

Status of Women Prisoners in Afghanistan

(M.Phil Dissertation)

Dissertation Submitted to Jawaharlal Nehru University
For Award of the Degree of

Master of Philosophy

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2009



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DECLARATION

I declare that the dissertation entitled "**STATUS OF WOMEN PRISONERS IN AFGHANISATN**", submitted by me for an award of the degree of Master of Philosophy of Jawaharlal Nehru University, New Delhi, is an original work and has not been submitted for any other so far in part or in full of any other degree or diploma of this University or any other University.

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CERTIFICATE

We recommend that this dissertation may be placed before the examiners for evaluation.

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Dedicated to

My parents

Acknowledgement

I wish to record my appreciation and gratefulness for the help and guidance I have received from different persons in completing my research.

I feel very fortunate to have Dr. Mondira Dutta, as my supervisor and mentor whose constant source of inspiration spared on me to persist in my studies. Her unceasing encouragement, unconditional guidance, constant supervision and devotion throughout the tenure of my study has contributed tremendously to this dissertation.

I gratefully acknowledge with gratitude to Prof K.Warikoo, Prof. Partho S. Ghosh, Dr. Paswan, Dr. Ambrish Dhaka, Dr. Sharad K. Soni and Dr. Mahesh Ranjan Debata and Dr. Tsetan Namgyal for their constant suggestions and cooperation during my research.

I also express my sincere gratitude to all the other faculties of the centre including former chairperson Prof. P. Sahadevan and our present chairperson Prof. Ganganath Jha.

I am highly indebted to the staff members of different libraries, particularly Jawaharlal Nehru University library, Institute for Defence Studies and Analysis (New Delhi) library, Teen Murti Bhavan library and India International Centre library to furnish all the required materials for the preparation of this work.

I am highly thankful to my friends Aym (Dino), Adi, Chander prabha Negi, Kanika Verma, Deepak Menon, Deldan Kunzes Angmo, Leikomang Haokip, Lobsang Tenpa, Rai Mahimpat Ray and Ranjak Katara without whose support this research paper could not have been realized or completed.

I would like to express my indebtedness to my Grand parents, parents, my husband Rohit and family for being ever inspiring, loving and supportive.

At last not least I pay my gratitude to god for the successful completion of this mission.

Anjali Dabas

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LIST OF ACRONYMS

AIHRC	Afghanistan Independent Human Rights Commission
ANDS	Afghanistan National Development Strategy
AREU	Afghanistan Research and Evaluation Unit
AWEC	Afghan Women's Educational Centre
AWJA	Afghan Women Judges Association
CANADEM	Canadian International Development Agency
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CG	Consultative Group CNL Counter Narcotics Law
CPC	Criminal Procedure Code
CPD	Central Prison Department
CRC	Convention on the Rights of the Child
CSSP	United States Corrections System Support Program
GDI	Gender Development Index
HAWCA	Humanitarian Assistance for Women and Children in Afghanistan
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
ICPC	Interim Criminal Procedure Code
ICRC	International committee of the Red Cross
ILF	International Legal Foundation
MoE	Ministry of Education
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoLSAMD	Ministry of Labour, Social Affairs, Martyrs and Disabled
MoPH	Ministry of Public Health
MoWA	Ministry of Women's Affairs
NJSP	National Justice Sector Programme

NJSS	National Justice Sector Strategy
SMR	United Nations Standard Minimum Rules for the Treatment of Prisoners
TISA	Transitional Islamic State of Afghanistan
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Programme
UNICEF	United Nations Children’s Fund
UNIFEM	United Nations Development Fund for Women
UNODC	United Nations Office on Drugs and Crime
UNOPS	United Nations Office of Project Services
WHO	World Health Organization

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CHAPTER - I
INTRODUCTION

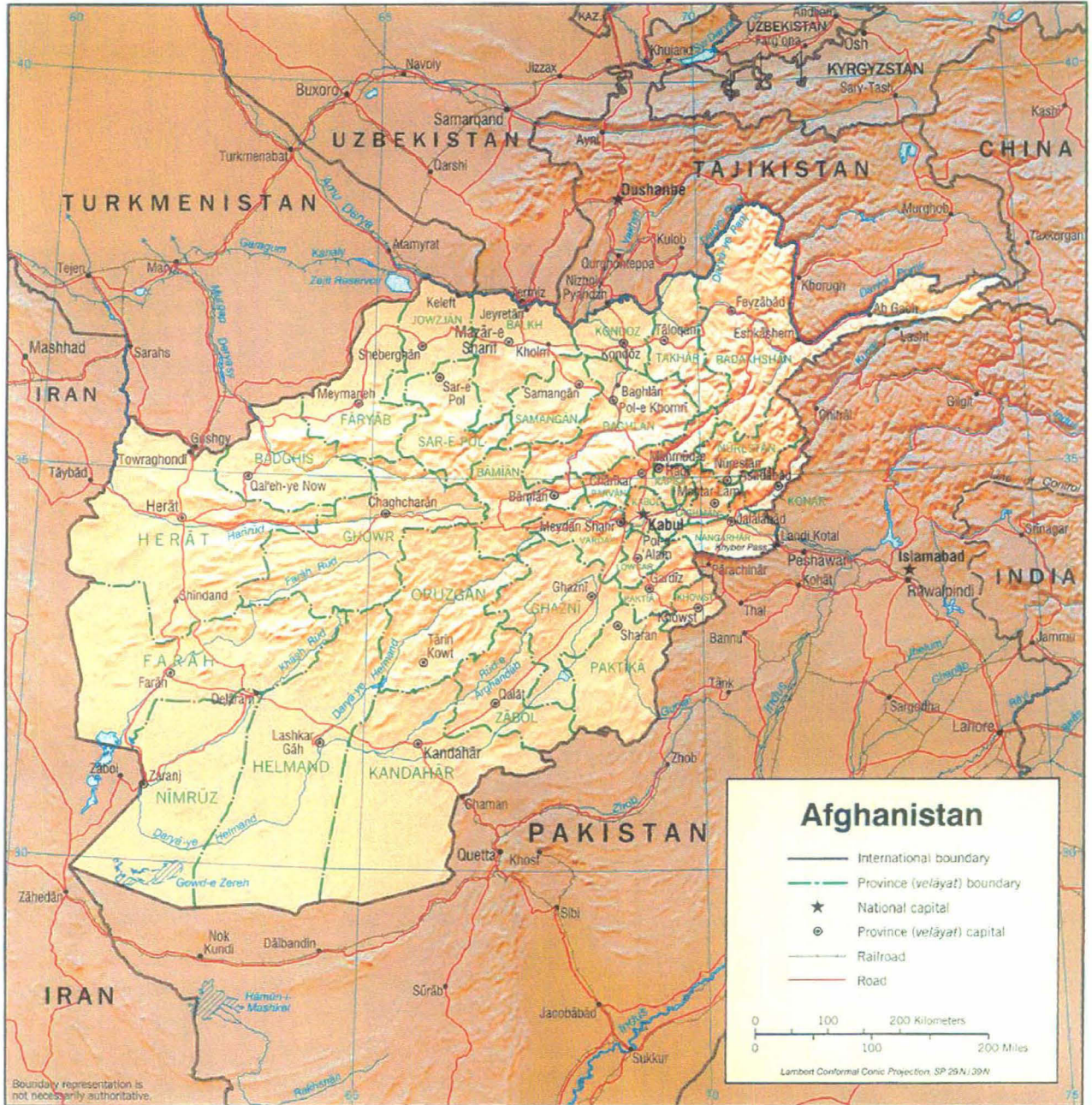
Background

Historically, Afghanistan's strategic location at the crossroads of Asia has made the country a focal point of many imperialist ambitions. The country has been subject to recurrent invasion and outside occupation. The virtually unbroken state of war and suffering in Afghanistan since 1970s has been met mainly with apathy from the outside world. Afghanistan is in the centre-stage renowned for its largest concentration of land mines, the greatest number of refugees and one of the largest opium producing areas. Since the beginning of 1820s till the end of 1919, Afghanistan was the unfortunate victim of the competing imperialist ambitions of Great Britain and Tsarist Russia [Dupree, 1973]. Viewing Afghanistan as a buffer state against Russian expansionism, the British invaded and occupied Afghanistan for close to a century before finally being driven out in 1919 [Ewans, 2002; Farr, 1988].

During the cold war period the Soviet Union sought to wield its influence over the country. During these years, the United States engaged in a proxy war against the Soviet Union its long-standing Cold War opponent [Ma'arroof, 1997; Magnus, 1998]. It was one of the bloodiest and most destructive wars ever fought leaving Afghanistan completely devastated. It also left behind scores of armed, well-trained fundamental radicals which became an international apparatus for the network of terrorists, and a burgeoning anti-American sentiment.

It was only after 9/11 that the US led American invasion toppled the Taliban Government and assisted the government of President Hamid Karzai in establishing the writ of law as well as rebuilding key infrastructure in the nation [Morgan, 2007]. Thus U.S. initiated retaliatory attacks following the terrorist attacks of September 11, 2001 which marks the third period of imposed invasion and occupation upon the country.

Spatial Location of Afghanistan



Map 1.1

Afghanistan has a rugged topography with various ethnic, religious, and tribal groups. The population of Afghanistan is approximately 28 million [en.wikipedia.org/wiki/afghanistan]. The largest ethnic group is the Pashtuns estimated to be 40 percent and the Tajiks estimated to be 20 percent. The country has yet not had a census and as such the figures are some estimation as computed by the UN agencies and others. These are followed by the Hazaras, Uzbeks and Aimaq. Both spatial and ethnic impenetrability has prevented Afghanistan from forming a consensual and coherent sense of nationalism. Ethnically based rivalries, combined with open and varied interpretations of Islam created fractious cultures. In addition, interference by western countries and countries bordering Afghanistan has contributed to the fragmentation of the Afghan polity [Wardak, 2003].

Women in Afghanistan have been the worst hit in the war torn country. Since 2001, along with rebuilding the key infrastructure, the international community has pursued various strategies to advance the status of women in Afghanistan. These strategies have focused on constitutional rights, political participation, development and reconstruction, education and the monitoring and promotion of human rights. Although progress has been limited to some urban Centres, 85% of Afghan women living in the rural areas have hardly benefited from these interventions and programs [U.N, 2007].

The impact on women has been especially harsh, since women's lives have often been used as the raw material with which to establish ethnic prominence [Zulfacar, 2006]. Tribal laws and sanctions have routinely taken precedence over Islamic and constitutional laws in deciding gender roles, especially through kinship hierarchies in the rural regions. Tribal power plays, institutions of honour, and inter-tribal shows of patriarchal control have put women's position in jeopardy. Tribal laws view marriages as alliances between groups; women are pawned into marriages and not allowed to divorce, total obedience to the husband and his family is expected, and women are prevented from getting any education. They are perceived as the receptacles of honour; hence they stay within the

domestic sphere, observe the veil and are voiceless. The honour of the family, the tribe, and ultimately the nation is invested in women [Armstrong, 2002; Wali, 2002].

The gender development index (GDI) reflects disparities between men and women in terms of three parameters - life expectancy, health, and the standard of living. This reflects the lack of social and economic opportunity available to the Afghan women [UNDP, 2007]. The average life expectancy for an Afghan woman is 42 years. This is around 20 years shorter than the global average. Health care is poor. The estimated maternal mortality rate of 1600 deaths per 100,000 live births is second highest in the world [UNICEF, 2004]. Moreover, women's fertility rates, on an average are 6.6 - the highest in the world [WHO, 2003]. Afghanistan's adult literacy rate ranks among the lowest in the world. Only 23.5% of the population aged 15 and above are able to read and write. An estimated 12.6% of the women are literate as compared to 32.4% men [AHDR, 2007]. The nurturing of the family and children remains their predominant social task. Customary and traditional gender discrimination have always existed in Afghanistan. Many women and girls still fear attending schools. Forced marriage, rape and abduction remain common in the rural areas [Brotsky, 2003].

In Afghanistan a mix of Sharia law, Afghan customary law and statutory law are practiced. A lack of clarity, uniformity, consistency, with which these laws are applied, have had negative implications for the women [UNAMA, 2002] pushing most of them into prisons. The Afghan women are frequently prosecuted for rapes and sexual assaults committed against them as a result of which many of the victims languish in prison. There are 250 women prisoners [UNODC, 2007] in Afghanistan, many women who were found to be amidst the system of criminal justice could not be accepted as criminals in the international system. Their main cause for being imprisoned was for moral crimes. Those that were imprisoned were not only the victims of their socio-economic circumstances but also because of unfair criminal justice system, where the male and patriarchal

principles dominated. There are a few prisons exclusively for the Afghan women although the living conditions are pitiable. The conditions of these prisons according to the State Department, are however worse than the prisons for the men. But none of the prisons can be compared to the international standards [Jones, 2007].

History of Afghan Women

Women in Afghanistan are not an isolated institution; their fate is entwined with and determined by historical, political, social, economic and religious forces. In addition to a range of internal tensions, outside or international political forces have impacted Afghanistan in more than one way. A number of attempts have been made by different Afghan governments throughout the 20th century to improve the status of women as part of efforts to modernize the country. Significant reforms favoring women were introduced in the 1920s, 1960s and then following the establishment of a communist government in 1978 [Rahimi, 1986]. Women in Afghanistan were not always oppressed by fundamentalism as occurred under the Mujahideen and the Taliban.

Pre-Taliban Period

During the communist rule (1978-1992), women in Kabul enjoyed greater freedom working in all professional sectors and serving in high ranking government positions [Skaine, 2002]. The Mujahideen were quick to reject the reforms instituted by the communist government and equated a return of the women to their traditional roles in maintaining the nation's Islamic identity [Magnus and others 1998]. Ultimately a restricted role for women became part of their Islamic ideology. The Mujahideen groups successfully curtailed the womens' freedom of movement and led to a retreat to the veil once again [Farr & others, 1988]. With the fall of the Najibullah government in 1992 civil war ushered in and the rule of law & good governance became a distant dream further deteriorating the condition of women. They thus became the victims of molestation, abduction and rape. In 1996 the Taliban militia came into power in Afghanistan. The activities and behaviour of women became the most

important issue for the Taliban and their policies towards women were the corner stone of their national policy.

Taliban Period

The Taliban policies of 'gender apartheid' included forbidding the women to work outside the home, wearing a head to toe covering when they venture out into public, forbidding girls from attending schools, preventing women from going out in the public unless accompanied by a close male family member, applying harsh punishment for fornication and adultery, requiring windows of residences be painted black so that passers by are unable to catch glimpses of any women with in and using captured women from Afghanistan's internal war as slaves [Goodson, 2001].

After the Taliban takeover, female unemployment immediately jumped to over 80% with special impact on some economic sectors. Prior to Taliban on female employment, women accounted for 70% of all teachers, about 50% of civil servants & 40 % for medical doctors [World Bank, 2005]. This had a major impact on Afghanistan education & health care systems as well.

Women were denied political representation or civil rights to appeal their mistreatment in numerous ways, the Taliban approach to governance has denied women equal treatment with men under the law. Due to restrictions women could not communicate with the men in places of authority. Women could not hold positions in the government serving as judges or lawyers or engage in journalism or political activities [UNISD, 2005]. Women's testimony in judicial proceeding counts was not entertained with the same vigour as that of the man's. Thousands of women have been beaten on the spot or detained with the legal recourse for minor violations of the dress code on the whims of some Taliban official. These policies produced lowest standard of living for women anywhere in the world (life expectancy was 43-44 yrs old because of maternal mortality rate (17/1000) & infant mortality rates (163/1000) highest in the world). Under the Taliban, a 23% suicide rate was reported among Afghan women [UNICEF, 2002].

Aftermath 9/11

The plight of the Afghan women was largely ignored until the terrorist attacks on the United States on 11 September 2001 which drew strategic interest towards Afghanistan. Women's rights were cited as one of the justifications for the international community's intervention. Following the September 11 attacks the United States launched a military campaign and the Taliban were ousted from power after inflicting enough damage during their five years of rule oppressing the Afghan people [Cooley, 2002; Sreedhar, 2003]. Although the government deepened its authority in provincial centers, Taliban or factions operating outside government control exercised authority in some areas.

In October 2004 Hamid Karzai was elected president in the country's first presidential election. Afghanistan signed a number of international agreements which include promises to uphold women's human rights. The Bonn Agreement of 2001 rendered inoperable existing laws that were inconsistent with these agreements. It called for specific attention to the role of women and established a government structure for this purpose called the Ministry of Women's Affairs (MoWA). The new constitution prohibits discrimination and guarantees equal legal rights to women and men [Dutta, 2007].

However, continuing religious and cultural conservatism and a dangerous security environment become obstacles to women's participation in economy, politics and society. The functioning of the formal justice system is primarily limited to urban areas, while in rural areas the majority of disputes and crimes are currently dealt under customary laws and by Jirgas or Shuras. The Talibani policies still exist in certain areas and there have been several incidences of killing women for family honour. There is certainly a strong hold of customary laws not only in rural areas but also in the urban centres [UNESCO, 2005]. Women currently face discrimination from every level of Afghanistan's justice system, including the police, legal counsel, judges, and the operators of the penal system and those women declared guilty of "zina" land up in prisons [ILF, 2004].

Existing Laws for Women

Afghanistan is making strides toward repairing the devastating effects of 25 years of sustained conflict. The Bonn Agreement of 2001 recognised the rights of women as the key factor towards peace building and reconstruction. During this period of redefining national identity, efforts have been made to help ensure that voices of women were heard. As stated earlier the country of Afghanistan suffers from multiple law system with innumerable interpretations. There exists a mix of Sharia law, Afghan Customary law and Statutory law. The reconstruction of a legal system in any post-conflict country requires a certain understanding of the local customary laws. In Afghanistan, the need for such an understanding is particularly acute because customary laws, de facto, govern the lives of a majority of the women.

Customary Laws/ Traditional Laws

Most members of the Afghan society abide by regional customary laws. Customary laws are not formal state laws [Entezaar, 2008]. They are unofficial rules and principles adhered to by ordinary Afghan citizens. These informal laws apply to every aspect of life and are considered an essential part of community cohesion. Anyone disobeying customary laws are traditionally regarded as a criminal and, as a result, condemned by the community [ILF, 2004]. Throughout history, a formal legal system has not played a central role in governing the lives of the majority of Afghan citizens.

The bifurcation of the legal system into official and unofficial law has been a hallmark of Afghanistan's legal history ever since attempts were made to introduce statutory laws [ICJ, 2005]. Customary laws have increasingly gained authority with the fall of the Taliban in 2001, as the central government has lost much of its ability to maintain control and provide security to the public [ILF, 2004]. Traditionally, men take on a governing role in the community, acting as leaders and protectors of the family, which in many instances, has led to women being regarded as the property and responsibility of male family members [Kamali, 1985]. These

arrangements have created restrictive codes of behaviour, gender segregation, and the strong association of female virtue with family honour. These characteristics are deeply embedded in many of the customary laws and traditions found throughout Afghanistan.

