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Informal Institutions and Women's Rights in Afghanistan

Mariam Amiri
Western Michigan University

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INFORMAL INSTITUTIONS AND WOMEN'S RIGHTS IN AFGHANISTAN

by

Mariam Amiri

A thesis submitted to the Graduate College
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Thesis Committee:

Jim Butterfield, Ph.D., Chair
Priscilla Lambert, Ph.D.
Mahendra Lawoti, Ph.D.

INFORMAL INSTITUTIONS AND WOMEN'S RIGHTS IN AFGHANISTAN

Mariam Amiri, M.A.

Western Michigan University, 2014

In political science a lot of attention is given to institutions and their role in shaping behaviors in a polity and society. In this thesis I examine the conflict between formal and informal institutions. I believe in many societies informal institutions play a major role in shaping political behavior. In Afghanistan these informal institutions can easily undermine formal institutions. Many of the studies that are conducted about informal institutions in Afghanistan have prized them for being capable of dealing with different problems. However, it is also important to find out whether the way they deal with different problems and solve those problems is fair to all or not. The problem in Afghan society is that formal institutions (*de jure*) are implemented to promote equal rights for all citizens, men and women, but in practice (*de facto*) women are oppressed, suffer discrimination and do not enjoy the same liberty that men do. Here it is argued that the informal institutions rooted in patriarchal traditions promote discrimination and violence against women.

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Mariam Amiri

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CHAPTER I

*I am the lady of the land of fire
I am incurable wound of this earth
I am so full of hurt, pain and suffering
That even death says Bravo! to me*

*Each step takes me to a different direction
To the target of ambush by Monsters and Predators
This is who I am
This is who I am
I am the daughter of Afghan Land
Even Though I am Sweet and Innocent*

*Who says I am a Mother to the World?
I am nothing but a burden on the Son's shoulders
I am a slave because I am Wife
I am a headache when I am a Sister*

*This is who I am
This is who I am
I am the daughter of Afghan Land
Even Though I am Sweet and Innocent*

*The moment my heart expresses suffocation
I get bombarded by the stones of the world around me
Both my own and strangers alike
Come forward for belligerence against me
Even though I am Sweet and Innocent*

*This is who I am
This is who I am
I am the daughter of Afghan Land
Even Though I am Sweet and Innocent*

*I am the lady of the land of fire
I am incurable wound of this earth
I am the subject of stoning by the nation
I am a dishonor to culture and tradition
I am a black mark on faith and religion
I am the lady of the land of fire*

- Sulaiman Didar-

Introduction

Why in Afghanistan are women's rights violated notwithstanding the fact that they are guaranteed by Afghan laws? Informal institutions in Afghanistan can be as harsh on women as one could imagine. Violence against women in Afghanistan is widespread and most of the times it is not publicized. In the last couple of years the media is trying to cover some cases of violence that involve physical injuries while plenty of cases that involve physical, psychological and emotional injuries are remained unrevealed. There are bigger issues that are either ignored, taken lightly or never publicized due to high respect for traditions. In Afghanistan people are very secretive about what is happening in their households and communities, and how much it affects their lives. Informal institutions in Afghanistan are directly involved in discrimination of women's rights, violating formal rules, and damaging economic of the country at least by banning women from taking part in any kind of economic activity that would require a job outside the houses.

In Afghanistan different organizations are working for women and are following the cases of violence against women. These organizations report all types of violence such as physical, verbal and psychological, economic and sexual violence but in most of their reports they do not illuminate the roots of the violence. An incident in my life made me think about such roots. My life has always been full of different kinds of problems and incidents from my childhood to the present and I always put the blame on being an Afghan girl. My father's family and relatives have created most of the problems that I

have faced. It is because they have always wanted my father, my mother, my brother and I to follow their family and community rules and we have always ignored them. My father disappeared when I was five months old. My mother raised my brother and I while waiting for my father to return one day. Though, we always believed that he was abducted and maybe killed by his own immediate or extended family members just because he never followed their discriminative and patriarchic traditions. In my father's village all kinds of discrimination against women is practiced. In that village one cannot find a girl or woman who is literate. Some girls might go to school but only until they reach the age of twelve. No single woman is employed outside her home. Young girls are forced to marry against their will.¹ Girls are killed if they insist on love marriages. Most of the girls are engaged and in some cases married in their early teens. Recently I was going to be forced to marry someone against my will if I was in Afghanistan.

In summer 2013 when I was living and studying in the U.S. I got a call from my mother and she said that my father's immediate and extended family members had decided to arrange my marriage with one of my cousins. When I heard the news I was shocked. My mother sounded worried and scared. By then I had already planned to visit my family during my summer vacation but my mother asked me to cancel my plan. She thought if they see me, they would force me to marry my cousin and never return to the U.S. to complete my studies. It was unbelievable for me since I am an independent

¹ Just a week before my scheduled defense, I got a news that one of my cousins who was only eight years old was engaged to one of her cousins who is much older than her. The boy knows and is happy but the girl doesn't even know about it.

woman and have obtained my higher education from Western schools, first in Bishkek and now in Kalamazoo. My mother told me that once the decision is made, it is made and if they find me they would not let me escape; hence, I had best not come across my father's family. She said that it would be risking my life if I rejected their proposal in front of them. "Either accept their decision and get married to that illiterate and cruel guy, or never show your face to them because they know how to take their revenge," said my mother.

I remember my brother said that I had disappointed my father's immediate and extended relatives by traveling outside of Afghanistan to obtain my higher education. For years my family and I had not told anyone that I was getting education abroad because we knew it could create a problem for my family and me. My father's immediate and extended relatives adhere to traditional beliefs. They never let their women to travel alone or to study somewhere out of village or even within village. My only goal behind getting higher education was to go back and work for my country in general and for the people of my father's homeland in particular, since I believe they are the most deprived. When I heard from my brother that there was a reason behind the arrangement of my marriage to my cousin, I got disappointed. The reason was to lock me up once I get married to my cousin. According to my mother, brother, and one of my cousins (the good cousin who supports me), I am a bad example for the other girls in the village/tribe because I will influence them and they might in future want to follow my paths. Maybe the plan was to

bring me under their control and punish me so that it would remain as a lesson for other girls if they tried to follow my paths.

Afghan society is a complex society. People accept all the barriers that they face from their traditions. In Afghanistan the immediate and extended families arrange almost all marriages. Most of these marriages are forced marriages in which the brides have no say. Sometimes a woman is exchanged for a piece of land or even a domestic animal such as a cow or a sheep. They do not call it an exchange but a gift to the bride's parents in return to arranging their daughter's marriage. In my case, my father's family had brought a sheep to exchange for me. My mother was offered the sheep and in return she was asked to give my hand to my cousin who does not even have a high school diploma. According to my mother, my father's family had made the decision on my behalf and had come prepared to engage me with that cousin of mine. My mother and brother rejected their gift (the sheep) and told them that they will not make any decision in my absence. My father's family and relatives said that since I was a girl, I didn't have any right to reject the decision that was made by experienced and wise elder men. "Who is a woman to make a decision? A woman's brain is in her nose not in her head; whatever she accomplishes is nothing since she is still a woman and women are absentminded/incomplete-minded human beings," said my elder cousin. They are still waiting for my return so that they can engage me to my cousin.

