.

22. Effective awareness and education programmes are to be carried out for the members of jirgas and local councils to explain to them Islamic values and accepted standards of human rights for the purpose of bringing reforms to jirgas.

23. A greater number of women should be engaged in judicial and police organs.

24. Human Rights courses and other courses regarding law and gender should be organized for justice and judicial staff and these issues should be integrated into their short term and long term study programmes.

25. The state and institutions should carry out broad based awareness and education campaign regarding legal issues for women and men in cities and in provinces to enable them to get informed of their legal rights and rescue

26. The judicial principles concerning the family rights are to be scrutinized and with insertion of clear instructions about marriage based on Bad, this tradition should be discredited.

27. Attempt should be done to make it compulsory to register the records of marriages.

28. Since claim is addressed to justice by the victims, the victims of Bad are deprived of access to justice and courts, so that it is recommended that to raise file for Bad cases the report of third person also should be considered affecting.

Institutions and civil society organisations active in the field of human rights:

1. All Human Rights institutions and offices and other offices responsible of Human Rights monitoring should mainly focus on violation and women rights violations reports. Theses reports should include discussions carried out with women of various social standings, likewise these reports should embrace the cases for which there are clear instructions but the authorities don't employ them.

2. The UN offices, Human Rights institutions and civil societies should develop various programmes to raise the level of awareness regarding the matter and state responsibilities to prevent such violations.

3. Providing of Broacher, posters, films and shows regarding the harmful effects and disadvantage of Bad publicly, specially where Bad is very common.

4. The harmful impacts of Bad should be explained publicly through mass media and by holding of meeting and discussions. Moreover the role of education is also very important in introduction of harmful aspects of Bad.

5. Workshops should be held in this regards in all over the country by Human Rights Commission and other Human Rights and women rights advocating entities as well as Ministry of women affairs.

6. As the family is the first source of distinction between boys and girls and the basic factor for Bad is family, so it is necessary to develop specific programmes to inform the families, the women and girls of their rights as well as of the harmful impacts of Bad.

7. The press and other social institutions should try to circulate publicly the negative impacts of Bad and change the attitude of people in the society.

The institutions and organisations advocating women rights

1. The institutions and organizations advocating women rights are to play a significant role in reformation and implementation of laws regarding prevention of Bad.

2. The institutions and organizations advocating women rights are to act jointly through a common network to tackle these problems.

3. As the women rights advocating entities are the main structures to bring an end to such tradition as Bad, it is necessary that these entities acquire due skills in the areas of research, publicity , monitoring and awareness.

4. Reporting capacity should be improved among the women rights advocating groups.

5. It is important that the women rights advocating entities register the traditions and cases causing by these traditions, so that they can prevent negative traditions and introduce positive ones.

6. All women and women rights advocating entities that are aware of some Bad cases in different places should try to convey the information to the responsible authorities. Moreover the public should be informed of such cases by media and press.

7. All entities advocating women rights and all women should act jointly and get contact with those women who have become victim of Bad and organize systematic advocating programmes.

Final word:

Dear readers,

I hope what is gathered here in this report, a very brief revelation of the facts and grieves that our girls and women are involved with, would help the state authorities specially the judiciary authority to take practical steps toward eradication of such acts which are clearly contrary to Islamic law as well as enacted laws.

Similarly I hope this report would be published for the Human Rights institutions and other women rights advocates and media to all over provinces by posters, radio and short films. Likewise I hope this information and material will be used in workshops and meetings too. Moreover I hope the messages of this report will be received by public, especially by those who willingly or unwillingly have committed Human Rights violation, and in this way they will be aware of the consequence of such acts and avoid repeating them in the future.

Annexes:

A) Explanation of terms:

1. Roman Germanic judiciary system

Roman Germanic judiciary system takes its start from European countries (Countries surrounded by land). In all countries the law and regulation originating from Roman Germanic family are classified in a similar way. There is a distinction between public rights and private rights. And legal sources here are 1- Law, 2- Common laws, 3- legal procedure, 4- The ideas of lawyers, 5- general principles.