Many customary laws within the Afghanistan are based on principles of Restorative Justice. A traditional council, known as a Jirga, is called to resolve community disputes. Afghans regard these decisions as law. Women's participation is limited in this process, as Jirgas are generally composed of men [Johnston, 2001]. Council meetings are held in public, council members review the facts of a case and pass a sentence, which will vary based on the offence and tribal custom. Usually sentences involve a formal apology, the payment of blood money, and/or a gift to the victim's family. Though Jirgas play an important role in generating community cohesion, many customary laws violate women's rights under standards of international law. Such practices include the gifting of women as a punishment for murder, forced marriages and a strong disregard for the dignity of women particularly in cases of rape. For example, if a case of rape is discovered, the sentence imposed is harsh. In the case of rape amongst Hazaras, the Jirga ordered the woman to receive 60 lashes and the male perpetrator be stoned to death [Amnesty International, 2005]. Similarly forced marriages occur for the settlements of feuds (badal), restitution for a crime, by giving a young girl to the victim's family (bad) and forcing widows to remarry someone from her deceased husband's family and so on [Drumbl, 2005; ILF, 2004].

National Legal Systems-Statutory law

Afghanistan has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2003. Thus gender inequality has been recognised as a key issue in the National Development Framework of Afghanistan [Amnesty International, 2003; Dutta, 2006]. With the adoption of the constitution in 2004, embedding women's rights in the Constitution was thought to be a pillar in the struggle for women's rights. Article 22 of the Constitution of 2003 prohibits "any kind of discrimination and privilege between the citizens of Afghanistan" and

provides for equality before the law to all citizens, whether man or woman. Article 54 obliges the state to adopt "necessary measures to ensure physical and psychological well being of the family, especially of the child and mother, upbringing of children and the elimination of traditions contrary to the principles of the sacred religion of Islam" [en.wikipedia.org/wiki/constitution_of_Afghanistan].

The Civil Code of 1977, currently in force, discriminates against women particularly in the areas of marriage, divorce and inheritance. Failure to prove divorce from the first husband may lead to the imprisonment of women for running away and adultery, if they marry a second time, even when the second marriage is legal [Medica Mondiale, 2004]. According to the Civil Code, daughters and widows have rights to inherit property. In fact, in reality women rarely exercise their right to property [AREU, 2005]. Men have the right to marry more than one wife, fulfilling some conditions (Article 86). A Muslim woman cannot marry a non-Muslim man, whereas a Muslim man may marry a non-Muslim woman (Article 92). The mobility of a married woman is subject to the permission of her husband and she is obliged to have sexual intercourse with her husband [www.ag-afghanistan.de/constitution]

Data reveal that fifty per cent of the 56 women interviewed in Kabul in December 2006 were imprisoned for moral crimes, mainly adultery and running away from home. A total of 78 per cent of the women imprisoned in Herat were charged with moral crimes [UNODC, 2007]. The offence of zina (extra-marital sex) is covered under the penal code. In practice victims of rape are treated as persons having committed the crime of zina until proven innocent [Medica Mondiale, 2004; Jones, 2007]. While the reform activities are ongoing, the equal rights of women, enshrined in the Constitution and international conventions signed by the Government of Afghanistan are not yet reflected in legislation.

Literature Review

Socio-economic situation of Afghan women

Despite progress made in improving the status of women in political, legal & educational fields, since the fall of the Taliban in 2001, women continue to face enormous social, economic, security & human rights challenges in Afghanistan [IDLO, 2006]. Statistics show that Afghanistan has one of the lowest gender development index (GDI) in the world [AHDR, 2007]. Most girls and women face poverty, illiteracy, limited access to healthcare & continued widespread gender violence. Their mode of upbringing, education, work and marriage is determined by customary practises, depriving them of control over all these areas and in general placing them within the domestic sphere of the household under the supervision of their fathers, husband and brothers [ILF, 2004; UNIFEM, 2006(b)].

The female/male literacy ratio is 0.4 for the entire population, far lower than in neighbouring countries such as Iran (0.8) and Pakistan (0.6). Barriers to girls' education include lack of girls' schools with significant regional & urban / rural disparities, lack of sufficient female teachers and poverty [World Bank, 2005]. Security is a major concern, with political opponents of the present government attacking girls' school and campaigning against female education [U.N, 2007]. Social and family pressures also prevent women from seeking higher education [Pourzand, 1999; AIHRC, 2006].

Approximately 57 percent of girls get married before the age of 16, according to a study by the Ministry of Women's Affairs and Afghan women's NGOs [www.rawa.org/facts.htm]. Afghan traditions dictate that women are the bearers of the family honor, which is measured by the chastity of the female gender. Therefore, marrying girls at a very young age constitutes a measure to prevent girls' loss of virginity prior to marriage [UNIFEM, 2006(b)].

Afghan women encounter barriers to earning their own livelihood, have limited economic opportunities, and are restricted in their access to work outside the home as 80-90% of economic activity occurs within the informal sector. Their activities contribute to the household economy but are not documented or remunerated [World Bank, 2005]. When paid, their wages are about half of that of men (and sometimes even lower than those of children) and few women have control over their earnings. Often women's products may be bartered rather than sold, since selling them would be considered shameful [AREU, 2005]. The National Reconstruction and Poverty Reduction report published by the World Bank in 2005, reports that women's labor force participation rates in Afghanistan are comparable to the rest of the region at 35.8%—lower than in Bangladesh (42.5%), Nepal (40.5%) and Sri Lanka (36.9%), but higher than in India (32.5%) and Pakistan (29.5%).

Both the World Bank and AREU studies show that women and children are the main tenders of animals, with women often playing a critical role in diagnosing and tending sick animals [World Bank, 2005]. In urban areas women's employment outside the home is limited, due to strict cultural norms, low literacy and skills, limited opportunities, sex segregation and the unavailability of childcare. According to data from the Central Statistics Office [www.moj.gov.af] 12 percent of permanent government employees were women in 2003. Other work undertaken by women in urban areas includes sewing, embroidering and laundering. The approximately 50,000 widows living in Kabul face barriers to employment and services, and are often forced into begging [AREU, 2005]. Poor women in low-income positions, such as domestic workers, are at risk of sexual exploitation [UNESCO, 2005]. Thus the low socio-economic profile of women makes them vulnerable to the deploring law and order in the society making them an easy prey to an already gender biased society.

Violence against Women

Violence against women remains pervasive in Afghan society, both in public & private spheres of life, forced & child marriages, domestic violence, sexual harassment, trafficking, forced prostitution and honour killing are the main types of violence against women and girls [Latifa, 2003; Mardsen, 2002; HRW, 2002]. The AIHRC documented at least 106 cases of self-immolation nationwide in the year 2005. It found most self-immolations occurred to escape abusive marriages and to avoid marrying a man that the victims did not want to marry. Forced and childhood marriages constitute 60% to 80% of all marriages [www.aihrc.org.af]. The Ministry of Foreign Affairs (MoFA) and International Organization for Migration (IOM) reported that there is an increase in the trafficking in women for commercial sexual exploitation during the year 2005 [www.rawa.org/facts.htm].

A study [UNIFEM, 2006(b)] indicates that in 82% of the cases perpetrators are family members. In some parts of the country tradition continues to be used to legitimize violent deaths of women. Women and girls alleged to have eloped or committed adultery were reportedly killed by the family. Adultery, "running away from home" and unlawful sexual activity (sexual intercourse by unmarried men and women) known as *zina* crimes remains subject to criminal prosecution. Women accused of *zina* are at risk of being killed by their families if released. Women victims of rape remain at risk of prosecution for *zina* if they could not prove the act was against their will, and have little hope of seeing justice done. Divorce on grounds of physical violence was virtually impossible for women to obtain, even with evidence of severe domestic violence [www.hrw.org.af].

In many rural communities, women and girls continue to be exchanged as a mechanism for addressing community disputes or criminal issues including murder or elopement. Women and girls exchanged in this way are married to a man or boy from the victim's family. During the year 2005, the AIHRC recorded 41 cases of women being given to another family to settle disputes. In the early part of the year 2005, there was a very high-profile case involving a 13-year-old who was engaged to the

son of an influential politician in Badakhshan province. She refused to marry the man and was threatened with stoning by residents of her village.

The criminal justice system remains weak to offer effective protection of women's rights to life and physical security, and itself subjected them to discrimination and abuse. Prosecutions for violence against women, and protection for women at acute risk of violence, are absent [Amnesty International, 2004]. The few women who overcome powerful barriers to seek redress rarely have their complaints considered or their rights defended. No safeguards are in place to protect women from sexual abuse while in police custody and detention. There have been many reports of sexual abuse of women prisoners in official detention centres in Herat, Mazar-e-Sharif and Kabul [PRI, 2008].

Judiciary system for women

The functioning of the formal justice system is primarily limited to urban areas, while in rural areas - where the majority of Afghanistan's women reside - the majority of disputes and crimes are currently dealt with under customary law by Jurgas or Shuras [Braithwaite, 1989, 2002(a), (b), 2003].

Given the stronghold of customary law in these areas, the degree to which the Constitutional law will be disseminated, accepted and enforced in outside urban centers is unclear. Even in urban centers authorities are reluctant to respond to women's complaints of domestic violence, rape, sexual violence or other assaults [Amnesty International, 2005]. Complaints from victims of domestic violence are widely dismissed by the police as a private matter and victims are often advised, and sometimes pressured not to take action. Further, in much of Afghanistan, interactions between women and unrelated men are limited, and in some instances, are prohibited. This greatly inhibits women's access to both formal and informal justice mechanisms, as these bodies are almost exclusively male [Rubin, 2003]. A number of laws discriminate against women in a range of

aspects, while their interpretation varies according to different judges, prosecutors and legal experts [Amnesty International, 2003].

Literature depicts the unequal way in which women are currently treated by the legal system, their minimal decision-making power, the difficulties women encounter when trying to end abusive marriages and why they may find themselves behind bars for trying to escape [Benard, 2002] For example- In 2005 in Ghazni Province, a 13-year-old girl was sentenced to five years in prison after her much older, former husband (who divorced her) had the girl and her new husband arrested for committing adultery [UNIFEM, 2005].

Access to laws has also been cited as a critical problem, with many judges making decisions without reference to legal codes. The personal opinions of judges at district levels particularly are regarded as the primary source of law [UNAMA, 2006]. Lack of reference to legal codes and the dominance of personal opinions over statutory law, clearly imply great risks for women, whose traditional position in society is defined and controlled by men. In fact, as explained above, customary rather than statutory laws, often contrary to the principles of Islam, continue to rule the lives of most Afghan citizens, to the detriment of the large majority of young girls and women [UNODC, 2007]. [Moghadam, 1997] accurately points out that the issue of women's rights in Afghanistan has been historically constrained by (a) the patriarchal nature of gender and social relations deeply embedded in traditional communities and (b) the existence of a weak central state that has been unable to implement modernizing programs and goals in the face of tribal feudalism.

Women Prisoners

Imprisoned for what are loosely described as "moral crimes", these women would qualify as victims rather than criminals under any interpretation of international human rights laws, including those to which Afghanistan is a signatory. Women constitute 4% (250) of the total prison population. Though, it is quite a thin figure in comparison with countries like U.S.A (183,400), China (71,286), Russia (55,400), India (13,355) and

Brazil (11,000). But in Afghanistan women prisoners are half victims themselves and they are further victimised by the criminal justice process [BBC News, 2008]. And on release from prison, they face victimisation for a third time. Currently the majority of the female prisoners are being held for violating social, behavioural and religious norms [UNODC, 2007]. The reason is the lack of a robust formal criminal justice system.

Many women were imprisoned at the request of a family member, including those incarcerated for opposing the wishes of the family in the choice of a marriage partner, on adultery charges, or bigamy charges from husbands who originally granted a divorce but changed their minds when the divorced wife remarried [Jones, 2007]. Women also faced bigamy charges from husbands who had deserted their wives and then reappeared after the wives had remarried. Many imprisoned women were also accused of murdering their husbands [UNODC, 2008]. The Afghan women are frequently prosecuted for rapes and sexual assaults committed upon them [Emadi, 2002; AWEC, 2006]. Precise numbers were impossible to tabulate as victims of rape in Afghanistan are stigmatized and duly victimized by putting them behind bars. Their "crimes" range from marrying a man of their own choice to being accused of adultery [U.N Doc, 2005]. Some Afghan women are in the prison voluntarily [Medica Mondiale, 2003].

According to the State Department, they chose prison over enduring rampant domestic violence or being forced into arranged marriages. Several girls between the ages of 17 and 21 years of age remained detained in Pul-e -Charkhi prison because they were captured after fleeing abusive forced marriages [UNODC, 2008]. Without shelters for battered women in Afghanistan, prison becomes a viable option. A growing number of Afghan women are adopting self-immolation rather than endure their newly found freedom [ILF, 2004; UNIFEM, 2006(a); Medica Mondiale, 2003]. With the establishment of rule of law and criminal justice in Afghanistan, the prison population is on the increase. The number of women in prison has also increased over the past three years, from 86 in December 2004 to the current figure, which constitutes a rise of 3.5 times

[UNODC, 2008; UNODC, 2007] It also varies at the time of Eid when prisoners are released as an act of clemency [Warikoo, 2007].

Prisons

The Central Prisons Department (CPD) was transferred from the Ministry of the Interior to the Ministry of justice in March 2003 [Medica Mondiale, 2004]. This positive step, taken by the Afghan authorities, led to the loss of funding that is currently provided to the security sector by the international community. There are currently 34 provincial prisons, one located in each province [Jones, 2007; www.moj.gov.af]. With the establishment of rule of law and criminal justice institutions in Afghanistan the prison population shows an increasing trend. The total number of prisoners was estimated to be over 6,000 in January 2006, compared to 600 in 2001 [UNAMA, 2006] which represents a 10-fold increase in five years.

Afghanistan launched its first prison for women in the capital Kabul in 2008. Approximately 22 provincial prisons and 4 district detention centres house female prisoners [www.moj.gov.af]. Women were sometimes detained in private homes as the result of decisions taken by customary law actors to be guilty of acts that may not constitute legal offences or forced to marry as compensation for killings, creating highly abusive situations [Medica Mondiale, 2004].

Prison conditions are poor, decrepit, severely overcrowded, and unsanitary. Prisoners share collective cells and are not sheltered adequately from severe winter conditions [AIHRC, 2006; Amnesty, 2003(b)]. Contagious and mentally ill prisoners were rarely separated from other prisoners. Female prisoners have had to give birth in detention centers, without any facilities and support [Amnesty, 2003(b)]. The AIHRC states that over 40 private and illegal detention centers had been closed between 2001 and year's end. AIHRC discovered private prisons in Kabul, Jalalabad, Kandahar, Herat, Kapisa, Badakhshan, and Baghlan provinces and reported in a later meeting that it believed all of these secret prisons had been closed [AIHRC, 2005].

There is one large detention center in Kabul. Out of 374 districts there are over 200 district detention centers each, one with very limited capacity [CPD, 2007]. The majority of the centers are unable to provide for even the most basic needs let alone meet international standards. Most of the centers do not have facilities for women who therefore, are reportedly kept in private homes of districts officials, which allows for their abuse [IRIN News, 2007; AIHRC, 2005; PRI, 2008]. The percentage of detainees compared to sentenced prisoners has also grown to over 50%, as the courts have been unable to keep up with the arrest rates [UNODC, 2008]. Many detainees are being held illegally as the legal timeframe for the processing of their cases is often exceeded. According to CPD officials, it is estimated that out of 3,000 inmates at Pul-e-Charkhi alone, over 1,800 have not been processed within the legal timeframes [CPD, 2007].

Reforms and Policies

Currently, the top two priorities of women activists with respect to customary laws in Afghanistan are 1) the creation of representative, trusted and accountable judicial institutions and 2) ensuring that women have access to justice through these institutions. Both of these requirements are central to maintaining peace, stability and ensuring the protection of women's rights [Deniz, 2005].

Afghanistan's prison system faces a number of challenges in relation to women prisoners. Several international organizations, foreign embassies Government Departments and N.G.O's like Medica Mondiale, Da Qanoon Ghush-tonsky, Amnesty International, AWEC, ANDS, RAWA, AIHRC are working to address its funding and capacity needs [UNODC, 2008]. They have been working to provide women mental counselling, free legal aid, vocational skills and infrastructure in the prisons. The situation of female prisoners in Afghanistan also presents a number of opportunities. The establishment of the department of Ministry of Justice responsible for the prisoners is allocating funds to the increasing demand of the Central Prison Department [Medica Mondiale, 2003; 2004].

The range of NGOs providing support services to female prisoners provides a good opportunity to establish lasting cooperation between civil society and prison authorities. Many prisons are being made constructed to make separate facilities for women and children [CPD, 2007]. Civil Society Organizations are also working to rehabilitate women once they are released. As there is a social stigma attached to the imprisonment, women may not be accepted back in their families. Mediation is conducted by the social workers between Prisoners and their families. Prisoners are being given vocational training to make them self-sufficient after their release. Various Shelter Homes are being made with the help of HAWCA, AWEC, Medica Mondiale to provide women shelter when they have no where to go to [AWEC,2006; Amnesty International, 2003(b)]

Objectives

The present study has the following objectives:

- Study the historical background of the Afghan women
- Highlight the situation and living conditions in the prisons
- Study the magnitude and socio economic background of the women prisoners
- Analyse the customary laws vis-à-vis the statutory laws
- Examine the implementation of the present policies and reforms on the women prisoners
- Study the role of civil society organisation in extending support and protection in mainstreaming the women prisoners

Definition, Rationale and Scope of the Study

It is important to understand and identify the issues and problems relating to women prisoners in Afghanistan as this target group is one of the most marginalized caught amidst a mix of sharia law, afghan customary law and the statutory law. The laws lack clarity, uniformity and consistency. Sometimes they contradict each other leaving most of the decisions to be undertaken on the basis of whims and wishes of the elderly in the community. The implementation of these laws has particularly left

negative implications for the women landing them in prison. Given the current situation, it is important to understand the circumstances under which this vulnerable and most marginalized section of the society live. It is important to highlight the present complex nature of laws that are implemented on the women.

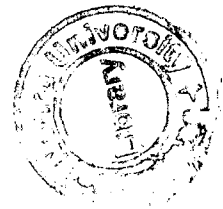
The present study will attempt to analyze the social reintegration of female offenders, their rehabilitation during imprisonment and post-release support. This study would address the gaps between the policy formation and implementation in the transitional government. This issue constitutes an important aspect in achieving the millennium development goals. The ultimate aim is to uplift and empower the women in Afghanistan and work towards a free and equal society with fair justice system.

Hypothesis

The present study has the following objectives:

- The pre-dominance of Islamic and customary laws over statutory laws stand firmly in place for implicating women into getting imprisoned
- Most of the women prisoners are victims rather than the offender of the crime

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Methodology

The research will be based on ethnographic case studies based on secondary sources of information. Primary and secondary sources of information available in the form of documents, reports, internet sources will be collected and further analyzed. The judicial system will be studied with the help of the constitution, civil codes and the laws as available in the Government of Afghanistan website. Data and statistics obtained from the government of Afghanistan, UN, World Bank and other international agencies will be presented through tables for easy understanding and comparison. Techniques adopted include simple statistical tools such as averages and percentage depicted through diagrammatic and graphical

representation of data for further analysis and interpretation. Pie diagrams and bar diagrams are used extensively for explaining variations within the data.