Status of Afghan Women

Improvements After the Fall of Taliban

In 2001 when the U.S. led coalition overthrew Taliban, in addition to the war on terror and establishment of a new democratic state, one of their objectives was to fight for women rights. The new state was supposed to generate an atmosphere in which all citizens, men and women, live in peace and liberty. New institutions such as a democratic constitution, a government, and a parliament were established to serve all Afghan citizens. Right after the invasion a lot of donors concentrated their funds for women issues because it was known to all that women had suffered the most under Taliban regime. As a result of international assistance, schools were reopened for girls in most parts of the country, at least in the urban areas and secure places. After a half-decade finally in 2002 girls got the right to go to school and women obtained their rights once again get jobs outside their homes.² Since 2001, the government has been involved in establishment of several laws that promote women rights. Right after the withdrawal of Taliban regime the government established the Ministry of Women Affairs. Besides, a lot of national and international civil society organizations/NGOs started working for women in different parts of the country. From 2001 to the present millions have been devoted to the projects that work for Afghan women (Afghanistan Research and Evaluation Unit Issue Paper, 2013).

² During Taliban regime girls and women were not allowed to attend schools or work outside their homes.

It is worth mentioning that after the fall of Taliban women got the opportunity to go to schools and as World Bank statistics indicate, 2.2 million of enrolled 7.1 million school students are girls. The present number of girls attending school is satisfying compared to the Taliban regime when girls were not allowed to go to school and compared to 2002 when less than 200,000 girls attended schools (World bank, 2013). It is also important to note here that the number of girls enrolled in school will drop considerably once reaching secondary education. According to a report provided by UNICEF, gender parity for primary school is 0.74, indicating a difference in the attendance of girls and boys in primary school. The indicator drops to 0.49 for secondary education (UNICEF, 2012).

Moreover, some other improvement in status of Afghan women is also noticeable. As a result of legislation and quotas, women now make up 28 percent of Afghanistan's National Parliament (UN Women, 2011). Besides, women head three ministries and Afghan Independent Human Rights Commission and five women are the deputy ministers. For the first time ever, in 2005 a woman was appointed as governor of a province (Bamyan). Later on women also were hired as mayors and district governors. Furthermore, since 2002 the presence of women in the "rule of law institutions" such as National Army, police force, and courts has increased significantly (Ministry of Women's Affairs, 2014).

Meanwhile, media, civil society, and government are implementing various human rights programs to help people understand their rights. Lately more cases of violence against women are reported to the prosecution offices. The increase in reporting violence does not necessarily demonstrate an increase in violence against women but an increase in awareness of women about their rights. On the other hand, media and civil society are playing a major role in speaking out for women and exposing cases of abuse and violence (Samandary, 2013). According to a recent report by UNAMA, in 2013 number of incidents of violence against women registered with the police was 581 while in 2012 it was 363 (UNAMA. 2013). This shows that now women are more informed about their rights and they most likely trust formal institutions therefore they file their cases.

Problems of Afghan Women in General

We also need to look at the other side of the story and find out why women's rights are violated in Afghanistan. Afghan society is dominated by the communal identity; individual identity does not exist, particularly in rural areas. Community and group identity is the base of Afghan society that has a great impact on women's life in particular (Rostami-Povey 2007). A woman does not have her own individual identity and her need is not seen as a separate need from those of her immediate and extended male family members.

According to Afghan culture a woman's place is at home and her job is to take care of house chores, children, and male family members. Women do contribute to the economy that is based in "communal labor in agriculture and cooperation with men" (Rostami-Povey 2007, 17). In a traditional way the contribution of women to the economy is through animal husbandry, milking their animals and producing dairy products, carpet weaving, sewing, netting, and even indoor harvesting and sowing. Despite their essential contribution to the economy and family income, women are not respected and are not given the right to make any kind of decision about their personal needs or their households. The communal setting in Afghan society supports gender segregation. Women are supposed to be obedient to their immediate and extended male family members.

A woman is even not supposed to choose her life partner because that is what the male family members and relatives should do for her. Arranged marriages are a part of Afghan traditions in which the man has a voice but the woman does not. Forced marriage is something normal and accepted in the society in which a girl/woman is forced to marry any man that her family members or relatives choose for her. Divorce is considered a shame and dishonor for the whole family in Afghan society. A woman fleeing forced or arranged marriage or asking for divorced is considered immoral act and is punished for that. Hundreds of women are now in jails for "immoral acts" and most cases are fleeing forced marriage or leaving their cruel husbands who beat them (Kieff, 2012). A woman cannot ask for divorce if she is not happy with her husband, but a man can have a second,

third, or even fourth wife if he is unhappy with his wife. In most cases if a man is very unhappy with his wife, he would prefer to kill her rather than divorce her.

Moreover, women are used as tools for dispute resolution among different tribes. Young girls and women are exchanged to settle tribal feuds (Domínguez, 2013). This action is called *ba bad dadan*. This is “a type of forced marriage when a woman from the side of the accused is married to the victim’s close relative” (AIHRC 2008). This is the worse thing that could happen to any girl or woman because once she is exchanged for a crime that a male relative or family member has committed to the victim’s relative or family member, then she will be treated the worst that sometimes these women would prefer to die rather than live such a life. Other types of forced marriages such as *badal* and *sale* marriages are also practiced in Afghanistan (Violence against Women in Afghanistan, 2013). *Badal* (exchange) is a form of forced marriage “where male and female siblings of one family are married with siblings of another family” (AIHRC 2008). In this type of marriage a girl would be exchanged with another girl who would marry her siblings or any other male relative. *Sale* marriage is a kind of forced marriage in which a girl is “sold for a fixed quality of goods, cash, and/or to settle a debt” (AIHRC 2008, 34). It is obvious that once a woman is sold then she will be treated as a servant or even an object. Another form of forced marriage that is practiced in Afghanistan is the child marriage. According to some surveys more than half of all Afghan girls were married before age of 16 although the legal age for marriage is 18 according to Afghan law (Afghanistan Research and Evaluation Unit, 2013, 39).

Women do not have the right to make decision about their basic needs. For instance, women are not allowed to go outside of their homes without permission of their male family members. When a woman goes out she needs to be accompanied by a *mahram* (a male family member by birth or marriage). If she either goes out without permission or without *mahram* then she would be punished for breaking the family and community honor. The same goes for proper clothing. Women have to cover their body, hair, and even most of the times their face. There is no way that a woman would go out sleeveless or without a scarf.

Another decision that is made prominently by the male member of family is about going to school or continuation of education. A girl will not start school if the immediate or extended family members do not allow her. Mostly in rural areas girls are not allowed to get education but some basic religious education. Sometimes they will go to school but only until they turn 11 or 12 years old (Afghanistan Research and Evaluation Unit, 2013). It doesn't matter how intelligent and eager she would be to continue her education because once it is decided that she should stop going to school she should obey it. In urban areas most girls who could complete high school will not be allowed to apply for higher education or a job outside their houses.

Finally, it would be useful to sum up our discussion with an overall statement about the violence against women in Afghanistan. According to a report by the Afghanistan Research and Evaluation Unit in 2013, in Afghanistan violence against

women is taking place in several forms including “domestic violence, rape, child and forced marriages, exchange of girls to settle disputes, and honour killings” (Afghanistan Research and Evaluation Unit, 2013, 38). According to this report most of the violence against women is perpetrated by their own family members. This report states that in a survey 87% of the 4700 women from 16 provinces of Afghanistan reported that they had been subject to some sort of violence in their lives (Afghanistan Research and Evaluation Unit, 2013).