2. Sabhaa

As Bactrian Arians entered from animal husbandry life into tribal life in fact they stepped ahead one step toward development and progress. And they could further avail themselves of the advantages of democratic system in the areas of social and political life. Since all society individuals had active part to organize their social life. They were always discussing the important matters relating to their people and country with the representatives of different stratum of the society and used their views, opinion and consultation to tackle the problems. Consequently they founded an assembly called "Sabhaa".

3. Samiti

At the time when the ancient Arians stepped out of animal husbandry life and walked toward social and tribal life they had, beside Sabhaa assembly, another assembly called Samiti.

4. Islamic Declaration of Human Rights

This declaration was adopted in 15 of August 1990 coinciding with 15 of Asad 1369 in the summit of Islamic countries foreign ministers in the Organization of Islamic Conference in Cairo which is composed of 25 articles.

5. Law

The word of law is an equivalent of Canon in Greek meaning rule and order. Law is one of the most important concepts which is not limited to the areas of social science but can be used in many other fields of science as well. There is no single definition for law but in the areas of legal affairs law is a total of standards and principles enacted by judiciary forces and implemented by executive forces to regulate the individuals' relations and work out their problems and discrepancy.

6. Sharia

Includes the followings:

- 1- Affairs relating to belief
- 2- Moral affairs including recommended affairs, ritual practices and disapproved affairs
- 3- Legal affairs including criminal cods and civil cods.

7. Citizens

The word citizens, is plural of citizen employed for those who have the citizenship of a certain country. This word is used as opposite to alien or foreigner.

8. Movajala debts

In this kind of dept the debtor is required to pay his dept within a definite time.

9. Mosta'jela debts

In this kind of debts the debtors are required to pay his debts as soon as possible and fulfil his promise.

10. Narkhi

In the tribal law the person who employs some non compiled cods and rules in jirgas and Marakas held to deal with the cases and claims is called Narkhi.

11. Basic rights

Basic rights is a series of norms and rules that defines the form of government, organizations of country forces and their mandate and duties as well as the relations between these forces.

12. The principle of personal effects of crime and punishment

On the basis of this principle punishment is referred only to the one who commits the crime. The fulfilment of this principle in the history has always been slow down as in the past not only the offender but the family of offender was also considered responsible for the offence.

13. Universal Declaration of Human Rights

The term of Human Rights for the first time was addressed during the great revolution of French in a document "Declaration on Rights of Human and civilian".

The Universal Declaration of Human Rights was approved by the General Assembly of the United Nation in 10 of December 1948 where the rights and freedoms anticipated in the previous constitutions and documents compiled in this declaration by all United States members and they became committed to respect and fulfil this declaration.

14. Constitution

Constitution is the laws and regulations ruling the country forming the structure and regimes of a country and can not be changed by ordinary procedures.

Questionnaire



Research project on Bad

Second phase

Responsible of compilation of questionnaire: _____

Place where the questionnaire was developed: _____

Starting date: _____

Ending date: _____



Number of case:

Prepared by:

Date:

Place happening:

District:

District/village:

First part: Information about victim (woman)

General information:

1. Introduce yourself:
2. How old are you?
3. How old is your husband?
4. How long have you been living together?
5. Explain briefly how it happened you got married?
6. How is your relation with your husband now?
7. How is your relation with your husband's family?
8. Are you and your husband literate?
9. Have you got children?
10. How are your husband and your husband's family behaving you and your children?
11. Did you have any relation with your husband's family before marriage?



Second part: Information about husband

1. What is your name?
2. Are you happy of your marriage? If no, why?
3. How is your relation with your wife's family?
4. How it happened you got married?

Third part: information about tribal jirga

1. Who takes decision in the village?
2. How is the composition of tribal Jirga(number, social position, structure)?
3. Who select (elect) Tribal jirga?
4. What are jirgas holding meeting on?
5. How many cases of Bad have been witnessed in this region within 10 past years?
6. Is there any agent of police, state, court or others in the region?
7. In case of yes please explain the role of each organ in the decisions taken by jirgas?

I _____ son of _____ have started collecting and preparing of cases relating to Bad on date _____ and completed on _____.

Signature

Locations covered by the research are shown in the map:



*This book has been dedicated to the
women and girls who have been
sacrificed under the name of Traditions.*

WCLRF, 2004