Chapter Scheme

The present study consists of five chapters. These are

Chapter I: Introduction

The first chapter outlines the background, area of study highlighting the predominance of customary laws under different regimes. It thematically presents a detailed literature survey, the objectives, hypothesis, methodology and the organization of the study.

Chapter II: The Women Prisoners

This chapter will probe into the background of women prisoners, their demographic characteristics and socio-economic profile. It also analyses the causes and consequences of imprisonment. It will highlight the distribution of prisons and the gender distribution of the prisoners.

Chapter III: Judiciary and its Implications

The third chapter looks into the detailed account of the customary laws and assesses its implications on the women. It also highlights the consequences of the Sharia laws. An attempt will be made to highlight these as existing against the judiciary system.

Chapter IV: Role of Civil Society Organization

This chapter analyses the process of social re-integration of the women prisoners. The role of international organization, regional and national NGO initiatives for the women prisoners will be highlighted.

Chapter V: Conclusion

This chapter will present the major findings of the research.

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CHAPTER – II
THE WOMEN PRISONERS

This chapter probes into the background of women prisoners highlighting their demographic and socio-economic characteristics. It also analyses the causes and consequences of imprisonment, discusses the distribution of prisons and the spread of women prisoners.

Socio-Economic Background

Women in Afghanistan experience one of the lowest social positions in the world. Denied access to education and jobs and often not allowed to leave their homes without a male relative, they lack access to information on how to protect themselves. The gender development index (GDI) reflects disparities between men and women along three dimensions: life expectancy and health, knowledge, and standard of living. The GDI for Afghanistan is 0.310 - one of the lowest in the world highlights the lack of social and economic opportunities available to the Afghan women.

The average woman in Afghanistan has a lifespan of 42 years, around 20 years short of the global average. Although women around the world generally live longer than men, Afghan women die at a younger age. Despite the toll of male casualties during 25 years of war, men still outnumber women by an average of 104 to 100 in all age groups. Afghanistan's estimated infant mortality rate is 165 deaths per 1,000 live births and maternal mortality rate is 1600 deaths per 100,000 live births is one of the highest in the world. Moreover, women's fertility rates, at an average of 6.6, are the highest in the world. Seventy two percent of married women below the age of fifty two are unaware of any methods to delay pregnancy [TISA, UNICEF, 2003]. At the same time, Afghanistan's child mortality rates continue to be the highest in the world. Afghanistan's adult literacy rate ranks among the lowest in the world: only 23.5% of the population aged 15 and older is able to read and write. Only an estimated 12.6% of women are literate, compared with 32.4% of men. The female-to-male literacy ratio is 0.4 for the entire population, far lower than in neighbouring countries such as Iran (0.8) and Pakistan (0.6).

Girls' access to education has improved in urban centres, but progress has been limited in rural areas. School enrolment rates at the primary,

secondary and tertiary levels are 41.8% for females and 73.7% for males. In Afghanistan, 80-90% of economic activity occurs within the informal sector. Because of conservative practices, Afghan women encounter barriers to earning their own livelihood, have limited economic opportunities, and are restricted in their access to work outside of the home. Since the majority of women live in rural areas, their main activities are in agriculture, livestock management of family care giving. These activities contribute to the household economy but are not remunerated.

Table No 2.1
Human Development Indices

S.N.	Indicators	Afghanistan	South Asia	Least Developed Countries	Low Human Development Countries
1	Life Expectancy at Birth	44.5	63.2	50.6	49.1
2	Infant Mortality Rate per 1000 live Births(2003)	115	69	99	104
3	Human Dev (Index) Ranking	0.346 (173)	-	-	-
4	Gender Dev (Index) Ranking	0.300 (143)	-	-	-
5	GDP per capita (US dollar 2002)	190	516	298	312
6	Population without sustainable access to an improved water source (per cent) 2003	60	15	38	38

Source: Dutta M, (2006): Contemporary Central Asia, 10(2)

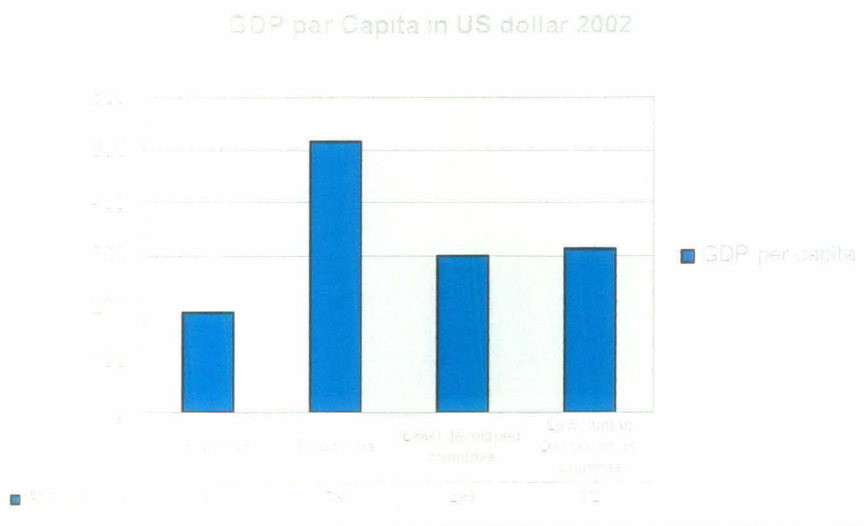
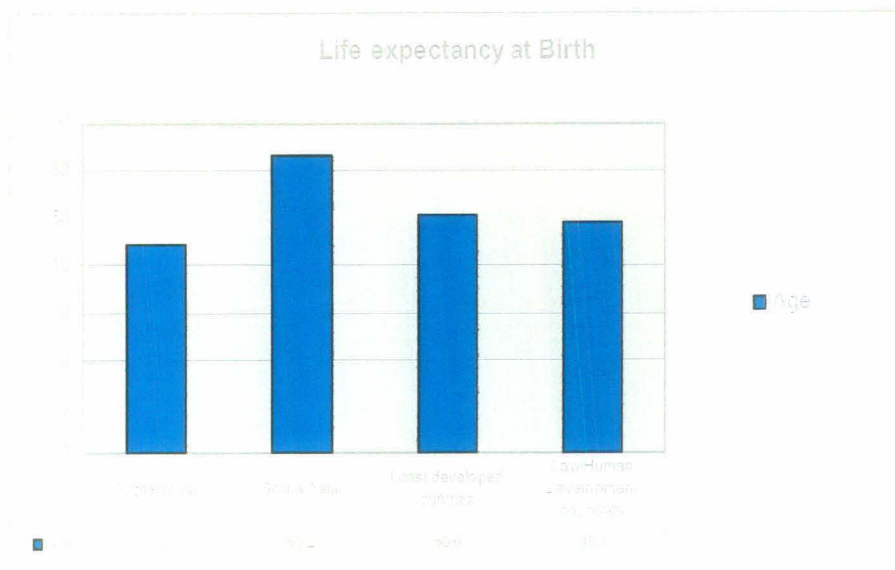


Figure no. 2.1

As seen in fig no. 2.1, the life expectancy at birth, infant mortality rate and the GDP per capita are the worst in the world. The GDI value for Afghanistan places the country further down on the scale of low human development. With a GDI of only 0.300, Afghanistan is much below all its neighbouring countries. Most of Afghanistan's people particularly women and girls remain severely challenged in terms of human development.

**Table No 2.2
Health Related Statistics**

Infant mortality rate per 1,000 live births	165*
Under-five mortality per 1,000 live births	257*
Maternal mortality ratio per 100,000 live births	1,600
Provinces with obstetric care	11 out of 31
Low birth weight	20%
Children under five with malnutrition	10% acute, 50 % chronic
Under fives dying from diarrhoea	85,000 per year
Acute malnutrition	10 %
Chronic malnutrition	50 %
Tuberculosis death of women	12- 13,000

Source: TISA Securing Afghanistan's future; * Estimated

In Afghanistan, a woman dies of pregnancy-related complications every 30 minutes. Table No 2.2 depicts the appalling conditions prevailing for the mother and child. The maternal mortality is perhaps the highest in the world. The figures for < five year old children who die from diarrhoea is 85000 per annum which is unimaginable. Out of 15,000 death of Tuberculosis per year, women alone constitute 12- 13000 death.

Over 2 million Afghans are estimated to suffer from mental health problems [UNDP, 2004]. Mental disease that one would see in any population has not been attended to for years in Afghanistan.

Table No 2.3
Literacy and Gross Enrolment Ratios

Country	Literacy Rate	Male	Female	Combined Gross Enrolment Ratios
Afghanistan	28.7	43.2	14.1	44.93
Tajikistan	99.5	99.7	99.3	73
Uzbekistan	99.3	99.6	98.9	76
Turkmenistan	98.8	99.3	98.3	81
Iran	77.1	83.5	70.4	69
Pakistan	41.5	53.4	28.5	37

Source: UNDP, 2004

Table No 2.3, clearly shows the low literacy rate for Afghanistan from its neighbours. What is shocking is the female literacy rate which is hardly 14.1 percent as compared to its regional neighbours where the women are more than 70 percent literate.

Due to lack of proper authentic source the present research focuses only on a study [UNODC, 2007], comprising of 56 women prisoners in the prison of pul-e-charkhi, located in the capital city Kabul which house 69 women prisoners with 43 children. One block of the prison comprises for women with nine rooms, holding 4 to 15 prisoners each and their children. All those working in the prison are female, though external security is provided by male staff.

The interviews were conducted by the UNODC project coordinator. Thus the present study tries to depict the situation of these prisoners by taking into account their socio-economic aspects.

In the present study the following results came out in our research findings-

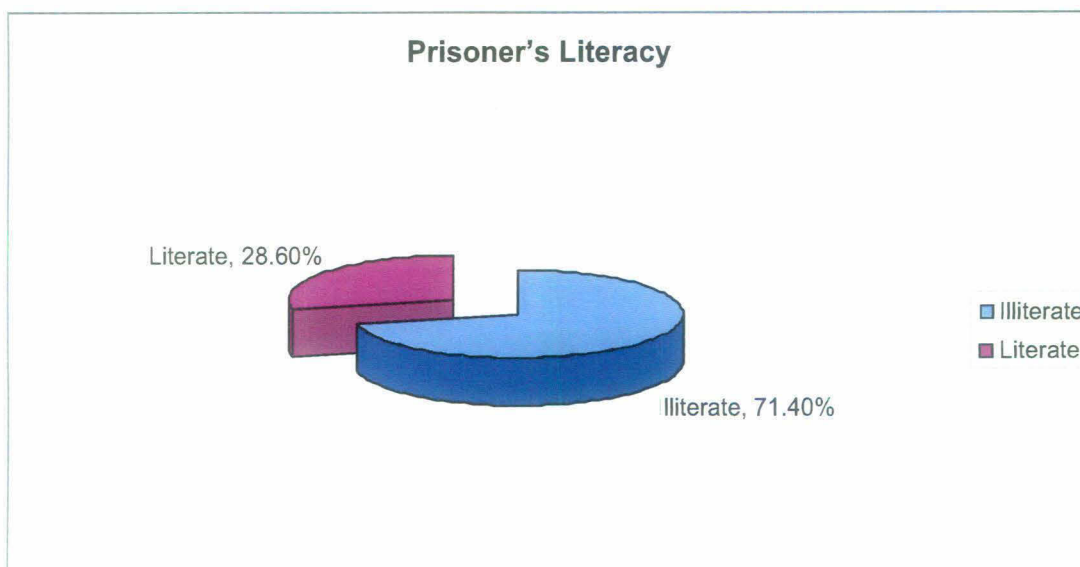


Figure no 2.2

Out of 56 prisoners interviewed 71.4% of the prisoners were illiterate only 28.6 were literate as we see in figure no. 2.2. The literacy rate of the women prisoners is relatively high compared to the general female population of Afghanistan, which has a literacy rate of only 12.6 percent [UNDP, 2004]. Moreover a higher proportion of literacy rate among the women prisoners is perhaps due to the small sample size localised in Kabul. This fact is also to be noted, that 71 % women in the prisons have been arrested in Kabul. Thus, the women who find themselves in the formal legal system are those who come from urban settings, with a relatively higher level of education.

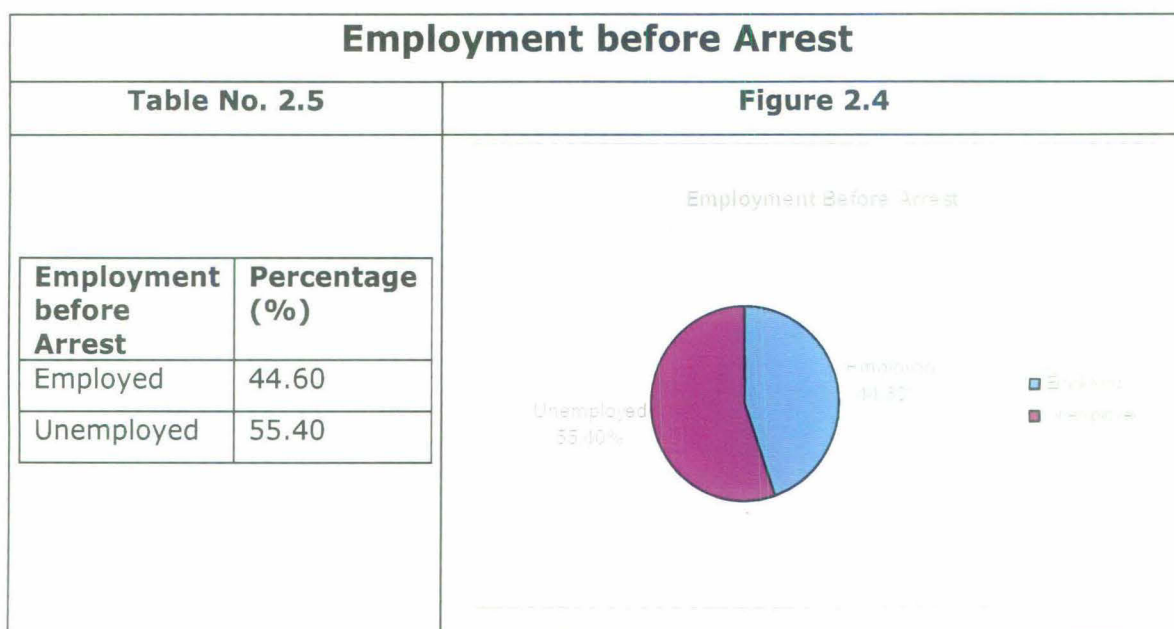
Table No 2.4
Education of Women Prisoners

Education	Percentage (%)
Illiterate	72
Religious Scools/ Madrasa	7
Primary school	7
Secondary School	5
High School	5
University Graduates	4



Figure 2.3

The educational status of women show that most of them completed only elementary education and many went to madrasas for formal education.



The 44.6 per cent employment rate is high in relation to the employment rate of women in the general population which has been reported as 35.8 per cent [World Bank, 2005]. There are enormous regional disparities among women’s participation in various gainful activities, with 81 to 90 per cent of women in the North and North-East undertaking some kind of work, compared to very low levels in the southern, central and eastern regions [World Bank, 2005] Thus, 44.6 per cent employment rate among the prisoners, mostly from Kabul and provinces close to Kabul is not startling.

It can be said that the percentage shows rather a low level of employment, when considered in light of the fact that 76.8 per cent of the women interviewed are poor or very poor [UNODC, 2007]. As in Afghanistan, where the traditional role model for women comprises attending to the domestic work, rather than participating in the labour force, there is an inverse relationship between wealth and work, i.e. the frequency of work increases as wealth decreases [Annaim,1990].

Table no 2.6

Economic Status of the Prisoners

Economic Status	Percentage (%)
Medium Wealth	21
Very Poor	48
Rich	2
Poor	29

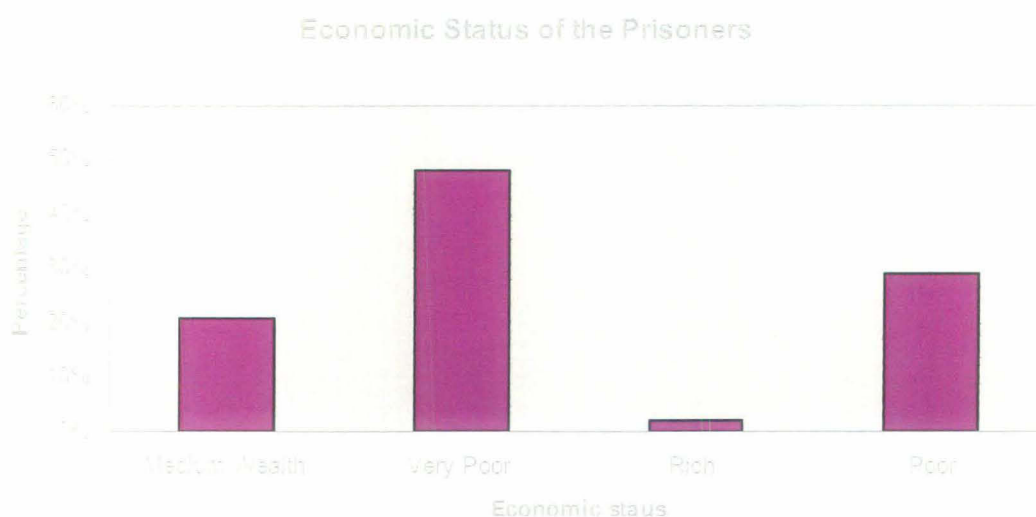


Figure 2.5

According to the finding from data collected, given in table no.2.6 and figure no. 2.5 most of the imprisoned women are poor. Thus a significant majority, comprising 77 per cent of the women, are economically disadvantaged, similar to the situation among prisoners worldwide.

Reasons for Imprisonment

Violence against women and girls and lack of access to justice for women are significant problems in Afghanistan. Violence against women can encompass marital rape, sexual assault and other forms of violence within the household; the physical and psychological violence associated with child marriages and forced marriages; the practice of self-immolation whereby women and girls attempt suicide by setting themselves on fire and, neglect through malnutrition and inadequate medical care [Erturk, 2006]. According to a report released during the year, 2005 by

Womankind, 87 percent of the women were victims of violence, half of it being sexual. The justice system simply does not work where a women is included [Rasnayagam, 2005]. In some rare cases where women are willing to report the crimes perpetrated against them, they are being ignored, accused of committing sexual offences, detained arbitrarily, tried unfairly.

Most women prisoners are imprisoned for what are loosely described as "moral crimes", under which these women would qualify as victims rather than criminals. In many cases the Local officials imprisoned women at the request of family members for opposing the family's choice of a marriage partner or being charged with adultery or bigamy. Women also faced bigamy charges from husbands who had deserted them and then reappeared after the woman had remarried. Local officials imprisoned women in place of a family member who had committed a crime but could not be located. Some women resided in detention facilities because they had run away from home due to domestic violence or the prospect of forced marriage. Several girls between the ages of 17 and 21 remained detained in Pol-e-Charkhi prison having been captured after fleeing abusive forced marriages. Women in need of a shelter in the shelter-homes often ended up in prison [HRR, 2008].