Now that we have a general idea about the status of Afghan woman we need to know why is it so that women have no choice to live the way they want. We also need to find out what makes it so hard for the society to accept the truth that women are also human beings and they also have the right to decide how they want to live. The Afghan Constitution guarantees women’s rights and gives them the same status that men have, however, it is mostly on paper and in reality women are treated as objects.

Time Frame: The time period that is covered in this paper is the present.

Organization of the Thesis: The first chapter is devoted to the introduction, country background, literature review, and methodological framework. This chapter gives an idea about the status of Afghan women in present and it briefly discusses the origin and types of institutions. The Second chapter is dedicated to formal institutions that have particular provisions for women in Afghanistan. All these formal institutions are listed and their provisions are explained in detail. Chapter Three offers detailed explanation

about informal institutions in Afghanistan. Chapter Four is dedicated to empirical analysis of the interview data. In this chapter the dependent and independent variables are explained and measured. Chapter Five is the concluding chapter. In this chapter final discussions are offered and the work is concluded.

Country Background – Afghanistan

After the 9/11 attack in 2001, the U.S invaded Afghanistan in order to finish harsh totalitarian regime of the Taliban and establish democracy. Right after the invasion of Afghanistan, the UN, U.S and international community took a decision to establish a new interim government for Afghanistan. In December 2001, a group of prominent Afghans and world leaders met in Bonn, Germany under United Nation auspices to draft an agenda for an interim government (Bonn Agreement, 2001) The Bonn Agreement was to establish the interim government, support long lasting peace and stability in Afghanistan, and stress an establishment of a representative government. In order to fulfill the promises that were made in Bonn Agreement, the UN, U.S and the international community along with some prominent Afghan leaders established an interim government headed by Hamid Karzai. The interim government along with Grand Council of Elders (Loya Jerga) was responsible to draft a new democratic constitution for Afghanistan (The September 2005 Parliamentary and Provincial Council Elections in Afghanistan”, 2006). The constitution convention was convened in mid-December 2003, and it called for a universal suffrage and equal rights for all Afghans.

Literature Review

This section will briefly look at the literatures on definition and origin of institutions. Institutions are viewed differently in different fields of study though in political science it is believed that institutions shape behavior of individuals in a society or polity. Institutions could be formed intentionally or unintentionally but they always exist in a society and affect behaviors. Institutions are rules and regulations through which individuals interact in a society. Politics of a society cannot be studied without analyzing the function of existing institutions in that society. As this thesis will be about the role of formal and informal institutions in life of women and the conflict between the formal and informal institutions in Afghan society, it is import to know what institutions are and how they function and where are they come from.

What are Institutions?

Before going in detail and studying institutions in general it is important to know the definition of institutions in social sciences. Goodin (1996) defines institutions as “a stable, valued, recurring pattern of behaviors” (Goodin, 1996, 22). Institutions are also defined as system of established rules or “set of rules that structure social interactions” (Knight 1992, 2;). Institutions are “social rule-systems” and with their set of rules they have the ability to structure and constrain behavior of its “agents in fundamental ways” (Hodgson 2006, 7). Goodin (1996) simply puts it; “the existence of institutions makes certain things easier to do and other things harder to do” (Goodin, 1996, 22). In other

words, institutions are set of rules that make people do the things that they will not do otherwise.

Moreover, some sorts of institutions always exist in any society and individuals are “born into pre-existing institutional world” that directly shapes their behavior (Hodgson 2006, 7). Institutions are divided into two categories, formal institutions and informal institutions. Formal institutions are defined as rules and procedures that are officially accepted and enforced into a society or polity. On the other hand, informal institutions are “socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels” (Helmke and Levitsky, 2004, 727).

It is important to mention once again that institutions, whether they are formal or informal, are there to regulate behaviors. Behaviors can be more “stable and predictable” in institutionalized settings and that is why institutions, be them formal or informal, are given more importance in any society. Institutions are there in all spheres of a society. Goodin (1996) includes institutions in the sphere of *family and kinship, education, economics, politics, culture, and stratification*. In the sphere of family and kinship institutions (informal institutions) regulate the relationship of the members of family and members of society with one another. In the sphere of economics institutions regulate the markets within societies. In the sphere of politics institutions are there to solve collective action problems, control the “use of force within a society”, control the “mobilization of

resources”, and control the “peace of boundaries of a society”. Cultural institutions help in preservation of cultural and historical artifacts and practices in the societies (Goodin, 1996, 22). In the sphere of stratification, institutions take part in rewarding, and distributing positions and resources by different “individuals and groups within a society” (Goodin, 1996, 22). Thus, “stable, recurring, repetitive, and patterned” behaviors would be shaped within the institutions and because of the institutions (Goodin, 1996, 22-23).

Formal and Informal Institution

Formal institutions are the set of rules and procedures that are written, officially accepted and enforced in a society such as constitution, civil laws, written religions law, written rules and regulations of different organizations, and so on. On the other hand, informal institutions are not written rules. Informal institutions can be habitual practices and traditions that are accepted in a society and practiced by generations. Informal and formal institutions exist in all societies, and are important because they reduce uncertainty and create constraints within which individuals make rational decision (Ostrom 1991, 240). For Dryzek (1996) if formal rules and logics would be called hardware of institutions then discourses (informal rules) can be called software of the institutions.

According to Helmke and Levitsky (2004) there are four types of informal institutions: complementary, accommodating, competing, and substitutive informal institutions. *Complementary* informal institutions are those that "coexist with effective

formal institutions" and are there to "fill in the gaps" and make sure formal institutions function the way they should or, in other words, they make sure that the rules which are written or are on the paper are enforced properly and effectively. These informal institutions do not just coexist with the formal institutions but they are there to make the formal rules effective. *Accommodating* informal institutions plays a role in changing the outcome of the formal institutions that are disliked by the actors and are not changeable openly. Such institutions change the effects of the formal rules that are generated by formal institution but do not violate those rules. They keep the rules of formal institutions stable by "dampening demands for change". *Competing* informal institutions are those that "coexist with ineffective formal institutions" these informal institutions create such rules that are not compatible with the formal rules, therefore, "to follow one rule, actors must violate another". This means either one can follow formal or informal rules because they are in clash with each other and have divergent outcome not convergent. *Substitutive* informal institutions are used by actors who want to have outcomes same as formal rules. "Substitutive informal institutions achieve what formal institutions were designed, but failed, to achieve" (Helmke and Levitsky, 2004, 729). Such informal institutions play a crucial role in producing favorable outcomes that formal institutions couldn't because either they lacked authority or were weak.

Institutions in Three Different Approaches

In this section it is also important to know how institutions are explained in different approaches in order to have a broader picture of institutionalism that would help us analyze our findings. Hall and Taylor (2001) talk about three kinds of institutionalism, historical institutionalism, rational choice institutionalism and sociological institutionalism. Historical institutionalism explains the "relationship between institutions and ideas or beliefs". It uses the institutions to find the chain of changes of behaviors across the time. Historical institutionalism defines institutions as "formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy" (Hall and Taylor, 2001, 938). In brief, the historical institutionalism focuses on four factors, the relationship of institutions and people's behaviors, the chain of power that aimed in functions and development of institution, what caused the institutional development, and it also focuses on integrating "institutional analysis with the contribution that other kinds of factors, such as ideas, can make to political outcome" (Hall and Taylor, 2001, 938).

Rational choice institutionalism that has arose from the study of congressional behavior in the U.S. in the late 1970s emphasis that actors use institutions to maximize their utilities through extensive calculation. In this type of institutionalism, politics observed "as a series of collective action dilemmas". It focuses on strategic calculation and interactions of actors who calculate their actions and outcomes according to the

others' reactions. According to this rational choice approach institutions are established as a result of agreement between different individuals to gain a collective interest.

Finally, sociological institutionalism argues that the institutional forms and procedures are not adopted because they were efficient to the society but because they were culturally acceptable by societies. Sociological institutionalism does not only explain "formal rules, procedures or norms, but the symbol systems, cognitive scripts, and moral templates that provide the 'frames of meaning' guiding human action" (Hall and Taylor, 2001, 947). Sociological institutionalism talks about the relationship between institutions and individual behaviors and it believes that institutions have influence on the behavior of individuals in a society. They believe that "organizations often adopt a new institutional practice, because it enhances the social legitimacy of the organization or its participants" (Hall and Taylor, 2001, 949).

Origins of Institutions

It is important to know where institutions come from or how are they originated or designed in the first place. Scholars believe that human societies or social institutions rise and change over time (Elster (1983); Knight (1993); Goodin (1996)). According to Goodin (1996), this rise and change may occur in three ways; accident, evolution, and intention. Sometimes social changes might take place by accident without any natural or social forces. Sometimes a social change might occur due to competition among different

settings and at the end one or several changes would be selected and others would be ignored. Thus, those social changes that could resist and survive the competition are selected and would be accepted as “better fitted” institutions in a given environment. And, sometimes social changes is adopted intentionally. This kind of social change is embraced deliberately by “goal seeking agents”. Once a social change or a particular institutional setting is produced due to intentional intervention of goal-seeking agents, it would remain active whether the outcome would benefit the agents or not. Thus, according to Goodin (1996) any social changes involve a “combination of these three elements”, accident, evolution, and intention (Goodin, 1996, 24-27). Though, it is important to keep in mind that intentional intervention always plays a major role in rise and change of institutional settings or institutional design.

How are institutions designed and should be designed? For Goodin (1996) institutional-design theories base their arguments on “intention-based theories of social change” (Goodin, 1996, 28). This means, institutions cannot be designed and redesigned or shaped and reshaped without intentional intervention of some particular agents either directly or indirectly. Even if a social change comes about by accident or through revolutionary pressure, it might be reshaped or redesigned intentionally by applying design principles. A “well-designed institution” should have broader reception and flexibility, and it should be “internally consistent and externally in harmony with the rest of the social order in which it is set” (Goodin, 1996, 37). Dryzek (1996) believes that a well-designed institutional design does not only rely on formal but also informal logic-or

discourses. He believes while designing institutions, discourses help to fill in the blanks/gaps that are not filled by formal rules. Discourses are always there in any set of institutions and institutions cannot function without “associated and supportive discourses” (Dryzek, 1996, 104).

What is important about Dryzek’s argument is that he gives a lot of importance to the informal discourses and their role in designing of institutions. He argues that institutional design is not just a matter of formal rules but also constellation of discourses. According to Dryzek (1996) those that only focuses on hardware/formal logic and not in software/discourses they would fail. Thus, according to him successful and functioning institutions are those that consist both formal and informal logics or discourses. He states that, informal approach to institutional design; first, allows multiple dimensions of human subjectivity; second, it can tolerate extensive ambiguity in interaction among persons and the rules that govern interactions; third, its methodological commitments can be elastic-to find out more through criticisms (Dryzek 1996, 106). (I believe) also for him institutions should be always ready to be reshaped by discourses if necessary.

Goodin (1996) on the other hand also offers desirable principles of institutional design. The principles are noted as reversibility, ‘learning by doing’; robustness, able to adapt new changes relevant to the new situations; sensitivity to motivational complexity, to be able to react in any condition; publicity, all institutions should be able to defend their actions publicly; and last but not least, variability, there should be always room for

experiments, reflections, learning and willing to borrow lessons from elsewhere-which are appropriate to the situation and place. Thus, a desirable institution would be designed if the above-mentioned principles were applied.

Hypothesis

It was found out that institutions are a set of rules and stable pattern of behaviors or in other words social rule-systems that shape behavior of its agents. Institutions regulate behaviors, as Goodin puts it, institutions have the ability to regulate the behaviors in a certain way that would make certain things easier and other things harder to do. It is also demonstrated that people are born into pre-existing institutions and they do not have a choice to abandon those institutions. Moreover, if people would not follow those pre-existing rules they will be punished. It is obvious that where there are rules there should be reward for following those rules and also punishment for refusing to follow them (Helmke and Levistky 2004; Hodgson 2006, Ostrom, 1991). In this study the role of formal and informal institutions in life of women will be studied.

The relevant literature on formal and informal institutions also can help us determine what can be called formal institutions and what can be called informal institutions in our study. In order to relate the literature review to the case of Afghanistan it is important to recall how formal and informal institutions are distinguished. Thus, written rules are formal rules and unwritten rules are informal ones. It was also determined that both formal and informal institutions exist in all societies and are

accepted by societies because they reduce the uncertainty about behaviors and outcomes (Ostrom 1991, Dryzek 1996, Helmke and Levistky, 2004,). In Afghanistan Constitutions, Civil Code, Sharia Law, and other written Laws are obviously formal institutions because they are written. On the other hand, family, kinship, tribe, culture, and Jirgas (Shuras), are informal institutions.

Goodin (1996) demonstrates that in the sphere of family and kinship institutions (informal institutions) regulate the relationship of the members of family and society with one another. And in the sphere of culture, cultural institutions help in preservation of cultural and historical artifacts and practices in the societies. Goodin makes it very clear that families and kinships are also institutions because they have their particular rules and regulations and every member should accept and follow those rules and regulations. In this study we will study the rules of Afghan families, kinships/tribes, and culture and their role in the life of Afghan women. In Afghanistan these informal institutions are very strong that they run people's day-to-day life and give people no choice to abandon them and most of the time these informal institutions undermine formal ones.