Women constitute 4% (250) of the total prison population [UNODC, 2007]. Though, its a marginal figure in comparison to countries like U.S.A (183,400), China (71,286), Russia (55,400), India (13,355) and Brazil (11,000) [PRI, 2008]. But the women prisoners of Afghanistan are victims in the hands of the criminal justice process. Even after release they continue to face victimisation. Currently the majority of the female prisoners are being held for violating social, Behavioural and religious norms [UNODC, 2007].

The breakdown of crimes with which the 56 interviewed prisoners were charged is as follows- The types of crime were divided into moral and other crimes committed by the women which were equal in number.

**Table no 2.7
Type of Moral Crimes**

Type of Moral Crimes	Percentage (%)
Running away	4
Running away and adultery	28
Adultery	42
Facilitating and supporting adultery	14
Attempted adultery	4
Moral crime (undefined)	4
Running away and theft	4

Source: UNODC, 2007

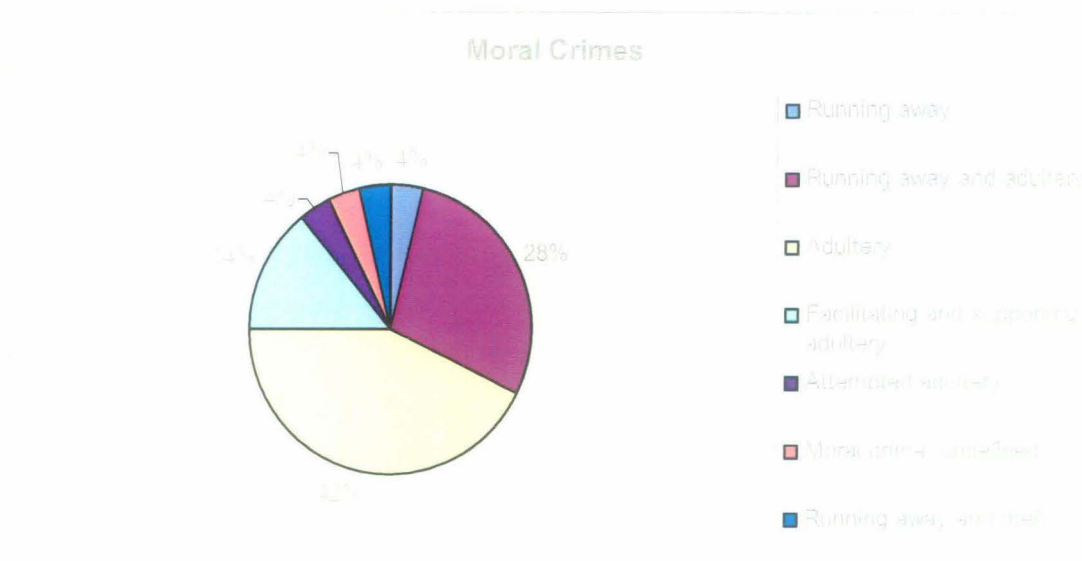


Figure 2.6

The ratio of moral crimes appears to be relatively high with 50 percent of the total crimes being moral as seen in table no. 2.7 and figure no. 2.6. Running way and adultery seem to be the major type of moral crimes committed by women. It is noteworthy that not one of the charges, in 2006 relates exclusively to what are referred to as crimes of poverty: theft or robbery. In addition, according to previous research carried out by UNODC, many may be victims of exploitation and discrimination in legislation and practice, particularly in relation to child marriages and the unequal application of divorce laws, among others. Imprisonment for petty-offences among women is virtually non-existent.

**Table No 2.8
Other Crimes**

Other Crimes	No. of Women Prisoners
Murder	56
Murder/ adultery	4
Murder child revised as child neglect	4
Kidnapping	24
Kidnapping/ Robbery	4
Interference with family life and causing physical Harm	4
Drug Trafficking	4

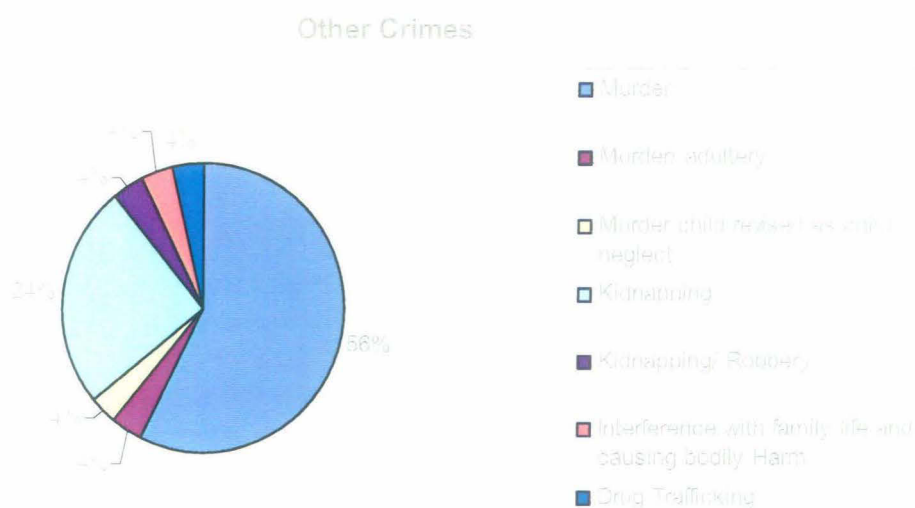


Figure 2.7

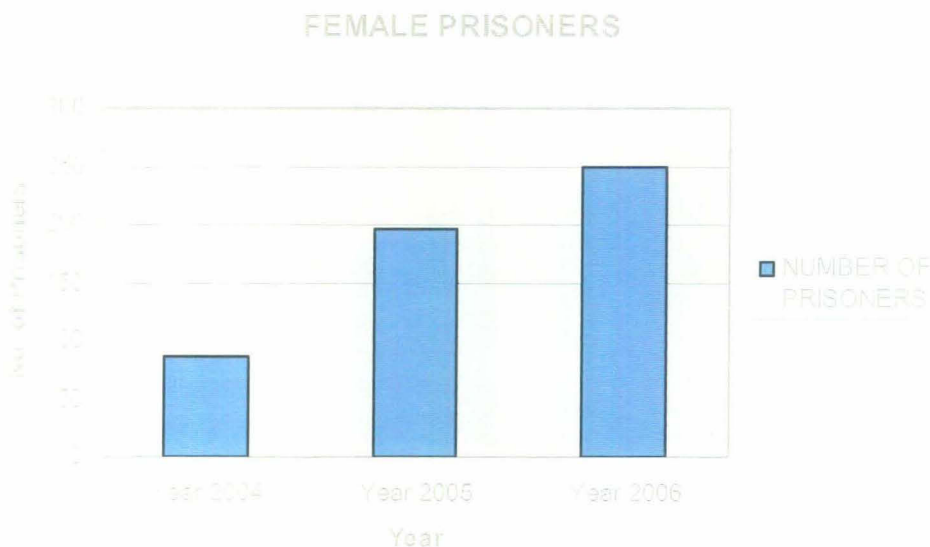
In terms of other crimes, 56% women have committed murder (Refer Table No 2.8 and Fig 2.7). However case studies have revealed that most of the murders have been in self defense.

The prison population is increasing at an alarming rate. In 2001 there were only 600 prisoners countrywide. By March 2005 there were 5,500 prisoners and the numbers grew to over 10,400 by March of 2007. Out of 10,400, slightly over 250 were female [UNODC, 2007]. Most imprisoned females also have dependent children living with them. The number of children living with their imprisoned mothers almost equals the total number of women in prison [CPD, 2007].

Women are detained for crimes against social norms and for purposes of executing punishments on behalf of husbands or male relatives [UNODC, 2008]. Women in Afghanistan face enormous barriers, social and economical, to leading independent and self supporting lives. However, some women are not able to return to their homes, as they are rejected due to the shame they have brought on their family members according to the social and cultural norms in Afghan society [UNODC, 2007]. Women represent the fastest growing segment of prison and jail population. Eighty five % of incarcerated women serve time for non-violent crimes.

Table No 2.9
Trends of Women Prisoners over Years

Years	No. of Women Prisoners
Year 2004	86
Year 2005	197
Year 2006	250



Source: (UNODC, 2007)

Figure 2.8

The Prisons

The Central Prisons Department (CPD) was transferred from the Ministry of the Interior to the Ministry of justice in March 2003 [Medica M, 2004]. There are currently 34 provincial prisons, one located in each province [Jones, 2007; www.moj.gov.af] and more than 200 district detention centers [HRR, 2008]. The government also reported 30 active rehabilitation centers for juveniles. Twenty-two provincial prisons and four district detention centers reported housing female inmates [HRR, 2008]. Prisons lacked adequate separate housing for women, accompanying children, and juveniles. Authorities generally did not separate prisoners awaiting trial from the rest of the inmate population.

The total number of prisoners was estimated to be over 6,000 in January 2006, compared to 600 in 2001 [UNAMA, 2006] which represents a 10-fold increase in five years. The number of female prisoners (250) remains relatively small, representing 4 per cent of the total prison population. Most are dealt with in the informal, "traditional justice" system. The number of women in prison has also increased over the past three years, from 86 in December 2004 to the current figure, which constitutes a rise of 3.5 times [UNODC, 2008].

Table No 2.10
Women Prisons

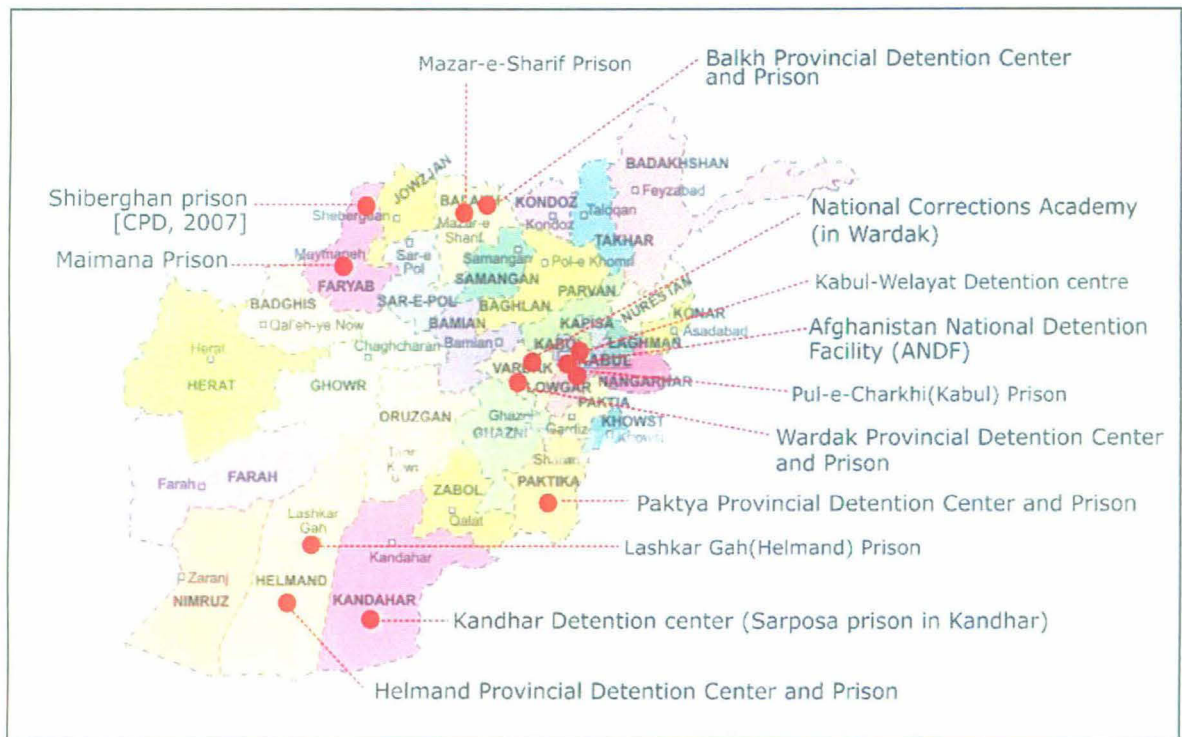
Name of the source	Name of the Prison	No of women Prisoners	No of Children
BBC News, 2008	Lashkar Gah(Helmand)	7	-
IRIN News,2007; UNODC, 2007	Pul-e-Charkhi(Kabul)	69	43
Pajwak Afghan News, 2005	Mazar-e-Sharif	11	2
UNODC, 2008	Kabul-Welayat Detention centre	21	-

On Jan 24, 2008 the First Female Prison/Detention Center (FDC) in Kabul with a capacity of 330 prisoners was handed over by the United Nations Office on Drugs and Crime (UNODC) to the Ministry of Justice of the Islamic Republic of Afghanistan [www.unodc.org/afghanistan].

Map no. 2.1 shows the following important prisons in Afghanistan with the prisons mentioned in figure no 2.10

- Afghanistan National Detention Facility (ANDF)
- Juvenile Rehabilitation Center
- Paktya Provincial Detention Center and Prison
- Balkh Provincial Detention Center and Prison
- Wardak Provincial Detention Center and Prison
- National Corrections Academy (in Wardak)
- Helmand Provincial Detention Center and Prison
- Kandhar Detention center (Sarposha prison in Kandhar)
- Maimana Prison

Distribution of Prisons in Afghanistan (Restricted to Availability of Data)



Map No. 2.1

Places of Arrest

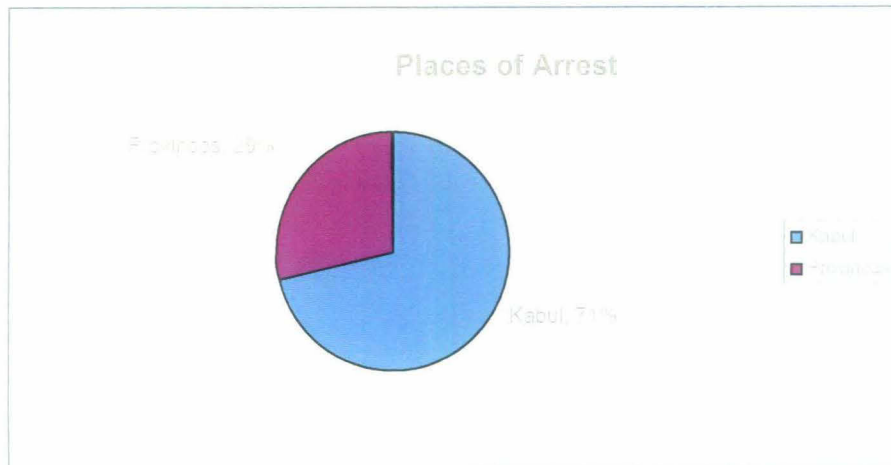
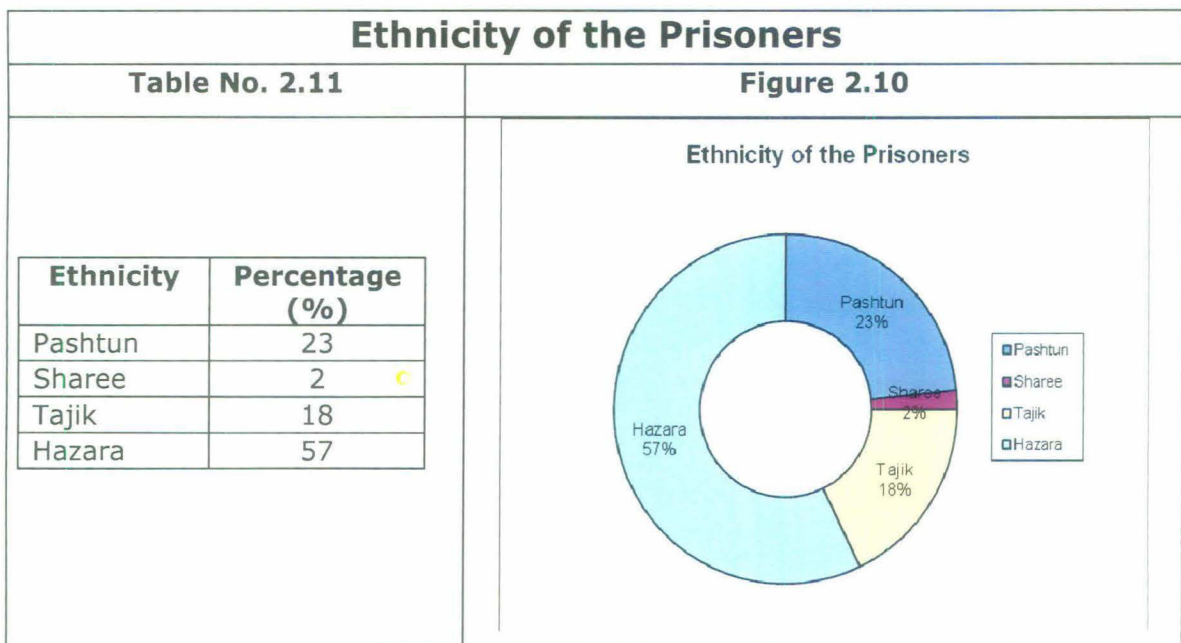


Figure 2.9

Figure 2.9, shows seventy-one per cent of the 56 prisoners were arrested in Kabul, 29 per cent in other provinces as the prison pul-e-charkhi on which the research is based is located in Kabul therefore Kabul has a high percentage for place of arrest

Ethnicity

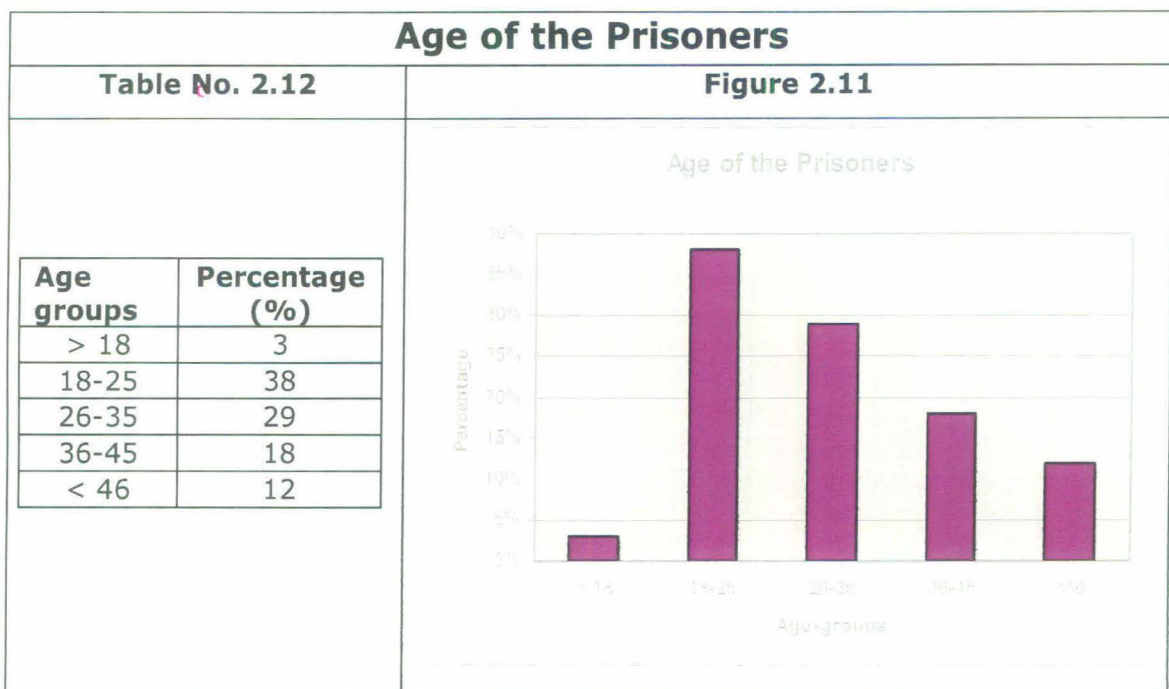


Compared to the general population, the pashtun are significantly underrepresented (the pashtun comprise 42% of the general population) [www.learning partnership.org/ afghanistan].The Tajik and Hazara are

overrepresented (the Tajik comprise 27 per cent of the general population and the Hazara 9 per cent) in the prison as given in table no. 2.11 and figure no. 2.10