While studying formal and informal institutions, Helmke and Levitsky have come up with four types of informal institutions some of which are there to fill in the gaps and some are to challenge formal institutions. In this study the 'competing informal institutions' that according to Helmke and Levistsky, "coexist with ineffective formal institutions" can help us study the role of Afghan informal institutions. These institutions

according to Helmke and Levitsky create such rules that are not compatible with the formal rules; therefore, "to follow one rule, actors must violate another". This means either one can follow formal or informal rules because they are in clash with each other and have divergent outcome not convergent. This is applicable in Afghan society because informal institutions co-exist with formal institutions and are in conflict with each other. In this thesis I will test the following hypothesis: *In Afghanistan the informal institutions have structured people's day-to day lives and have undermined the formal rules. The informal institutions promote ongoing oppression of and discrimination against Afghan women.*

Methodological Framework

In order to test my hypothesis, I use qualitative methods. First, I relied on academic resources and news articles. Second, I conducted expert interviews with representatives of NGOs in Afghanistan who work on women's issues. With this method I was able to get primary data and firsthand information. Through this method I was able to find out the information that has not been explored by other researchers and even journalists. Some scholars have worked on informal institutions in Afghanistan but they have not conducted research on role those institutions play in the life of Afghan women. Since I could not go to Afghanistan I conducted the interviews by Skype and telephone. I have chosen NGOS from different regions to reflect the ethnic – and therefore cultural – diversity of Afghanistan. In total eleven experts were interviewed who worked in

different NGOs in different or same regions. Three experts were interviewed from the central region that includes the capital; while, two experts from each of the four regions were interviewed. None of the experts from the same region worked in the same NGO. Most of the experts were interviewed more than once because of the length of the interview and the tight schedules of the experts. The interviews were conducted in Dari/Persian and Pashtu. Most of the answers were directly typed in English and some of them were written down in Dari.

Before conducting the interviews I sought HSIRB approval and I was officially notified that I was exempt (See Appendix II for the HSIRB notification). I opted nonetheless to preserve confidentiality of the interviewees to be in the safe side. There are several reasons that I preserved their confidentiality. First, I was directly asked by some of them to preserve their confidentiality. Second, it could be risky for them if their ideas about Afghan traditions offended someone and they get prosecuted for it. Even though the topic of this thesis is very general and it does not address any particular person or object, it can be dangerous because Afghans are very particular about their traditions and preservation of their culture. I have preserved the name of the provinces or cities as well as the name of organization that they work. It is because they could be identified through the cities or organizations if they were only female employees in those cities or organizations.

CHAPTER II

FORMAL INSTITUTIONS THAT AFFECT WOMEN

Afghanistan has never been colonized; however, Afghan history has not had a slow and steady evolution. Instead, it has had periods dominated by traditional leaders and others dominated by religious extremists, foreign powers and Marxists. The current formal institutions that promote women's rights are not the first. In late 1800s the king Amir Abdur Rahman Khan abolished the custom of forcing a widow to marry her brother-in-law, raised the marriage age, and allowed women to ask for divorce. In the 1920s King Amanullah Khan publicly announced that women did not have to veil their hands, feet and faces and the tribal customs should not be imposed on the free will of individuals. The king's sister established an organization called Organization for Women's Protection. The king's wife founded a magazine, the first magazine for women, called *Ershad-E-Niswan* (Guidance for Women). However, the tribal leaders always opposed the king's ideas and finally fought against him and executed him along with his family (Qazi, 2011).

The next kings were very careful and had to pursue the tribal leaders' requests. From 1933 to 1973 some gradual changes in the life of women could be seen and in late 1970s women activists also arose, but all these changes took place only in the big cities and the capital. From 1973 to 1978 some laws such as the first Afghan constitution and the Civil Code were adopted. These laws had provisions for women and women's rights. In 1978 when the Marxists took over the government they made education compulsory to

all girls, abolished bride price and raised the marriage age. The Marxist regime did not have tolerance for the tribal customs and therefore faced resistance (Qazi, 2011). From 1979 to 1989, the Soviets also initiated changes in the life of women; for instance, women were not allowed to go schools or job places wearing veils or scarves. These internal and external pushes brought some changes in life of some women in the cities but had no affect in life of women in rural areas. Even in the cities very few women could enjoy their freedom due to tribal customs (Qazi, 2011).

After the withdrawal of Soviet Union from Afghanistan, civil wars started in Afghanistan and during these civil wars the Islamic government got established. The laws were changed accordingly and women's issues once again were ignored and discrimination against women's rights started officially by the Mujahidin as well as Taliban regimes from 1992 to 2001. Finally, at the end of 2001 the U.S.-led coalition invaded Afghanistan and new laws were passed. Most of them had particular provisions for women's rights.

The 2004 Afghan Constitution

The Constitution of Afghanistan is the supreme law that serves for as the legal framework between the Afghan government and the citizens. The Constitution was drafted by the Loya Jirga and was approved and signed by the president in January 2004. The Constitution grants equal rights for all Afghans including both men and women. It is clearly stated in Article 22 of Chapter 2 that “the citizens of Afghanistan, man and

woman, have equal rights and duties before the law” (Afghan Constitution, Art. 22, 2004). Afghanistan is an Islamic country and the Constitution supports Islamic law and rights in Chapter 1 where it is stated, “No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan” (Afghan Constitution, Art. 3, 2004).

It is obvious that traditional Islamic Law does not treat men and women equally, but the Afghan constitution has a separate chapter on Fundamental Rights and Duties of Citizens. Under this chapter, any kind of discrimination against any citizen is forbidden. The Constitution guarantees full liberty for all citizens and states “that Liberty is the natural right of human beings. This right has no limits unless affecting others freedoms as well as the public interest, which shall be regulated by law” (Afghan Constitution, Art. 24, 2004). The Constitution also dismisses any kind of judgment, justice, or punishment in the absence of authoritative court decision and the absence of offense (Afghan constitution, Art. 27, 2004). Torturing and punishment of any individual is prohibited and only authoritative courts can make decisions about prosecution of offenders. Under this chapter, rights such as freedom of movement, the right to vote and be elected, the right to attain one's moral and material goals, the freedom of expression, the freedom of correspondence and communication, and other rights are granted. It is stated in Article 43 that “education is the right of all citizens of Afghanistan” and also it is mentioned that programs should be implemented to foster balanced education for women. It is also important to mention that freedom of employment is also granted by the Constitution to all citizens (Afghan Constitution, Art. 48, 2004).

The Constitution has a special quota for representation of women in Afghan parliament. The proportion of women in *Wolesi Jirga* (House of the People) is defined in Chapter 5, Article 83, which promulgates that 68 of the 249 total seats (27%) in the lower house are reserved for women, comprising of minimum of two women for each of the 34 provinces (Afghan Constitution, Art. 83, 2004). Moreover, Article 84 details the *Meshrano Jirga* (House of Elders). Two-thirds of the total number of the members of the *Meshrano Jirga* are indirectly elected, while the remaining one third are appointed by the president. Fifty percent of the appointed individuals must be women (Afghan Constitution, Art. 84, 2004).

Afghanistan's Civil Law and Civil Code

Afghanistan's civil law is used by the courts to judge cases. This law is very detailed and has 2416 articles. Afghanistan's civil law grants freedom of all citizens and states that no one has the right to undermine this right of others (Afghanistan's Civil Code, Article; 44). Citizens whose rights are encroached upon may demand to stop the violation and can claim compensation for damages if there are any (Afghanistan's Civil Code, Art; 45). The Civil Code is based on Islamic law and in some areas it could contradict universal human rights provisions. For instance, polygyny is allowed and a man can have up to four wives at a time but a woman can only have one husband at a time. Besides, rights to some particular freedoms such as freedom of movement, which is very important for women, is not clearly mentioned in the Civil Code.

Another freedom that is mentioned in Civil Code is the freedom of residence. This law grants the freedom of citizens to choose where they want to reside. According to this law, a husband has to provide a suitable residence for his wife/wives. A wife is allowed to refuse to stay with husband if she has a lawful reason and the husband cannot force her to stay where he wants her to stay. The wife/wives can make her/their decision to live wherever she/they want and the husband has to provide her/their expenses. Moreover, fathers should provide for the maintenance of their daughters if they are unemployed until they get married (Afghanistan's Civil Code, Art. 256-258). However, it is not mentioned if the daughters have the freedom to reside anywhere they want if they experience violations in their father's residence.