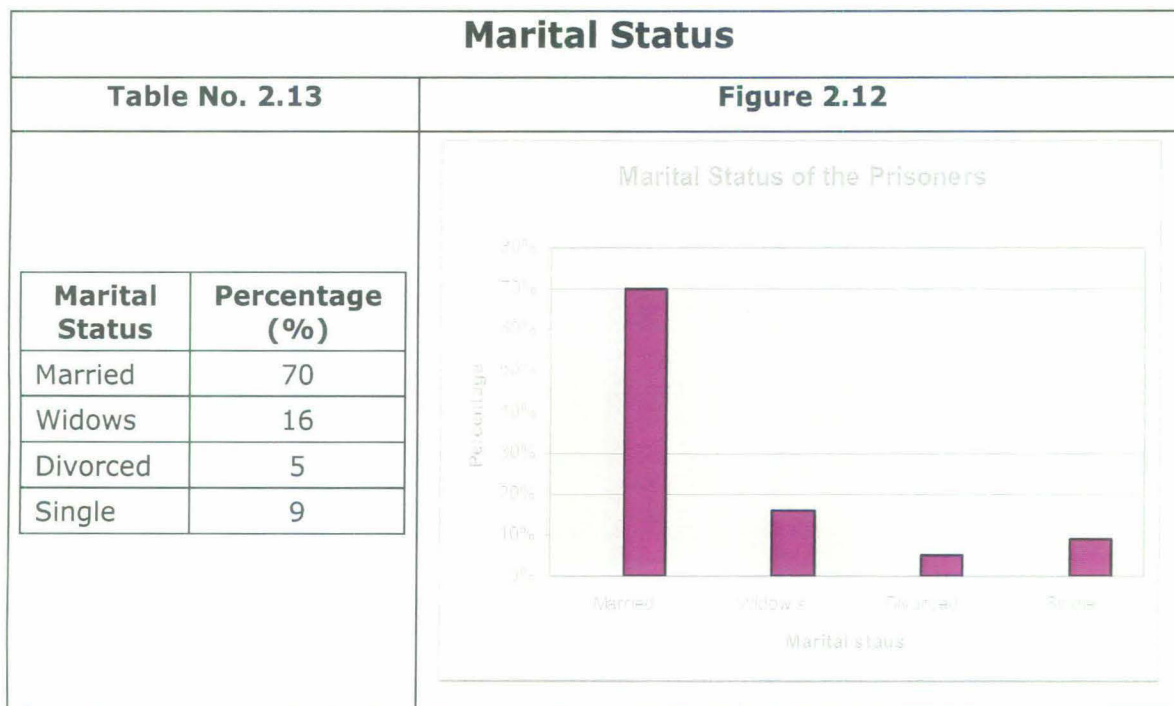
As most Pashtun women who commit crimes are penalized by the traditional justice system, compared to other ethnic groups, therefore they are underrepresented in the formal justice system. As we will study in the Chapter -3 of research that in Pashtuns traditional justice system prevails this assumption cannot be ruled out.

Age



We see from this finding that women committing crimes are very young. 46 women out of 56 women interviewed are below the age of 35. As seen above in the type of crimes committed by them, we can see that most women are the victims rather being the offender and most of them imprisoned for moral or petty crimes and most being victims of under-age and forced marriages.

Marital Status



As Table 2.13 and fig 2.12, show, some 70% per cent of the 56 women were married at the time of the crime. Many of the married women were married at a very young age reflecting a very high rate of child marriages, mention of “bad” was made in one case (married at 11 to settle a dispute by the decision of the jirga), mention of “forced” was made in two cases (both married at 13); mention of having been exchanged was made in two of the child marriages (one married at 10 and the other “very young”) Many women were in their second marriages.

Period of Sentence

The following figure no. 2.13 show the number of prisoners, divided into three main categories by length of sentence.

Table No 2.14
Period of Sentences

Tenure	Percentage (%)
5 month - 3 years	25
4 - 9 years	21
> 10 years	32
Death Sentence	4

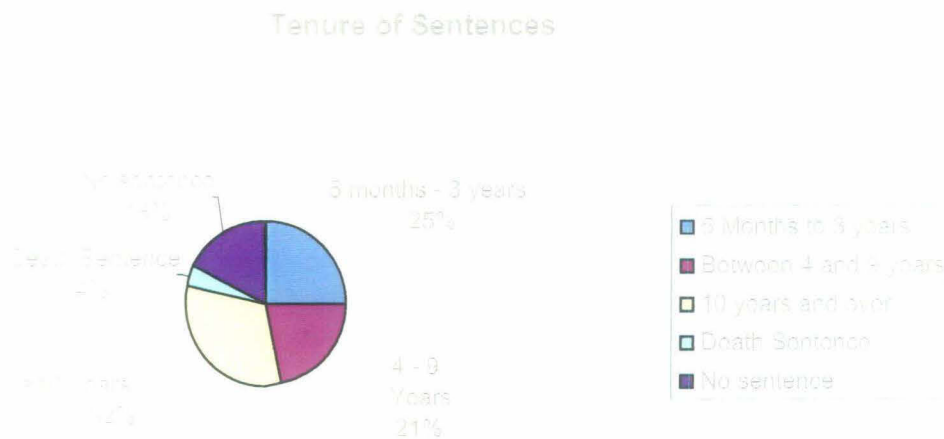


Figure 2.13

Table no. 2.14 and fig no. 2.13 shows the tenure of crimes for which women have been sent to prisons for crimes like committing adultery, running away from home for such crimes sentences range from 1 to 12 years. In four cases, sentences were final: one of 7 years and three of 10 years imprisonment. The death sentence is awarded for the most heinous crimes and one of the death sentences was confirmed by the Supreme court.

The particularly vulnerable situation of women in Afghanistan, calls for the development of a strategy to ensure that women are treated fairly in the criminal justice system and that their circumstances are taken into account in sentencing, including and especially when the offences constitute so called "moral crimes".

More than 50% of women in Afghanistan are convicted of moral crimes and are usually subject to medium or long prison sentences. Although they have not committed a violent offence and are not a danger to the public. In addition, according to previous research carried out by UNODC, many may be victims of exploitation and discrimination in legislation and practice, particularly in relation to child marriages and the unequal application of divorce laws, among others. The percentage of detainees compared to sentenced prisoners has also grown to over 50%, as the courts have been unable to keep up with the arrest rates [UNODC, 2007]. Many detainees are being held illegally as the legal timeframe for the processing of their cases is often exceeded. According to CPD officials, it is estimated that out of 3,000 inmates at Pol-i-Charkhi alone, over 1,800 have not been processed within the legal timeframes [CPD, 2007]. It seems clear that the particularly vulnerable situation of women in Afghanistan, calls for the development of a strategy to ensure that women are treated fairly in the criminal justice system and that their circumstances are taken into account in sentencing, including and especially when the offences constitute so called moral crimes.

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CHAPTER – III

JUDICIARY AND ITS IMPLICATIONS

This chapter will probe into the implications of the Sharia Laws, Customary laws and statutory laws on the women's lives. The chapter will attempt to investigate the existing judiciary system as a representative body.

History of the Justice system

The formal justice system of Afghanistan has been influenced, to varying degrees, by Western (mainly French) legal thought and moderate Islam, radical Marxism, and by radical interpretations of Islam. These influences, by and large, reflected the values, ideologies, and politics of the various governments that Afghanistan has witnessed since its emergence as a politically organised society. In the 1950s and 1960s, the justice system was modernised and state law, rather than sharia, became the primary source of the justice system. After the military coup in 1978, the Marxist government attempted to introduce a Soviet-style judicial system, but these changes were rejected before they took root [Magnus, 1998].

The subsequent mujahedin regime of 1992–96 reintroduced sharia as the basis of the state, and this was further entrenched by the taliban's regime. Most of these regimes have partly used their systems of justice as tools for achieving their political goals [Fange, 2000]. As the formal Afghan justice system was elitist, corrupt and involved long delays [Wardak 2002a; ICG 2003b], many Afghans avoided contacts with it. As a result, many Afghans particularly in rural areas continued to use traditional institutions of informal justice such as jirga,¹ maraka, and shura. Even if the practice of these traditional institutions of popular justice sometimes conflict with Afghan legal norms and with international

¹ Jirga and maraka involve very similar processes and the main constituent elements of the two are not fundamentally different from one another. Therefore, the concepts are often used interchangeably. However, the fact that jirga deals with serious and important conflicts within the tribe (or between tribes) such as murder, disputes over land, mountain, jangle/woods, and the fact that it operates at a higher level of tribal formation, its social organization is more structured. Maraka, on the other hand, mostly deals with civil and relatively less serious criminal matters at local village (or inter-village) level, and therefore, it is loosely structured and its related rituals are not as elaborate as those of a tribal jirga are.

standards of human rights majority of people continue to have full faith in them.

Since the establishment of the Afghan Interim Administration in December 2001 (and later the Afghan Transitional Authority), and the reinstatement of the 1964 Afghan Constitution and 'existing laws', there has been a new emphasis on the need to incorporate international human rights principles into Afghan justice institutions [UNAMA, 2002]. The increasing involvement of the international community and the UN in the social, political and economic reconstruction of Afghanistan appears to necessitate the compatibility of the Afghan justice system with international standards and principles of human rights.

Key dimensions of the post-war justice system in Afghanistan are sharia (Islamic law), traditional informal justice (jirga), 'existing laws' (interim legal framework) and human rights principles. Thus it is very important to understand the various dimensions of the Afghan Justice System.

Shari'a (Islamic Law)

The total population of Afghanistan is estimated to be 28 million, composed of various ethnic and tribal groups, most of whom have lived together in the country for centuries. These include Pashtun, Tajik, Hazara, Uzbek, Turkmen, Aimaq, Baluch, Brahui, Nuristani, Pashaie, Pamiri, Kirghiz, Qizilbash, Mongols, Arabs, Gujars, Kohistanis, Wakhis and Jats [Canfield, 1986; Glatzer, 1998]. Among these, the Pashtuns constitute the largest ethnic group (estimatedly around 42% of the total Afghan population), followed by Tajiks (27%), Hazras(9%) and Uzbeks(9%) [Dupree, 1980; Wardak, 2003].

As the overwhelming majority of the people of Afghanistan are Muslim, Islamic teachings and sharia permeate various spheres of life in Afghan society. Thus, sharia has strongly influenced the development of Afghan justice since the emergence of Afghanistan as a politically organised society. The population of Afghanistan is mainly divided by their religious following into an estimated 80- 85 % of sunnis and 15- 20 % shei'ite. The overwhelming majority of sunnis in Afghanistan are followers of the hanafi

school; Afghan shai'ite are, by and large, followers of the ja'afari jurisprudential school [Wikipedia, Encyclopedia].

Sharia is an Arabic word, which means 'the path to follow'; it is also used to refer to legislation, legitimacy, and legality in modern Arabic literature. However, sharia in a jurisprudential context means Islamic Law. The primary sources of sharia are the quran² and the sunnah³. Qiyas⁴ and Ijma⁵ are the secondary sources of shari'a [Wikipedia, Encyclopedia].

In the process of the consolidation of the Afghan state institutions, particularly in the early 20th century, the Hanafi School (alongside traditional customary laws) provided the basis of the Afghan justice system. This version of the sharia existed in symbiotic relationships with Afghan customary laws and with sunni 'folk Islam' that generally reflected the cultural, social and economic realities of every day life of the overwhelming majority of the people of Afghanistan [ILF, 2004; Olesen 1995].

The modernisation process in Afghanistan was accompanied by the codification of many Afghan laws in the 1960s and 1970s. This process gradually resulted in the relative secularisation of the Afghan justice system, especially in the areas of criminal law, commercial law, and general civil law. Thus state law, rather than shari'a became the primary source of the justice system. After the collapse of the last Afghan Marxist government, the mujahedin government (1992–1996) declared sharia as the basis of their 'Islamic State of Afghanistan' [Emadi, 2002]. Despite the fact that the various mujahedin groups, which formed the government interpreted Islam in conflicting ways, most of them attempted to impose a totalitarian theocracy of which sharia laws were part and parcel. The taliban's theocratic regime (1996–2001) imposed an even more regressive version of shari'a much of which reflected their ignorance of sharia as well of a system of justice [Ewans, 2002].

² refers to the holy book of Islam.

³ These are the statements and deeds of the Prophet Mohammad.

⁴ It means analogical reasoning.

⁵ means the consensus of Islamic jurists on a ruling.

Despite the over (or under) emphasis on the role of sharia in Afghan state institutions by different political regimes, it remains as an important constituent element of post-war Afghan justice. This is recognised by the Bonn Agreement [2001:3], which emphasises that the Afghan Judicial Commission and the UN shall 'rebuild the [Afghan] domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions.' Past experiences, indeed, show that it is only that version of sharia that is in harmony with Afghan cultural traditions, existing legal norms and fundamental principles of human rights that can make important contributions to a credible post-war justice system in Afghanistan.

Customary Law and Jirga

The role of the Afghan central government and its formal institutions of justice (courts, police, corrections etc.) in maintaining social order in Afghan society has always been limited [Wardak, 2002a; ICG, 2003b]. This particularly applies to rural Afghanistan, where it is estimated that over 80% of the Afghan population live. In some southern and eastern parts of the country, formal institutions of justice have no (or just nominal) existence, and yet there exist a reasonable degree of social order in these areas [ICJ, 2005; UNAMA, 2002].

A great many potentially serious disputes, relating to domestic violence, divorce, inheritance and marriage are normally settled within the 'private' sphere of the Afghan extended family without the involvement of local/tribal or state institutions [Wardak, 2002a]. They are dealt with on the spot before becoming a 'public' problem, and a burden on other societal institutions. However, those disputes that are considered 'public' are resolved by public institutions at local and tribal levels. The main institution that has traditionally operated as a mechanism of dispute settlement (at village and tribe levels) is jirga/maraka among the Pashtuns and its approximate equivalent- shura -among the non-Pashtuns of Afghanistan [Carter and Conner, 1989; Farhadi, 2000; Gletzer, 1998; Hashemi, 2000; Malekyar, 2000].

Jirga in every day practice refers to a local/tribal institution of decision-making and dispute settlement that incorporates the prevalent local customary law, institutionalised rituals, and a body of village elders whose collective decision about the resolution of a dispute (or local problem) is binding on the parties involved [Wardak, 2002b]. Those on the jirga combine 'traditional authority' (based on personal qualities, social status, and leadership skills) as well as 'competent authority' (based on the individual's recognised expertise and skills), which play a central part in achieving a prikra (ruling) that is satisfactory to both parties.

The context of jirga/shura, elders reach decisions in accordance with accepted local traditions/values (customary law) that are deeply ingrained in the collective conscience of the village/tribe. They have a profound existence in the collective mind of the village and in the minds of its individual members [Braithwaite 2002a; 2002b; 2003]. Illiteracy plays an important role in discouraging people from using the formal courts – the overwhelming majority of Afghans are unable to make applications, read/understand the laws or complete the paper work [World Bank, 2005].

However jirga/shura doesn't even consider Human Rights and in some cases, like murder jirga may recommend badal (direct vengeance), or the marriage of a woman from the par's tribe to the victim's close relative. Although these practices have become increasingly less in recent years [Johnson et al 2003], the first punishment is in direct conflict with the Afghan state laws, and the second one is a clear violation of fundamental human rights but such practices are still prevalent and women are victimized in the name of justice. In addition, jirga/shura is generally a male-only institution; it can also be excessively influenced sometimes by powerful elders. More importantly, in areas where warlords exercise direct control over the population, jirga/shura decisions are influenced (or undermined) by those with guns and money [Van Ness, 2003].

Southern and eastern Afghanistan

Pashtuns (in southern and eastern Afghanistan) follow Nanawati a special custom for seeking apology and eliminating enmity [Malikyar, 1997].

Nanawati for the murder and abduction of a married woman requires the giving of four copies of the Holy Koran, four women, and a fat sheep to the victim's family. In one case, a dispute arose over water allocation between two members of the Wazir tribe, The altercation escalated to the point where one person was killed, the village elders decided to resolve the dispute between the two families by giving two girls and pay a fine 300,000 Pakistani Rupees from the family of murderer to the victim's family and one girl from victim's family be married to the murderer's family [www.aihrc.org.af].

According to Pashtun tradition, because of the importance of women, most of the severe fights and conflicts arise out of disputes over women's issues, for which special regulations and principles exist. The following are some examples of crimes and punishments involving women:

- If a woman and a man are caught committing adultery, they are both killed and no Poar is required.
- If a woman does not struggle against, or otherwise resist, a man who assaults her, she is deemed to be a willing participant and both she and the perpetrator will be killed.
- If a woman enters a stranger's house seeking asylum and the owner of the house gives her shelter, he is considered a kidnapper and punished accordingly.
- If a man kidnaps a woman and the girl colludes in the kidnapping, the man is required to pay the equivalent of two murders and the woman forfeits the right to visit her father's home after the wedding.
- If husband of a woman beats her, breaks a bone, injures a body part or kills her, her father may claim Poar. If the father does not consent to the Poar, he can perform Qesas and kill her murderer.
- Finally, widows can only marry the brother or the cousin of the deceased husband. If no such person exists, the whole tribe shares the widow. No other tribe is allowed to marry her.

In one example, a man was accused of raping a married woman. The Jirga determined that the woman's family should receive two women as Bad

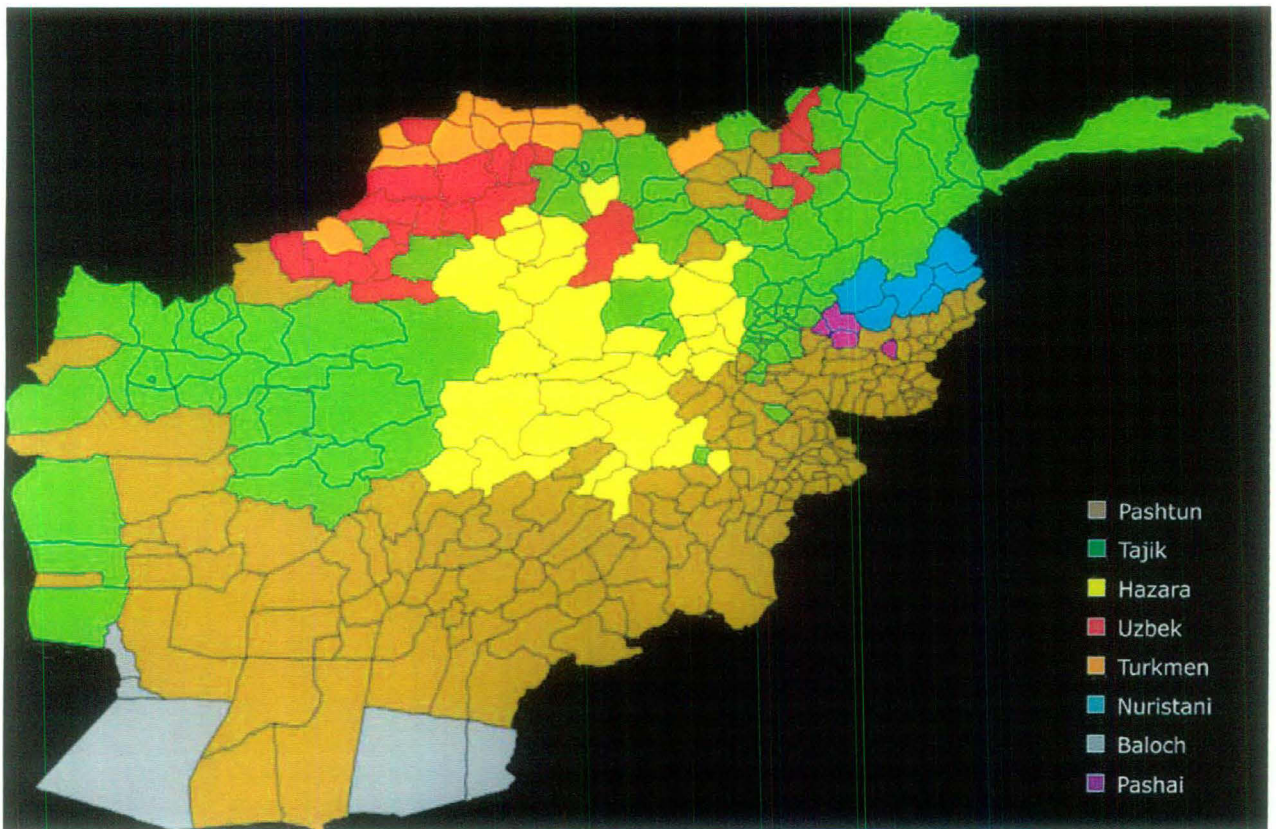
from the members of the man's household. The accused's uncle was forced to give up one of his two wives to the family of the aggrieved woman as Bad. This exchange was viewed as fair compensation for the crime.

Central Afghanistan

The Hazaras of Afghanistan live primarily in the center of the country. Because the Hazaras and Pashtuns live geographically close together, their customs have a lot in common such as their formal process of apology. The jirgas in this region are known as Maraka or Majiles Qawmi. The formal apology process is known as Ozrana or Nanawati. The exercise of Bad, or the gift of a girl to the family of the victim, is not common among Hazaras. When it does occur, it is generally in cases involving a dispute between tribes or villages rather than between people of one tribe or one village.

Hazaras are very sensitive when it comes to adultery. The members of the Maraka will find a person guilty of adultery only if there is testimony from eyewitnesses to the act or the woman gives birth to a child. If the woman is unmarried or a widow, the tribe will ask the man and woman to marry [Wardak, 2002b]. If the woman is married the husband of the accused woman is entitled to get a divorce and the "guilty" man will be asked to marry the woman. The daughter or the sister of the perpetrator will be given in marriage to the divorced husband. In cases of actual rape, physical punishment is an alternative. In one case of rape, the Jirga/Maraka ordered the woman to receive 60 lashes and the man to be stoned to death [UNODC, 2007]. In any dispute related to property boys are given preference over girls even if the father had left property for both. In case of widows where she is entitled to one-eighth of her husband's property she does not claim it because according to tradition, girls do not have a right to inherit.

Ethnic Map of Afghanistan



Map No. 3.1

Eastern Afghanistan

The Nuristan province (Land of Light) is located in the Eastern part of Afghanistan. The Jirga, or village council, remains a common institution known as Awri or Uloo. Under the customs of Nuristan, a girl cannot be given in marriage as a fine or penalty [Tapper, 1991].

But in cases of Adultery, if the husband learns about woman's adultery, he can kill her. In any such offence it is an embarrassment to both parties and no one will take part in the Fatiha, or mourning ceremony. In the absence of pardon, the legal punishment for adultery is death by stoning. For example, in one case, a widow became pregnant by an unmarried man and the boy was forced to marry her [The ILF, 2004]. When a girl is taken by force, the village calls a Jirga. The Jirga puts pressure on the family of the man to bring the woman back. The Jirga then asks her to agree to marry the man. Example: A girl was kidnapped and returned to the Awri before returning to her family. She confessed to her participation in the crime but the boy refused to confess than the boy was ordered to pay money, his sister was given in marriage to the girl's father, and the boy and girl were married.

Northern Afghanistan

In customary laws of the Northern Afghanistan- the Northern Region includes Tajiks, Uzbeks, Turkmens, Arabs, followers of the religious leader Karim Agha Khan, (known as Ishmaelites), as well as Pashtuns. In the North, there are three types of traditional tribunals:

- 1) Shura-Eslahi or Shura-Qawnii known as Majles-Eslahy in certain Uzbek communities.
- 2) Jirgas
- 3) Mookee Khans. In many districts, local commanders will intervene and resolve disputes.

In the Northern region, the customary law principles will depend on the ethnicity of the community and region for example in Badakshan Province.

A judge working for the central government in Faizabad admitted that judges take traditional customs into consideration and seek the advice of elders in reaching decisions. In addition, because government courts take a long time to decide a case, judges often send cases to the Shura-e-Eslahy where elders will solve disputes according to customary principles. Abductions of unmarried men/boys and unmarried women/girls will be brought before a Shura where the punishment is often more lenient than the punishments imposed in the Southern region [The ILF, 2004].

In many provinces in Northern region in cases of adultery, if the man/boy and woman/girl are not married and the family of the woman/girl accepts the situation, the parties will be forced to marry each other, in case of married men and married women, the cases are mostly resolved by shuras. For eg- Example: A woman had children with one husband. The husband left and she was forced by her father to marry another man. They had children together, but three years later her first husband returned. The Shura ordered the father to give the first husband nine million Afghanis, so that he could marry again.

Post- Bonn Period

The past 25 years of war have badly brutalised Afghan society as a whole. During this period, serious abuses of human rights and war crimes (by all sides of the conflict) have taken place [Amnesty International, 2002; Newsweek, 2002; Rubin 2003]. This legacy of war, poverty, and religious fanaticism has particularly affected Afghan women, who have suffered from both cultural and structural inequalities (and violence) in Afghan society for centuries.

The rule of law in Afghanistan is fragile, but is slowly being brought to life. The Bonn Agreement of 2001 began the process, focusing on political institutions and procedures, emphasizing the reform of Afghanistan's justice system, and authorizing the creation of the Afghan Interim Administration. The Afghanistan Compact, signed in early 2006, followed up on that initiative by signalling a political agreement between the Afghan government and the international community to work toward a

series of benchmarks of progress in the areas of security, reconstruction and development.

Beyond these larger reform initiatives, one of the key milestones in the justice sector was the adoption of Afghanistan's Constitution in January 2004. The sources of constitutional protection for women are anchored both in the provisions of the Constitution that are intentionally designed to address the status of women, and those that are gender-neutral, and apply to all citizens. There are various provisions specifically addressing women's rights within the Constitution are few. Article 22, offers the greatest potential for combating the injustices faced by women under customary law. In prohibiting discrimination among the citizens of Afghanistan, and declaring that both men and women have equal rights and duties before the law, discriminatory customary laws could be challenged on the basis of these equality guarantees. However, inequality between men and women remain enshrined in national laws, particularly those relating to marriage and divorce.

Additionally, Article 53, which addresses the protection of the handicapped and disabled, also prescribes that the rights and privileges of women without caretakers are upheld by the state. To the degree that customary law may discriminate against such women, constitutional protection is afforded through this provision. Similarly, Article 54 explicitly deals with the rights of women, recognizing the family as the fundamental unit of society and requiring that the state adopt "necessary measures to ensure physical and psychological well being of family, especially of child and mother, upbringing of children and the elimination of traditions contrary to the principles of sacred religion of Islam". This provision may be of particular assistance in rolling back customary laws that permit forced marriages, which, although accepted under custom, are prohibited under Islamic law for example, honour killings, which are often mistakenly justified as being based on the teachings of Islam.

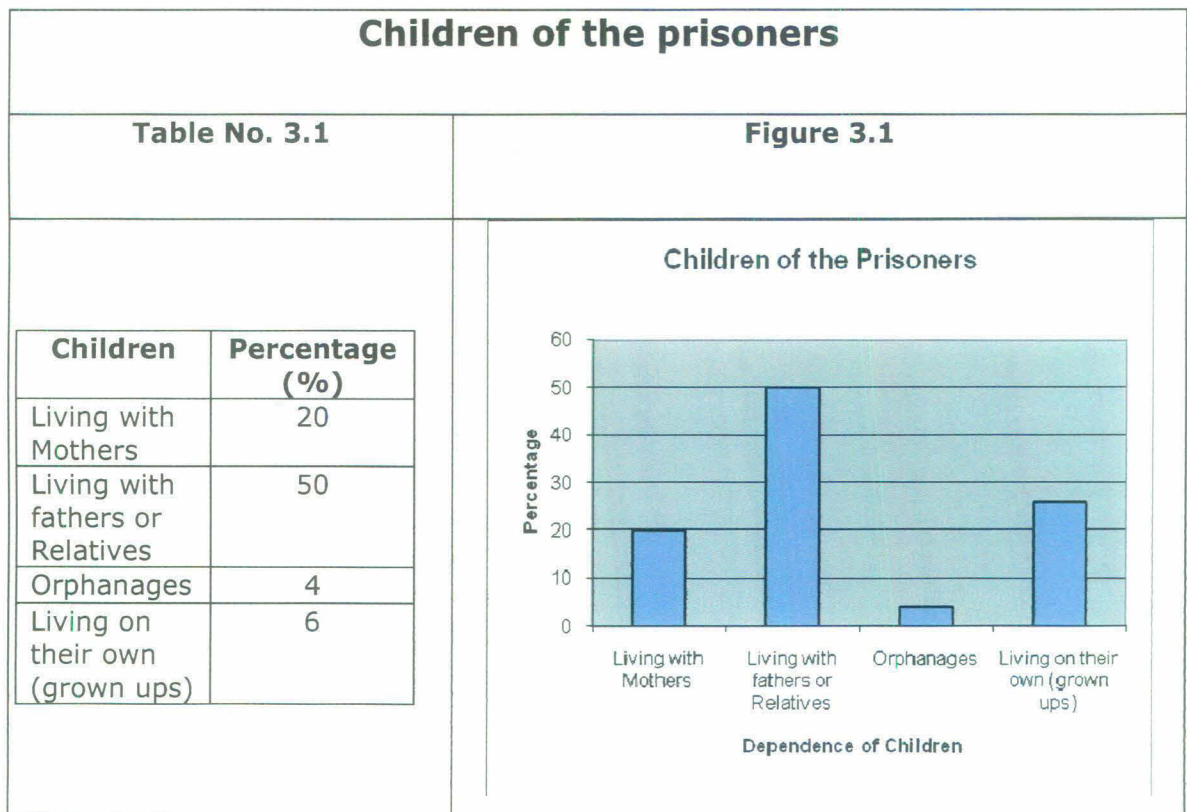
Although the large majority of provisions within Afghanistan's new Constitution do not explicitly deal with women's rights, many of the

neutral provisions have significant potential to challenge customary laws that negatively impact upon Afghan women like Article 6 which says, "the state is obligated to create a prosperous and progressive society based on social justice, protection of human dignity, protection of human rights..." which may provide protection to women in instances where customary laws amount to human rights violations. Article 7, which similarly addresses human rights, requires the state to uphold its international legal obligations by abiding to international conventions and the Universal Declaration of Human Rights. In this respect, Afghanistan's ratification of The Convention on the Elimination of Discrimination Against Women (CEDAW), which provides a specific commitment to women's rights in the context of public, political, social and cultural life, is of particular relevance. Under CEDAW, responsibilities regarding anti-discrimination fall on state parties, regardless of whether laws are customary or religious in origin. The Convention requires Afghanistan to modify the social and cultural patterns of conduct, with a view to achieve the elimination of prejudicial practices, which are based on the notion of inferiority or superiority of either of the sexes. This leaves considerable latitude to challenge discriminatory practices stemming from the application of customary law. Similarly, various other articles provide women of Afghanistan opportunity to uphold their basic Human Rights. But in reality, one recent example shows instead of criminalizing violence against women Afghan Government is legalizing women's abuse. The recent legalization of marital rape by the Afghan government has stirred an international outcry. However this law has been revoked and the new law no longer requires wife to submit to sex but it requires her to perform all household chores to which the couple have agreed at the time of marriage. A section that required a wife to ask her husband's permission to leave the house has also been deleted. In its place an article states that a woman is the owner of the property and can use the property without the permission of her husband [Faiz and Voyt: 2009]

Similarly, certain other provisions provided in the constitution of Afghanistan regarding the prisons and detention centers to provide women certain basic facilities in the prisons are always neglected.

The Afghan Constitution also entails various laws and provisions on the imprisonment for women and their children like adequate housing for female prisoners with children as mandated in the Law of Prisons and Detention Centers which remains an important issue as most prisons do not have the capacity to care for their specific needs. Article 56 of the Law on Prisons and Detention Centres allows mothers to keep their children with them in prison up to the age of three, and the prison administration is obliged to provide such children with adequate facilities. The government undertakes the establishment of nurseries for children over the age of three, adjacent to the prison. However, as such nurseries are not available at the current time; most women prefer to keep their children with them beyond the age of three. The mothers state that relatives of most are unable or unwilling to care for the children; some children's security would be at risk if separated from their mothers, due to family disputes, and placement in orphanages poses other problems [UNODC, 2007; UNODC, 2008]. Some 78.5 per cent of the 56 women interviewed are mothers.

As shown in table no. 3.1 and figure no. 3.1, only 20% of children live with their mothers in the prisons. Many of them have one or more of their children in prison with them, the others mainly staying with relatives or the father. A very few are in orphanages and the children of those who are older are married and/or living on their own. But this has negative implications on the mental state of women prisoners as staying away from their children makes them depressed. Women who have their children with them in the prisons also lack facilities supposed to be provided the prison authorities necessary for their upbringing.



The Judicial System

The judiciary is central to the provision of justice in Afghanistan. The court system consists of the Supreme Court in Kabul, Courts of Appeal in provinces, and Primary Courts at district level. The total number of Judges appointed in Afghan courts is 1,415 [UNDP, 2007] and the actual number of working Judges are 1107 [UNODC, 2008].

Yet, the court system remains far from adequate and is generally inaccessible to the public as a result of long delays and the expense of bringing cases to court. The system lacks sufficient resources and an adequately trained staff. According to the AHDR, 2007 report, a recent survey of 157 judges revealed that 44 per cent of judges had obtained university degrees from a *sharia* (Islamic law) faculty and only 11.6 per cent had obtained university degrees from a law faculty, 7.7 per cent had a non-legal higher education background and, 16.1 per cent were educated in informal educational settings (including madrassas, and private homes). One fifth of the judges (20.5 per cent) had only primary, secondary or high school education. Construction or rehabilitation is needed in 97.8% of Afghanistan's court facilities, and there is a severe shortage of professional resources such as access to Afghan laws and Supreme Court decisions and to textbooks. As a result, many decisions are based on personal opinion alone [AHDR, 2007] which is really a matter of concern for the women of Afghanistan fighting for justice in a biased society.

Legal Representation

The Constitution and the Interim Criminal Procedure Code provide for legal assistance to indigent defendants. In practice, detainees in most parts of the country rarely have access to legal representation. There are said to be 250 lawyers registered with the Ministry of Justice, who are responsible for providing free legal aid, covering the whole country of which 30 are women. However, the legal aid provided by the Legal Aid Department of the Supreme Court lacks capacity, with only around 4-5 attorneys. In practice the number of lawyers providing free legal counsel is much lower, estimated to be around 59. NGOs providing legal aid to

female prisoners include those registered with Medica Mondiale, Da Qanoon Ghushtonky, International Legal Foundation and Afghan Women Judges Association. Around 8-10 provinces are said to be covered by the lawyers of these organizations. With a total of 34 provinces in Afghanistan, there are many provinces where detainees have no access to free legal counsel at all. In contrast, there are police and prosecutors in all provinces, thus arrests and investigations can go ahead, in the absence of lawyers [CPD, 2007].

In Pol-e- charkhi prison, eighteen out of 56 prisoners (32 per cent) did not have lawyers.

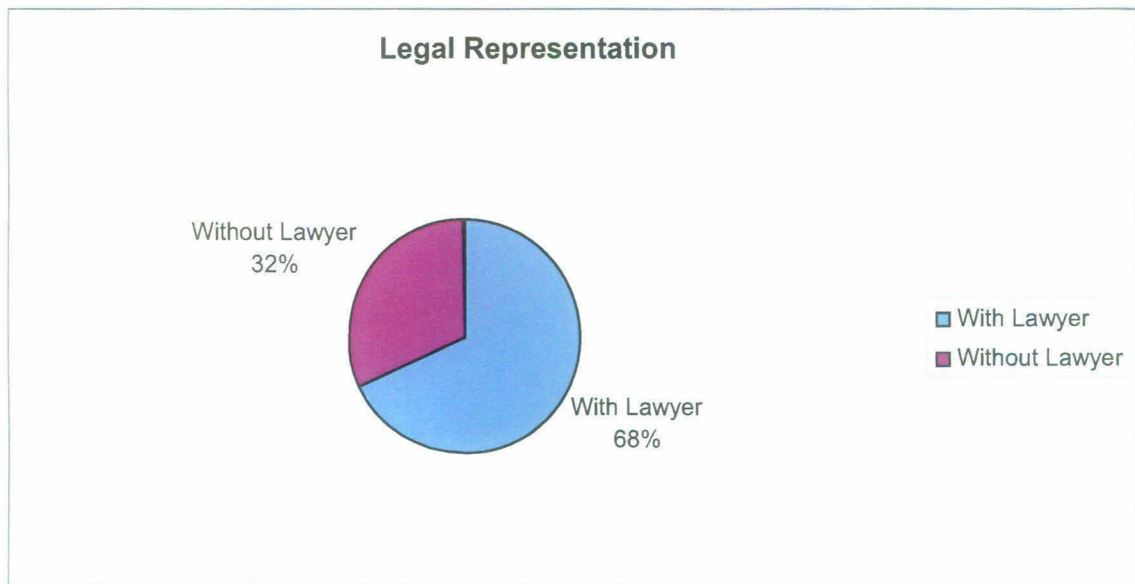


Figure 3.2

As shown in figure 3.1, only 32% of the prisoners had a lawyer defending them. But most of the lawyers providing legal representation would not be present during their interrogation and would hardly come for their trials [Medica M, 2005].