Women are also given the right to choose their life partner. According to the Code, marriage is a contract between a man and a woman; thus, it should not take place without approval of both. A woman has the right to either accept or reject a marriage proposal and she has the right to break the engagement if she wants to. Moreover, the legal marriage age for men is 18 and for women is 16, and a marriage below the legal age shall be referred to the courts (Afghanistan's Civil Code, Art 60-70). According to Article 71, the marriage of a minor girl whose age is less than 15 shall never be permissible (Afghanistan's Civil Code, Art. 71). The provision on divorce is not very well described in the Afghanistan's Civil Code but in one part it notes that a woman can ask for divorce if her husband gets married with another woman without the first wife's permission (Afghanistan's Civil Code, Art. 87). However, it is not mentioned

whether a woman can ask for divorce in case she experiencing violation from her husband or her in-laws.

Afghan Family Law

Afghan family law is not separate legislation but is a chapter of Civil Code that is established on the basis of Islamic Law (Sharia), customary law, the Constitution, and other state laws. This law focuses on legal relations of individuals that are built either by marriage or by kinship and common bonds. Afghan family law covers rights of family members, obligations of family members, and ties between family members. Afghan society is a communal society; therefore, the family is given a lot of importance. Article 54 of Afghan Constitution states:

The family is a fundamental unit of society and is supported by the state. The state adopts necessary measures to ensure the physical and spiritual well-being of the family, especially the child and the mother, the upbringing of children and the elimination of traditions contrary to the principles of the sacred religion of Islam.

The main issues that Afghan family law covers are: engagement, marriage and its effects, impediments to marriage, property effects of marriage, dissolution of marriage and its consequences, maintenance, filiations of children, milk kinship, custody, financial care, guardianship, and inheritance. According to the Afghan legal Family Law, engagement is a promise for marriage and a mutual promise between a man and a woman. According to this law an engagement can take place only when both man and woman announce the mutual promise; however, the engagement can be terminated with

the consent of either of them (Afghanistan's Civil Code, Arts 62- 65). According to Afghan Family Law an engagement can be terminated by marriage and the marriage can only take place as a result of offering and acceptance (Afghanistan's Civil Code, Art: 66). This article rejects possibility of any kinds of forced marriage because a marriage cannot take place without acceptance of both parties.

Afghan Family Law allows polygyny but does not indicate how many wives a man can have at a time. As per Article 86, polygyny is allowed under three conditions. First, equality should be maintained among the wives, from all points of view including welfare and sexual relationships. Second, the man should be financially capable of supporting all wives. And third, a legitimate reason such as infertility or incurable illness of the previous wife should exist. If the husband ignores the three conditions, the first wife has the right to ask for divorce. Also, if the man conceals his marital status from the second wife, in case of discontentment the second wife can ask for divorce (Afghanistan's Civil Code, Art: 87-89).

According to Afghan Family law, in an effective marriage certain rights and obligations should exist for both spouses. For instance, the husband is responsible of maintenance of his wife, both spouses should have right to each other's inheritance, they are obligated to prove lineage, and both should avoid prohibited acts (Afghanistan's Civil Code, Art. 90, 115, 116). The wife is given the right to ask for as much dower as she wishes and the husband should pay it (Afghanistan's Civil Code, Arts; 98-144). Besides,

it is the common rights and obligation of the spouse to have full privacy and to take care of their children (Afghanistan's Civil Code, Art; 91). According to this article no one has the right to damage a couple's mutual privacy.

Afghan Family Law is also clear about dissolution of marriage. According to this law a marriage could be dissolved during the lifetime of the couple by annulment (Faskh), repudiation (talaq), divorce by mutual consent (khol) or judicial divorce (tafriq) (Tehrani and Yassari, 2012, 71). According to the family law, both parties have the right to cancel a marriage either at the time of the marriage or after the conclusion of the marriage. The annulment of marriage can be initiated by either groom or bride due to reasons such as lack of one of the conditions for correct marriage, insanity, or deficiency in the amount of marriage-portion fixed for the wife (Afghanistan's Civil Code, Art; 133). According to this law both husband and wife can declare repudiation, the husband can end a marriage without assistance of the court but the wife needs the court to declare repudiation. In a divorce by mutual consent both husband and wife are given obligations to fulfill; for instance, the wife has to pay back the dower, and if she is still breastfeeding the husband is obligated to pay the cost that wife assumes for the childcare and maintenance (Afghanistan's Civil Code, Art; 169). On the other hand, the wife has the right to keep the common child/children until they reach the age of puberty and make their own decision whether to stay with their mother or father; however, the father has the responsibility to pay for the maintenance of the child/children. Moreover, the father can demand to keep the child/children or stop paying for their maintenance if the mother

failed to fulfill her obligations, run away or marries someone else (Afghanistan's Civil Code, Art; 170-173).

Afghan family law also gives the wife the right to ask the court for a divorce if she experiences harm in the marital relationship. If the harm that is caused by the husband makes the matrimonial bond impossible to be maintained, the wife has the right to ask for a divorce and the husband has to accept it (Afghanistan's Civil Code, Art; 183). The wife can ask for a judicial divorce if she can prove that it is impossible to continue the matrimonial relationship due to any of four conditions, including a defect in or incurable disease of the husband, harm done to her by the husband, the maintenance not being paid by the husband, or the husband's absence (Tehrani and Yassari, 2012, 82-83).

Parents are obligated to take care of their children and provide food and shelter for them. The father should provide maintenance to minor sons until they acquire the power to work and to minor daughters until they get married (Afghanistan's Civil Code, Article; 256). The father is obligated to provide maintenance of daughters who have attained the age of majority but are poor, until they get married. The father is also obligated to pay for the maintenance of sons who have reached majority age but are poor and not able to work (Afghan Civil Code, Article; 258). Parents do not have the right to spend their children's employment income. If the employment income of the children is more than their living expenses, the surplus should be saved and paid to them when they reach the legal age (Afghanistan's Civil Code, Article; 258 #2). Moreover, the father

does not have the right to get any part his daughter's marriage-portion or dower (Afghanistan's Civil Code, Article; 113).

Sharia Law and Fiqa Hanafi

The position of Sharia law is complex. It's tradition, but is part of the formal institutional framework. Sharia Law is used in developing all other legislation in Afghanistan. Courts mostly take their final decision based on Sharia Law, in particular the Hanafi School of thought (Mulla, Dinshah Fardunji, 2008). The Hanafi school is based on the Sunna and the followers are called Sunni. According to Sharia law, marriage is a legal bond and social contract between a man and a woman, and a man and woman can get married without permission from their guardians (Mulla, Dinshah Fardunji, 2008). This means a woman can choose her life partner and get married to him without the permission from her parents or any relative. The age of marriage in Sharia Law for men is when he is financially and economically ready to support his wife and family, and for women is when she turns into adulthood (Mulla, Dinshah Fardunji, 2008).