The absence of lawyers at most investigations and trials confirm the difficulties lawyers face in defending the cases of their clients, while demonstrating the lack of respect by prosecutors and judges, to the legal

requirement for defendants to have access to legal representation during investigations and court hearings [UNODC,2007].

Afghanistan has a mixed of civil law and Sharia law and customary law based formal legal system. This system has emerged and evolved in the last 120 years, since the creation of the bureaucratic state. The state legal system interacts with a deeply-rooted system of customary law and practices. This non-state system is comprised of tribal custom and "folk sharia" – local conceptions of Islamic law. Thus three bodies of law are state (statutory) law, sharia law, and customary law, which overlap in subject matter, and each provides challenges of implementation for the other two.

Applicable law in Afghanistan is difficult to determine due to the numerous regime changes since 1964. A new constitution in 1964 was superseded by new constitutions or basic laws in 1977, 1980, 1987, 1990, 1992 (proposed). Each of these regimes passed laws. The Bonn Agreement also recognized all existing law and regulations to the extent that they are not inconsistent with this agreement or with international legal obligations. In addition to the lack of clarity about the controlling law, many judges do not have access to legal texts and/or simply apply their version of sharia law to many disputes. In effect, the judiciary does not have access to laws at present due to a lack of education and materials. The formal court system lacks legitimacy for average citizens, who generally turn to more informal mechanisms to resolve disputes. An estimated 80% of legal claims are dealt with by traditional mechanisms jirgas (or shuras), which citizens generally consider to be faster, fairer and more comprehensible, affordable and accessible, and less corrupt [ICJ, 2005]. Even the courts appear to be encouraging individuals to resolve their civil dispute through jirgas [Jones, 2007]. Despite the advantages of alternative dispute resolution, there is concern that jirgas are not the perfect solution. Because of custom and tradition, jirgas are less accessible to women, and their decisions are not always consistent with the rule of law and human rights as many women have been forced into marriages, also killed for honour of the family or tribes as a result of jirga pronouncements. In

some parts of the country jirgas are dominated by military commanders, and some decisions are enforced by brute force. No mechanisms are in place to monitor the actions, and ensure the accountability, of traditional dispute resolution. In cases lacking a clearly defined legal statute, or cases in which judges, prosecutors, or elders were simply unaware of the law, courts and informal shuras enforced customary law; this practice often resulted in outcomes that discriminated against women. This included the practice of ordering the defendant to provide compensation in the form of a young girl to be married to a man whose family the defendant had wronged. Thus, the constitutional protection offered to women of Afghanistan has to to be provided in terms of reality which remains a distant dream until customary laws continue to dominate the life of people

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CHAPTER – IV

ROLE OF CIVIL SOCIETY ORGANIZATION

A fully functioning corrections system is an essential component of any justice system, especially in a post-conflict nation where the government is trying to re-establish the rule of law. Failure to support the strengthening of the corrections system has been detrimental to the reform of both the police and justice systems. An insufficient Prison system also encourages an environment for gross human rights violations. Examples of which are unlawful and arbitrary confinement, physical and sexual abuse, corruption, torture and marginalization of vulnerable groups such as women and children. This chapter analyses the role of international organization, regional and national NGO initiatives for the women prisoners.

Conditions of Prisons and Detention Centers

Prison conditions are poor, decrepit, severely overcrowded, and unsanitary. Prisoners share collective cells and are not sheltered adequately from severe winter conditions [AIHRC, 2005]. Living conditions do not meet international standards. Some prisons held more than twice their capacity [AHRR, 2008]. The women interviewed in pul-e-charkhi prison testify the facts. The AIHRC continued to report that inadequate food, water, poor sanitation facilities, insufficient blankets, sexual abuses and infectious diseases were common conditions in the country's prisons. Contagious and mentally ill prisoners were rarely separated from other prisoners. Female prisoners have had to give birth in detention centers, without any facilities and support.

The Central Prisons Department (CPD) was transferred from the Ministry of the Interior to the Ministry of Justice in March 2003. This led to the loss of funding that is currently provided to the security sector by the international community and also prison rehabilitation is not a popular program for being funded [CPD, 2007]. The prisoner population is increasing by nearly 300 prisoners per month. Systematic abuses often occur because of inadequate facilities and services.

The prison system had no international donor taking the lead on its reconstruction as much of international funding is spent on security, with

the Afghan National Army representing the largest security expenditure at 60 per cent, the National Police and Law Enforcement at 28 per cent, compared to a Ministry of Justice (MoJ) expenditure (including prisons) of 3 per cent of the security expenditure. The MoJ/CPD was provided with 10 million USD in the year 2006. In the year 2006, MoJ/CPD was allocated 9 million USD. With this budget, the MOJ/CPD could not provide food, bedding, clothing, medicine, health assistance, etc., for the inmates (to include the women and children). Even though approximately 70% of MOJ budget is allocated to CPD it is still unable to meet the basic needs of the prisoners [AHRR, 2004]. Even the staff salaries are not paid for months which further encourage corruption.

MoJ spends around \$US 708 per year per prisoner for recurrent costs, including around \$US 365 for food, incarcerating large swathes of the poorest people in Afghanistan [Barnett, 2007]. Despite this comparatively high expenditure, the expenditure per prisoner is low in terms of their needs; prison conditions are bad and the provisions of the Law on Prisons and Detention Centres are not applied, though according to AIHRC the situation is improving slightly in some areas.

Prison Reform Activities

The Government of Afghanistan supported by the international community must ensure a fully functional correctional system. Without an effective corrections system Afghanistan will not have security, rule of law or human rights. To paraphrase Henry David, to know the morals of the society one must go into its prisons and jails [CPD, 2007]. Civil society organizations in collaboration with the Afghan Government are working to improve the conditions of prisons and the rehabilitation of the prisoners. In the present times, all activities in women prisons are organized by NGOs, funded by international donors, with some support by UNODC and the Government of Afghanistan. Some of the government initiatives included,

- The Government of Afghanistan is supported by UNAMA, UNODC, USA (CSSP), UK, Italy and other UN and international agencies to

- provide a strategic approach to prison reconstruction and reform in the country. They help the government in forms of donations, provision of infrastructure, and other similar activities [UNODC, 2007].
- Two Correctional Services are provided by the Canadian officials as advisors to provide training and mentoring, as well as advice on rebuilding and reform of the prison system. The Canadian government is also undertaking infrastructure and rehabilitation work in Kandahar and ICRC, International committee of Red Cross has carried out infrastructure repair and maintenance activities [Barnett, 2007].
 - Formation of prison reforms working Group was formalized in 2006 under the Afghan Compact/ANDS headed by the Ministry of Justice. Consistent with the Afghanistan Compact and the Afghanistan National Development Strategy, the overall objectives of the reform being carried out by the working groups was to have functioning prisons, including separate facilities for women and juvenile offenders, in each of the 34 provinces [Afghanistan compact, 2006].
 - MoWA is also committed to establish a transitional house for former women prisoners in need of protection, supported by UNIFEM, UNAMA and UNODC.
 - A prison construction programme is also underway with separate budgeting, with the help of international donors. A women's prison in Kabul, as part of a plan to build 15 such facilities has also been completed by UNODC. A prison is being built in Gardez by UNODC, to improve the conditions of 200 prisoners, including men, women and women with children [PRI, 2008].
 - A total of six shelters, four of them in Kabul, one referral centre established in Jalalabad, with another being planned in Parwan and 5-6 family response units in police stations have been made by UNODC's efforts. These may be used to divert women from the criminal justice system for acts such as running away from home, which may be treated as a criminal offence in Afghanistan.

- CSSP, United States Corrections System Support Program, plans to build a prison in Wardak. But the prison building programme is unlikely to achieve the goal of having functioning prisons in all 34 provinces of Afghanistan with separate facilities for women and children by 2010, as stipulated by the Afghanistan Compact benchmarks.
- The AIHRC Afghanistan Independent Human Rights Commission is responsible for assessing Afghan prisons. They visit the prisons and take care of the needs of women prisoners. AIHRC reports that the correctional system is improving and new facilities are being built, wardens and police have been arrested for torture, cases are being processed faster, and there is better lighting, more beds, clean drinking water, and timely medical care [AIHCR, 2006].
- International training assistance is being provided by MoJ/CPD staff to meet professional corrections standard. The MoJ/ CPD international corrections experts developed combined Afghan-International curricula to provide training programme for and by Afghans. The new National Corrections Training Program was started at the Central Training facility in Pul-e-Charkhi and has expanded to four additional provinces.
- Drug use in prisons is extremely high with limited drug treatment programmes provided in Kabul and five other provinces, by the Drug Demand Reduction Action Team (DRAT) of the Ministry of Public Health (MoPH), supported and trained by UNODC. The drug treatment facility has been established by UNODC in December, 2007 which is a positive step forward [UNODC, 2008].
- Medica Mondiale has been providing psycho-social counselling to women in Welayat detention centre and Pul-e-Charki. The NGO, Emergency, provides medical care to female prisoners in Pul-e Charki and supplements the diet of pregnant and breast feeding women in this prison [http://www.medicamondiale.org/_en/].
- The International Committee for the Red Cross and the Red Crescent Society of Mazar-e-Sharif has donated blankets, quilts and rugs to the prisons. But the donation is insufficient to keep them

warm in the cold weather, when they have little or no wood to burn [Amnesty, 2003]

- Free legal aid is provided by Medica Mondiale and Da Qanoun Goshtunky.
- Afghan Women's Education Centre (AWEC), provides education and vocational training for the prisoners. It arranges family visits and monitors the situation of prisoner children placed in orphanages or with relatives [UNODC, 2007]. One such project for prisoner's rehabilitation undertaken by AWEC is the 'Support to Women in Prison' located in Kabul in the Balk provinces. This benefited about 146 women.

With the assistance of NGOs and the U.N., the TISA is organizing programs for the renovation and humanization of prisons. A range of N.G.O's like RAWA, Nedar and others as mentioned above are trying to increase the well being and opportunities for women in the prisons. For example- when AIHRC reported of Sexual abuses of women prisoners in Kabul Detention Center, RAWA organized big demonstrations forcing the authorities to take action. A delegation of Afghan parliamentarians visited the prison and found women become pregnant after being raped. [BBC Persian, 2007]. Fearing Afghan traditions and prison officials have made some victims silent, so it is difficult to find out a statistic about the number of abuses. The Amnesty International had already warned about torture of prisons in Afghanistan, but the delegation of Afghan parliament believe the situation in the Afghan prisons is worse then what is reflected in the AI report.

In addition, the social workers identify the basic needs for food, clothes, kitchen tools, hygiene materials etc. Workshops are conducted on a variety of subjects, such as gender issues, human rights, violence against women, women's rights and Islam, civil rights of women, HIV/AIDS prevention measures. Medical and Legal aid is being provided. In addition, prisoner's children, who live with their mothers in prison, are being provided education, toys, clothes and hygiene material. Literacy and vocational training programs (including embroidery, knitting and candle-

making) are arranged, as well as creative art workshops for the women to express themselves [AIHRC, 2008].

AWEC is also providing vocational activities in the prison of Pol-e-Charkhi. Regular classes are held for vocational training. In order to assess the rehabilitation interests of prisoners, all 56 prisoners interviewed as mentioned in the second chapter, were asked about the classes they attended in the prison.

Prisoner's Vocational Activities

Table No. 4.1

Prisoner Activities	Percentage
Basic education class	50
Knitting class	19
Tailoring	19
Embroidery	6
Language class	6

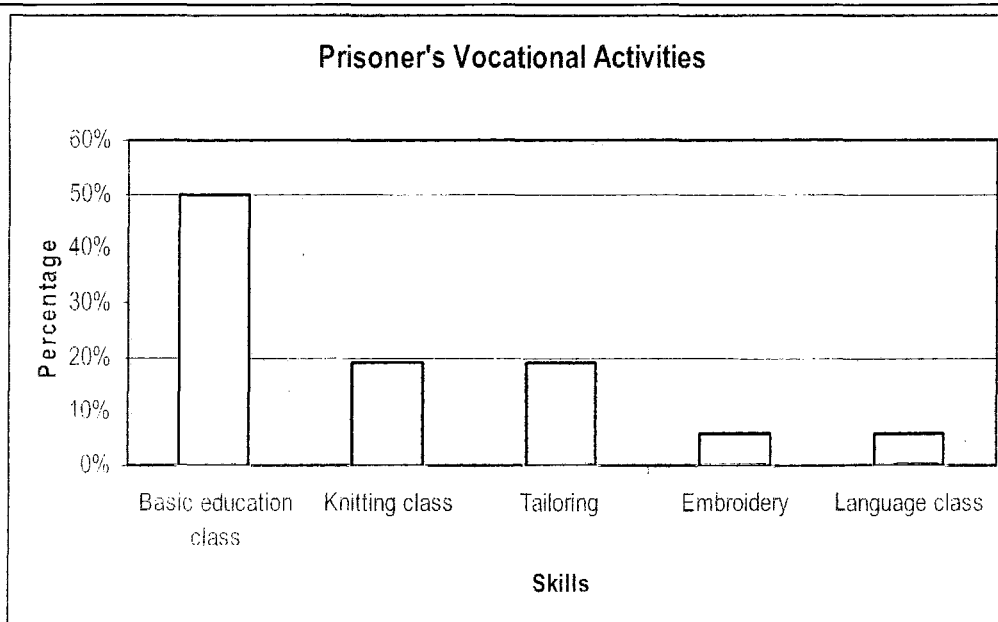


Figure 4.1

Table no. 4.1 is showing the various vocational skills being learnt by the women prisoners. Only 20% percent of the illiterate persons were taking part as compared to 44% of the literate prisoners as found by the interviews undertaken. It can be seen in fig no.4.1 most prisoners show interest in learning to read and write. There was relatively low level of class attendance and particularly low level among illiterate prisoners which harms the idea of introducing any vocational activity in the prisons [UNODC 2007].

The MoJ/CPD has identified 10 prisons in need of urgent replacement. The CPD was allocated 2 million USD for prison construction and they planned on building 10 prisons with this amount. However, the CPD engineering group with support of the international technical assistance, has determined each prison will probably cost more than a million dollars making it impossible to construct prison that meet basic international standards. In addition, many prisons continue to urgently require basic accommodations, drinking water supplies, kitchens, toilets and waste water disposal systems [CPD, 2007].

Unfortunately, government funding and international donor support has not matched even the most critical needs identified throughout the prison system in Afghanistan. The CPD has not received an equitable level of national or international support and resources compared to MCN, MOI, AGO and the Supreme Court .The National government and international donors have primarily focused their attention and resources on other branches of the justice system. As a result, prisoners continue to be housed in inhumane, deplorable conditions.

However, cooperation among NGOs and UN agencies involved in the prison sector is remarkable, with coordination meetings taking place each month under normal circumstances. Although the interaction between organizations of civil society and prisoners is an extremely positive aspect of the current situation in terms of providing much needed services to prisoners, as well as contact with the outside world, NGOs lack resources to cover the needs of all prisoners and sustainability is difficult to achieve, with NGO dependency on donor funding. Similarly AWEC is concerned

about the current way of working on short-term projects, relying on the success of funding applications to various donors, in order to be able to continue with their activities in prisons.

Rehabilitation

The contemporary understanding of social reintegration and post-release support entails preparations for release from the moment a person is admitted to prison, as defined in United Nation’s Standard Minimum Rules for prisoners (SMR, Rule 80), and is dependent on a very wide range of aspects relating to life in prison [Amnesty, 2003]. Although prison regime and activities are key elements of success, reintegration also encompasses physical conditions in prison, the prison environment, staff attitudes, measures taken to encourage and promote contact with the family and the community.

To get a picture of Family support provided to the prisoners data from UNODC, 2007 has been analysed in the following table-

Table no 4.2
Family Interactions

Family treatment	Percentage
Well Treated	59
Moderately Treated	5
Not Well	36

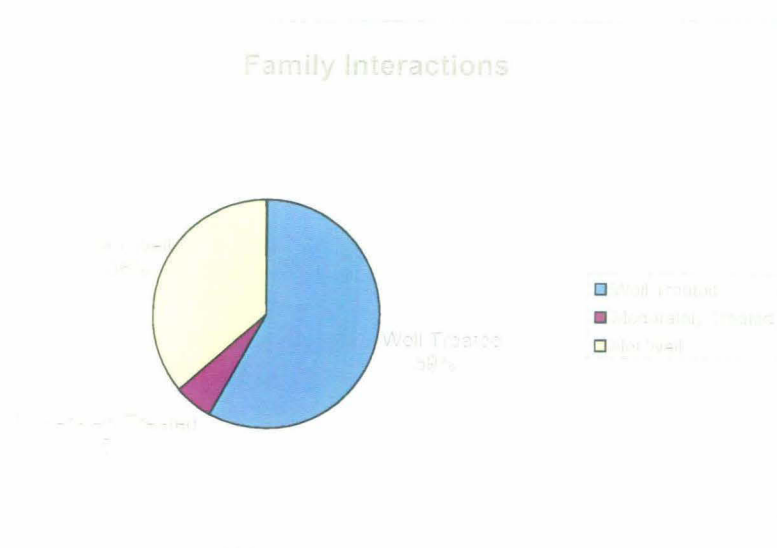
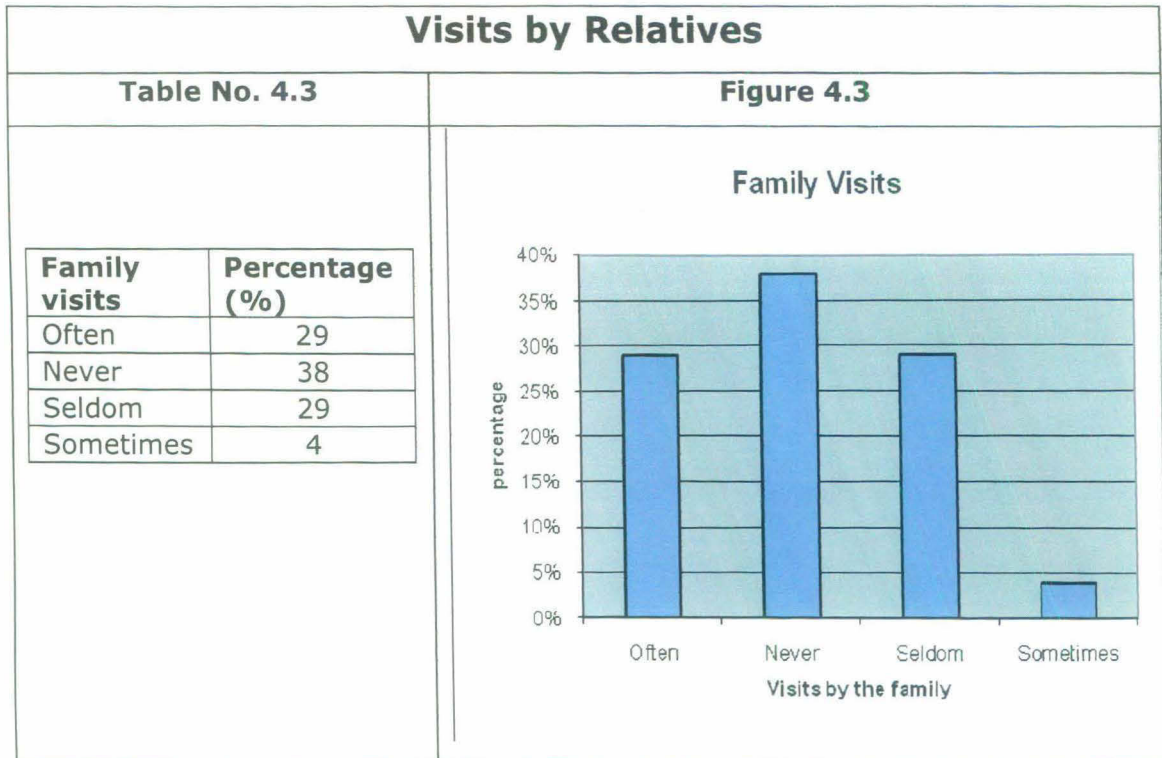


Figure 4.2

Even though 59% prisoners confirmed as seen in table no. 4.2 and figure no. 4.2 they were treated well by their families. When testified about the family visits it was found that 67% of the women were never or seldom visited by their relatives as seen in table no. 4.3 and figure no. 4.3.



However distance of prison from residence of these prisoners affect visits by the family members. As seen in figure 2.9, 71% of the arrests were made from Kabul only in the same city where the prison is located. It makes us assume that the women are not getting enough family support. The low level of support provided to female prisoners in Afghanistan, many of whom have children outside prison, is very likely to affect their psychological and mental well-being.

Women in Afghanistan face enormous barriers, social and economic, leading to independent and self-supporting lives. Even the first step of renting property, without a man to sign the contract, presents a legal problem, which is followed by the religious and customary norms restricting women's mobility and access to services, unless accompanied by a man and limited employment opportunities for the female gender

[UNODC, 2008]. Although interviews conducted in Pul-e Charki show that a considerable number of women were undertaking some kind of gainful activity at the time of their arrest, most of the work would have been performed in the safety of the home. Thus, it is not at all surprising that most women interviewed would prefer to return to their families, even when the families may be responsible for negligence. However, some women are not able to return to their homes, as they are rejected due to the shame they have brought on their family members according to the social and cultural norms in Afghan society. The shame may firstly be related to a moral crime committed by the women, and secondly to their criminal record. Some are at risk of honour killings following release. Mediation conducted by the lawyers of Medica Mondiale and social workers of AWEC has been successful in many cases, allowing women to return to their families [http://www.medicamondiale.org/_en/]. Some shelters also use mediation as a means to help victims of violence or those who have run away from home. Humanitarian Assistance for Women and Children in Afghanistan (HAWCA) is one such organisation helping the women in their rehabilitation process. In general, monitoring the situation of women who return to their families following mediation appears to be very difficult. Regular visits by lawyers or social workers exacerbate the shame felt by the former prisoner and her family, a constant reminder of her imprisonment [UNODC, 2007]. In many cases their lawyers lost track of the women, especially those who had been sentenced for premarital sex. In most circumstances the family would move house upon release of the prisoner in order to avoid further shaming and to increase the chance for their daughter to marry. However, by 2006, the lawyers were having more success both in following up cases of women who had been released and in mediation conducted between the women and their families [http://www.medicamondiale.org/_en/].

Officially, post-release support for women prisoners in need of shelter is the responsibility of MoWA. MoWA, on the other hand, lacks resources to provide for all former prisoners in need. There are currently four shelters in Kabul, one in Mazar-e Sharif and one in Herat, all run by NGOs, in cooperation with MOWA and AIHRC. The capacity of each safe house is for

around 20 women. Although some former prisoners have been placed in these safe houses, it is reported that in general those running the shelters prefer not to house former prisoners; due to the perceived criminal influence such women may have on other residents. However, according to their agreement with MoWA an assessment of all applicants needed to be undertaken by MoWA prior to referral to shelters. Risk of violent or criminal behaviour had to be determined at this time. Due to inadequate resources MoWA appears unable to fulfil this requirement and therefore problems have been encountered with clients referred to shelters by MoWA. AWEK social workers have also successfully introduced four former prisoners to shelters during the period April-June 2006.

MoWA has faced problems during *Eid*, in particular, when many women prisoners are pardoned by the President and released, without any prior notice or preparation. Some of these women cannot return to their homes due to security reasons. MoWA, which is not in a position to help all of them due to the limited capacity of shelters, has asked UNIFEM to look into the issue of transitional houses to cater for those women who are released, but cannot return immediately to their families. A proposal has been prepared by MoWA, with support from UNIFEM. The proposal suggests that MoWA, MoJ and the Ministry of Labour and Social Affairs (MoLSA) be involved in the management, initially of the one transitional house to be established in Kabul. As an interim measure the proposal suggests that a policy be put in place to secure the safety of women in need of protection, based on Article 53 of the Law on Prisons and Detention Centres, which allows prisons to be used as shelters for the protection of those whose lives have been threatened and whose safety is at serious risk. UNIFEM, UNODC, CSSP and UNAMA are currently developing a policy to guide the establishment and implementation of transitional houses. The establishment of transit houses for released prisoners had been recommended by the UN Special Rapporteur on violence against women, following her mission to Afghanistan in July 2005 [Erturk, 2006].

Female Juvenile Offenders

According to UNODC, 2008 report as of October 2007, there were a total of 455 juveniles in prison in Afghanistan. These female Juveniles constitute 9 % of the Juvenile prisoner population as shown in figure 4.4

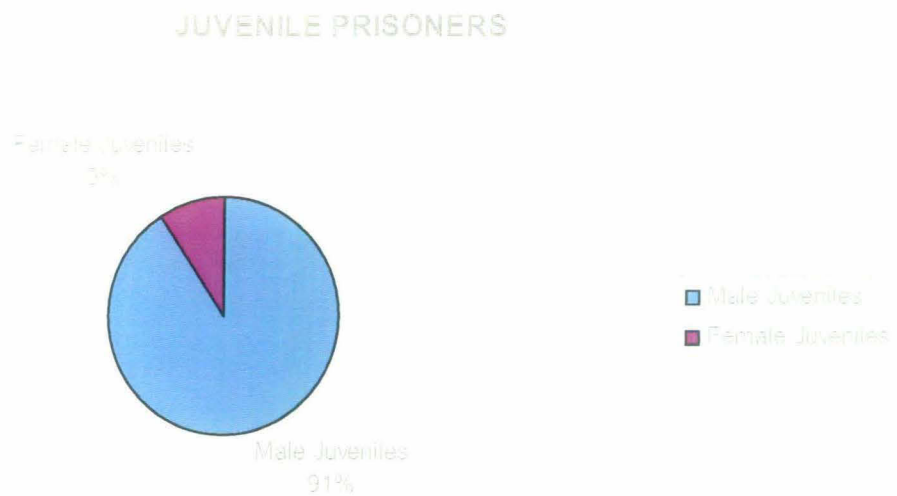


Figure 4.4

The situation of Female Juvenile offenders is not much different from that of the other female prisoners. Most of the imprisoned girls are between the age of 13 and 18 [UNODC, 2008].

Table No 4.4
Crimes committed by Juvenile offenders

Type of Crimes	Percentage (%)
Moral crimes	64
Running away from Home	22
Murder	5
Drug Trafficking	3
Kidnapping	3
Causing Injury	3

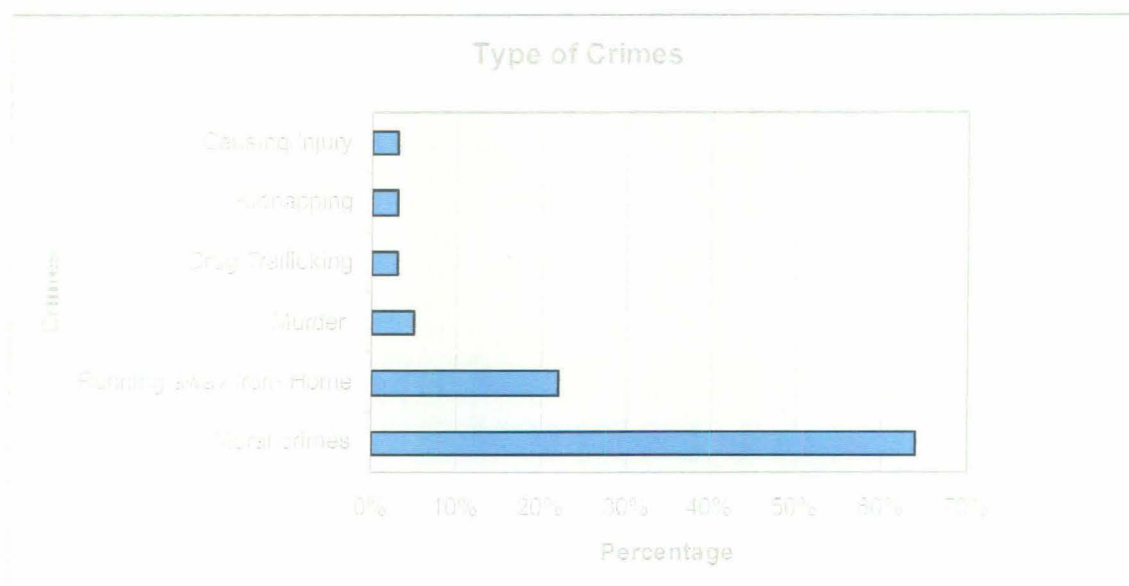


Figure 4.5

As table no. 4.4 and figure no. 4.5 suggests, most Juvenile offenders are being prosecuted for moral crimes. However even the law in the country suggests that girls should not be in prison for cases like running away from home according to the Penal Code of Afghanistan. In the large majority of cases running away is a consequence of forced marriages or domestic violence, often resulting from the marriage of a young girl with an older man, without the consent of the girl. When such girls are aware of their rights and have access to an institution which can provide legal and psychosocial assistance to them, they can avoid illegal imprisonment. For example, if they apply to MoWA or AIHRC, they will usually be referred to shelters, the establishment of the referral centre in Jalalabad, by UNIFEM and MoWA has reduced the imprisonment of women and girls who run away from home significantly.

Most of the international and domestic community noted improvement in the status of women prisoner's. Work is being undertaken by various organizations to provide humane conditions in the prisons. Separate prisons and detention facilities for women are also being constructed. One such prison has been handed over by UNODC to CPD in Jan, 2008 which can accommodate over 300 prisoners. Thus, it can be concluded that there is absence of treatment based on individual needs. Such activities are provided only by NGOs and not the Afghan government.

If the prison population continues to increase at the current rate, the social and health consequences of imprisonment, and the costs involved, will place a very heavy burden on the Afghan authorities and the international community. Action needs to be taken without delay to reverse the trend.

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CHAPTER - V
CONCLUSION

The position of women in the family and society has been shaped by many factors and there are strong cultural and historical roots of gender discrimination. In addition, the long years of war and violence in the country, and the resulting unstable political and economic situation, have had a particularly severe impact on women. Legal and law enforcement institutions exist but operate unevenly throughout the country. Justice is administered according to a mixture of codified law from earlier periods, Shari'a law, and local custom.

Despite the significant advancements Afghan women have attained since the fall of the Taliban, including educational and employment opportunities for women and girls and the recognition of women's political participation, the continuing state of insecurity in the country undermines women's rights and safety.

The socio-economic background of Afghan Women are amongst the worst in the world as measured in terms of life-expectancy, maternal mortality, malnutrition, etc. Discrimination against women in some areas is particularly harsh. Some local authorities excluded women from employment outside homes. Apart from the traditional work of women in agriculture; in some areas, women are forbidden to leave home except in the company of a male relative. The condition of Afghanistan women prisoners is much worse and below basic human standards. Lawlessness throughout the country is manifest in several forms. Violence against women persists, including beatings, rapes, forced marriages, and kidnappings. Such incidents generally go unreported, and most information is anecdotal. It is difficult to document rapes, in particular, in view of the social stigma that surrounds rape. Information on domestic violence and rape is limited. In a climate of secrecy and impunity, it is likely that domestic violence and rape against women remains a serious problem.

The present study is based on 250 women prisoners of Afghanistan. The majority of Afghanistan's women prisoners have been imprisoned for 'moral crimes', while a considerable number of others may have been

unfairly convicted. Many are imprisoned at the request of a family member. Some of those incarcerated opposed the wishes of the family in the choice of a marriage partner. Others were accused of adultery. Some faced bigamy charges from husbands who granted a divorce only to change their minds when the divorced wife remarried. Other women faced similar charges from husbands who had deserted them and reappeared after the wife had remarried. In 2002, Kabul's Police Chief said that the police would continue to arrest women if their husband or family brought a complaint to the authorities as quoted by AIHRC.

More than 50% of the women in Afghanistan are convicted of moral crimes and are usually subject to medium or long prison sentences. Case studies reveal most of the murders have also been in self defense. Many are victims of exploitation and discrimination as a result of legislation and practice, particularly in relation to child marriages and the unequal application of divorce laws. The study revealed that often local officials imprisoned women in place of a family member who had committed a crime but could not be located. In few cases, it was found that the husband killed someone and accused his own wife of committing adultery with the killed man to save himself from the punishment. Some women resided in detention facilities because they had run away from home due to domestic violence or the prospect of forced marriage. Several girls between the ages of 17 and 21 remained detained in Pul-e-Charkhi prison having been captured after fleeing abusive forced marriages. Women in need of a shelter in the shelter-homes often ended up in prison.

Although women do not commit any violence and severe offence and are not a danger to the public, yet they get imprisoned. Most women are victims of some form of violence and in most cases the perpetrator is a family member.

Women currently face discrimination not only in society but also in Afghanistan's justice system, including from police, legal counsel, judges, and the operators of the penal system. Afghanistan has signed a number of binding international agreements promising to enforce women's human

rights, and has also included provisions promoting equality between men and women, and liberty for all citizens, in the constitution. However these have not put an end to the application of older discriminatory laws. An estimated 80% of legal claims are dealt by traditional mechanisms called jirgas (or shuras), which citizens generally consider to be faster, fairer and more comprehensible, affordable and accessible, and less corrupt. Jirgas use customary laws to settle, in a communal manner, disputes ranging from property issues to (less commonly) murder. Decisions usually call for reconciliation between the parties, compensation, social ostracization of the offender, marriage between families to settle the dispute, or burning of the offender's house.

Even the courts appear to be encouraging individuals to resolve their civil dispute through jirgas, offering to endorse their decisions provided they are consistent with sharia and Afghan law. Despite the advantages of alternative dispute resolution, there is concern that jirgas are not the perfect solution. Because of custom and tradition, jirgas are less accessible to women, and their decisions are not always consistent with the rule of law and human rights. Many women have been forced into marriages as a result of jirga pronouncements. In some parts of the country jirgas are dominated by military commanders, and some decisions are enforced by brute force. No mechanisms are in place to monitor the actions, and ensure the accountability, of traditional dispute resolution. With an untrained, inexperienced judiciary and continuing uncertainty over the sources and application of law, there are very real fears regarding the rule of law and access to justice in Afghanistan.

The Bonn Agreement rendered inoperable all laws that were inconsistent with the International agreements and the constitution of Afghanistan promoting women's equal rights. But women get arrested for not practicing the inoperable laws, and face extreme violence within the justice system. Once in the Court system, women continue to face discrimination. Prosecutors are frequently unwilling to investigate cases of domestic violence, or to order protective measures for victims. Women accused of crimes rarely have access to legal aid, and often go

unrepresented. Even when women do have legal representation, they must face an exclusively male judiciary. Perhaps the most significant systemic discrimination faced by women lies in the concerns about corruption of the judiciary. Many members of the judiciary are continuing to enforce older laws that discriminate against civil code. The judges are also biased and besides referring cases to jirgas, they also give Judgements taking into account the prevalent customary laws against women. Thus we see it is the legal system in which customary laws are prevalent over statutory laws making the implementation of January, 2004 constitution difficult. Rather than help women combat violence against them the legal process land them into prisons.

The study reveals the poor, decrepit, severely overcrowded, and unsanitary prison conditions that exist in Afghanistan. Majority of the prisons/ detention centers are unable to provide for even the most basic needs let alone meeting the international standards. Efforts of women activists and International organisation supporting post – release programmes always fall far short of the necessary.

Equality for women in Afghanistan is continuously undermined by the corruption and sexist discrimination present at every level of the justice system. The process of Violence against women is widespread and comes from many sources, including family, armed groups, community leaders and agents of the state. Women who experience violence have little recourse. There are few shelters to turn to, and there is a lack of will to prosecute violence against women in the justice system, where they may face further discrimination and violence.

Women activists in Afghanistan and international organizations have seized upon the agreements and the constitution to argue that the government has an obligation to meet certain standards in enforcing women's human rights. There is a great need for legislation specifically criminalizing all forms of violence against women. One recent example shows instead of criminalizing violence against women Afghan Government is legalizing women's abuse. The recent legalization of marital rape by the Afghan government has stirred an international

outcry. The new version no longer requires a woman to submit to sex with her husband according to publishes newspaper articles. This change is likely to reflect a calculation by president Hamid karzai, as his reputation as a reformer is more important than support from conservative Shiite who favored the original bill. Karzai signed the original law in March but quickly suspended enforcement after governments around the world condemned the legislation. It was seen as a return of Taliban style-oppression by the government that was supposed to be promoting democracy and human rights. This law was even condemned by Conservative Muslim society, a host of academics and politicians, and the women took to the streets in Kabul. Under the new law a wife is no longer needed to submit to regular sex but it requires her to perform all household chores to which the couple have agreed at the time of marriage. A section that required a wife to ask her husband's permission to leave the house has also been deleted. In its place an article states that a woman is the owner of the property and can use the property without the permission of her husband.

However, even if laws are enacted that purport to offer women liberty, dignity and equality before the law, women will be unable to enforce their own rights while the justice system remains corrupt and the government does not enact legislation to criminalize domestic violence against women, or guarantee women's equal rights in the civil code.

Afghanistan is emerging from decades of conflict and regime change, and it must be recognized that effective rule of law is difficult to foster and that improvements are slowly but surely being made. This process will take time and significant effort on the part of local and international communities to provide support for a mechanism to ensure that justice programs are effectively implemented in provinces. Each of these projects is a step in the right direction – creating a framework and solid grounding for the future of real rule of law in Afghanistan which will provide women an equal treatment not only in legal framework but every aspect of life.

It is quite evident from the study that Afghan women have been marginalized and accorded a subordinate status in the society. Thus in

order to improve the plight of the women prisoners it is very important that range of NGOs providing support services to female prisoners provides a good opportunity for establishing lasting cooperation between civil society and prison authorities. The aim should therefore be to prevent unfair and unnecessary imprisonment of women, by providing support, protection and legal assistance for victims of violence. A policy for the social reintegration of women prisoners during their imprisonment and post-release should complement these measures. It should provide support based upon prisoners' individual needs and prepare prisoners for release from the moment of admission.

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