Sharia gives both husband and wife the right to terminate their marriage if they decided to do so. The termination or divorce that is initiated by the husband is called (*talaq*) and the divorce that is initiated by the wife is called *Khula*. *Khula* can be done either through approval of the husband or consent of judicial decree. If the *khula* is demanded based on serious problems or violations that the wife faces from the husband's side, the wife can keep the dowry (*Haq Mehr*) otherwise she has to give up the dowry. In

Talaq on the other hand, the wife can keep the dowry and any gift that was given to her in her wedding (Mulla, Dinshah Fardunji, 2008).

Sharia Law also has a detailed section about inheritance. A daughter gets half the share of inheritance that a son gets. The wife also has a share and that is one quarter in the absence of children while it is one-eighth if there are children (Mulla, Dinshah Fardunji, 1991). Mothers and sisters also have rights to inheritance. A mother gets one-sixth of the share and a sister can only get a share if the brother was childless.

The Ministry of Women's Affairs

The Ministry of Women's Affairs (MWA) is a policy-influencing agency that was established in late 2001. This ministry was launched to promote women's rights and advancement. The Ministry of Women Affairs has directorates in almost all provinces and these directorates are called Directorate of Women Affairs. These directorates represent the MWA in the provinces. MWA and its directorates have the responsibility over implementation of political and social policy of the government in order to secure and expand the legal rights of women and ensure the rule of law in their lives within its activity area (Ministry of Women Affairs Official website). One of the main responsibilities of this organization is to ensure that Afghan women's rights are respected, promoted and fulfilled. This ministry is responsible of any affairs that deal with women, from approval and denial of establishment of programs that concern women's issues to following up on cases of violence against women. All the

governmental and non-governmental agencies that work for Afghan women are registered under this ministry and report to it. MWA has the right to follow up and get involved in any issue that concerns women.

The Elimination of Violence Against Women Act (EVAW) of 2009

EVAW was drafted in 2008 and enacted in 2009 by presidential decree. This law criminalizes any act of violence against women including rape, domestic violence, child marriage, forced marriage, the exchange of women in blood feuds and other dispute resolutions, prohibition of marriage rights, prohibition from education, work and access to medical services (EVAW Law, Ch: 3, 2009). This law identifies and states twenty-two specific forms of violence against women and indicates specific punishments for those who would be found guilty of committing the violence (EVAW Law, 2013). This law bestows women the right to file their complaints to the local authorities, court or any other official offices. It also grants women's right against cultural barriers. According to this law any cultural practice that would cause harm to women should be dismissed.

The Afghan Independent Human Rights Commission (AIHRC)

The AIHRC is devoted to the promotion, protection and monitoring of human rights and the investigation of human rights abuses. This commission is independent and "non-governmental thus constitutionalized entity" (AIHRC, 2014). The AIHRC has six units and one of them is the Women's Rights Unit. This unit focuses on different areas

such as leadership, education, empowerment, advocacy, and monitoring and investigation. The Women Right's Unit are responsible for making sure that women get proper education, promoting empowerment of women, adopting policies and laws that are supportive of women rights, ensuring that women's rights are not violated and imprisoned women are not discriminated and they cases are followed up on time, and so forth (AIHRC, 2014).

Afghan Parliament Commission on Widows, Gender Issues and Civil Society

The Afghan Parliament has a Commission on Widows, Gender Issues and Civil Society. This commission still does not have a particular work plan or agenda and so far the members are not even well educated. So far this commission is symbolic and has not achieved any particular goal on women issues. This commission does not even have the ability to reject a law that would put women's status in danger.

CHAPTER III

INFORMAL INSTITUTIONS THAT AFFECT WOMEN

Informal Institutions in Today's Afghanistan

Afghanistan was and still is ruled by the traditional belief systems and practices. Among the different forms of governance, patronage is the most famous one. People trust their elders, tribal or ethnic leaders, and men of power to rule them. Even if they would not like it nothing much would be changed because the corrupted system is promoting this kind of governance. It is because the years of war produced a lot of warlords who are the men of power and they do promote the informal ruling system in order to dominate their communities. On the other hand, government officials in the province, district, and sub district levels also promote the informal governance system in order to achieve their personal goals. Most of these government officials are either warlords or are related to warlords. With endorsement of such informal system they can have better control over the society while undermining the rule of law. These supporters of informal governance actually support the rule of man and ignore the rule of law (Ramb, 2012). They do it because this way they can achieve whatever they cannot achieve through formal governance.

According to Lamb, “informal governance includes not only patronage networks and corrupt practices, but traditional or customary structures as well, including tribal, religious, ethnic, and kinship networks” (Lamb, 2012, 21). The informal institutions or customary systems exist in places where formal institutions either do not exist or are weak (Lamb, 2012). At the village level these informal institutions are dominant because

either penetration formal institutions are weak or do not exist in those areas or the people prefer informal institutions over the formal ones.

A report by the Asia Foundation working in Afghanistan writes about the formal and informal governance in Afghanistan. According to this report Afghans do not only believe in the formal governance, which is conducted by the government of Afghanistan, but also they believe in informal governance, which is conducted by the members of informal institutions. Formal institutions in this report are national/subnational government, ANSF, and provincial councils, and informal institutions are Jirga, Shura, Mullah, Khan, NGOs, and DCDs. This report also adds another informal body in this list and it is the Illicit, which consists local Taliban and local militia. The main task of these informal institutions is dispute resolution by using “traditions, Sharia, patronage, and rule of man” (Lamb, 2012, 7)

According to this report two-Third of Afghans have a great amount of confidence “in the ability of shuras and jirgas- traditional councils of elders in to manage community affairs” (Lamb, 2012, 8). Besides, this report in 2011 shows that 45 percent of Afghans believed that their local religions leaders served for the interest of the people while majority believed that the government branches (formal institutions) served not for the people but for their self-interest. This shows that the weakness of the formal institutions have led people to favor informal institutions over formal ones. On the other hand, a total of 35 percent of people in rural areas had said that they would go to a shura or tribal

leaders for judgments or report of crime rather than going to the police, court, or any other government office. This is because first of all they have more confidence in informal institutions; second they do not trust the government. It is also mentioned in this report that people have a “high degree of local legitimacy for a problem-solving role for informal system” (Lamb, 2012, 12).

The report by Asia Foundation has not discussed the level of confidence of different genders in formal and informal institutions though it is very important. It is obvious that men dominate those informal institutions and women might have objection about the decisions that are made by them. A study conducted by Manganaro and Poland (2012) shows that there is a difference between the level of confidence of Afghan men and women in the formal and informal justice system. According to this study women favor formal justice over the informal justice whereas men support the informal justice. According to Manganaro and Poland, men dominate the informal justice system and the decisions that are taken are not satisfactory to women; however, formal justice can be more just in favor of women (Manganaro, 2012).

Women and men are not treated equally before the informal justice and therefore majority of women do not support the informal justice. However, it is also true that in most parts of the country either formal justice does not exist or is very weak to function that leaves women with no alternatives but accepting whatever is decided by the informal

justice. On the other hand, the Afghan tradition also supports the local informal justice system and women have to accept it (Manganaro, 2012).

As we found out most women do not favor the informal justice or informal institutions. We also noticed that informal institutions matter in day-to-day life of people and people value them. In this paper I would like to find out why are these informal institutions in conflict with formal institutions in giving women their rights? I would like to find out why informal institutions contribute in violation of women's rights?

Afghan Jirgas (Shuras)

The legal system in Afghanistan has always been a mixture of Sharia law and customary law. In late 1800s some attempts had taken place by the monarchs to adopt some modern legal systems but the society have always favored the customary system. The legal system before the invasion of Soviet Union has always been corrupted and not able to implement social justice in the society. On the other hand, Afghanistan has always been a major war ground for superpowers and it has always been involved in internal and external wars. People either did not have access to any formal institutions or had always found the informal institutions more useful to solve their problems due to the corruption in the legal system and the wars in the country. According to Wardak (2003), people in countryside have always found it easier to solve their problems or make decisions via

*jirgas*³. He states, *jirga* “has resolved our nation's all tribal and national political, social, economic, cultural and even religious conflicts by making authoritative decisions” (Wardak, 2003, 3). However, the *jirgas* are on the other hand a challenge to the central state because some of its decisions might contradict with the formal provisions.

People have always favored the *Jirga* because it gives the people (men of power or elderly men) the chance to gather and solve the trouble at hand. *Jirgas* also gave a chance to them (men) to interact, share ideas, and establish contacts with each other. According to Wardak (2003), the *jirgas* were designed in a way that men of different economic and ethno-linguistic background could take part and communicate with one another. Wardak (2003) also believes that the convention of the *jirga* is crucial not only to solve day-to-day problems, but it can also be a means for reaching other solutions (Wardak, 2003, 1-4). The *jirgas* have always enjoyed legitimate authority because it is accepted by the society, in particular men in the societies. *Jirga* is an informal institution in the tribal level unlike the Loya Jirga (Grand Council of Elders), which was institutionalized and entered the legal framework of Afghanistan in the Constitution of 1964 (Wardak 2003).

In Afghanistan people respect their elders (in particular elder men) and give them the right to make decisions for them. This is the tradition and informal system that people are born into it and they have to follow it. As Afghan society is a traditional society, it

³ *Jirga* is pashtu word which means council of elders or council of men. In Dari and other Afghan languages *Jirga* is called *Shura* which means the same- council of elders or men.

always follows the traditional way of exercising authority and living. Nevertheless, authority is exercised at different levels, from family level to community, tribal, ethnic groups, and even national levels. The problems at the households are solved by the male family members such as fathers, grandfathers, elder brothers, uncles and other male family members. In a family the male family members have the ultimate authority to make a decision and solve problems at hand. However, the problems outside the households are referred to local *jirgas* (in Dari *shura*) (Wardak, 2003, 1-6).

The Jirga at the local level is called a *maraka*, which is a Pashtu word, but in Dari and other Afghan local languages it is still *shura*. Although the terms *Jirga* and *maraka* are sometimes used for the same purpose, *maraka* is composed of the respected elders within a small village or community. Therefore, *maraka* is an intra-village institution at the very low level that deals with the every day problems of the community (Wardak, 2003). According to Wardak (2003), the *maraka* is “a local institution of dispute settlement that incorporates a prevalent (time and space-bound) *maraka*, institutionalized rituals, and a body of *marakachian* (council members) whose *prikra* (decision) about a dispute (or problem) is binding on the parties involved” (Wardak, 2003, 10). Thus, *maraka* plays a vital role in conflict resolution within a village or community or even neighborhood. Usually, a *maraka* is held either outdoors or in a mosque. *Marakas* are sometimes scheduled on Eid days when people get together to share joy and make peace between opposing parties (Wardak, 2003). According to Wardak (2003) in a *maraka*, the *marakachian* or the elder men sit round and at the outer layer and usually they would agree with ideas that are offered by the respected elders. Most of the time majority of

marakachian will desist from engaging in the discussion and only observe the *maraka*. On the other hand the whole village (men in the village) will observe the discussion; therefore, the process is being called quite transparent and is accepted by almost everyone (Wardak, 2003).

Another form of *jirga* is called *qawmi jirga* or tribal *jirga*. In Afghanistan each tribe has numerous clusters and sub-clusters. Different sub-tribes or clans most probably follow somehow different cultures, traditions, and dialects depending on which part of the country they live. However, all sub tribes or clans identify themselves being descendent of one common ancestor. *Qawmi jirga* can be held at any levels of a clan or sub-tribe. According to Wardak (2003), the main difference between *maraka* and *qawmi jirga* is that the former usually deals with ordinary day -o-day disagreements between the villagers while the latter deals with more serious matters such as murder, quarrels over water or land both within tribes and between a number of tribes. Since it deals with important issues, its institutional structure is much more organized, but, still it is an informal institution.

Finally, another form of *jirga* at the macro level is called *Loya Jirga*, which means Grand Assembly or Grand Council of Elders. The *Loya Jirga* is held at the national level and includes members and leaders of all different tribes in order to decide about matters relating to the national welfare of the state. The *Loya Jirga* has long history in the culture and traditions of Afghan society and is accepted nationwide. Ahmad Shah Durrani, the first king of Afghanistan, introduced *Loya Jirga* to Afghan society in 1747 (Wardak, 2003, 10). The *Loya Jirga* in 1964 drafted the first Afghan Constitution and by

then for the first time women were also allowed to participate in the gatherings. The most recent *Loya Jirga* took place in 2003 and drafted the 2004 democratic constitution of Afghanistan. Afghans have always believed and had strong faith in *Loya Jirgas* and they have given it a legitimate identity. In *Loya Jirga* different people from different religious, linguistic, or ethnic ties can participate. At the present the *Loya Jirga* is politicized and dominated by warlords and people of the power; however, still people have faith in it and follow decisions that are made by its participant.

Pashtunwali

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It is also a kind of informal institution that is practiced by the Pashtun ethnic groups. Pashtunwali means ‘doing/ being Pashtu’, and is one of the most across-the-board and complicated customary laws in Afghanistan especially in Pashtun majority areas of Afghanistan and it is the fundamental part of Pashtun tribal identity. Afghanistan became an independent state in 1747, under the leadership of Ahmad Shah Durani. Afghanistan was a Muslim state at that time but the coalition under Ahmad Shah Durani was mainly based on the genealogical heritage and their Pashtun tribal codes, pashtunwali, which governed them above all (Kakar, 2003). For this reason, pashtunwali became the driving force of the afghan state in the early stages. Pashtunwali is a mechanism in the central norm system, which serves as a manual for majority of the Pashtun population’s code of honors, morals, right and obligation, social order and way of life. (Landinfo, 2011). Moreover, this system works in a rural and marginalized society, where everyone has equal political rights, it cannot be practiced in a society with strong government control

or class structured society (Barfield, 2003). Pashtunwali has codes of conducts that are elaborate and comprehensive. Some of these concepts are chivalry (Nang and ghairat), Hospitality (Melmasita), Gender boundaries (Parda and Namus), and council (Jirga), blood revenge (Badal), and many more.

Decision-making and Conflict Resolution in Pashtunwali

Pashtunwali plays an important role in conflict resolution in Pashtun societies. According to pashtunwali code of conducts, conflicts are divided in to two categories. First, conflicts within the family and extended family, and secondly conflict within the tribe and outside the tribe (Jirga).

When a conflict is caused within the family or if there is some important decision to be made, the authority of decision-making is head of the family. The head of the family is usually a male elder who has the control and absolute authority over all the issues in the family. These decisions include having say over marriage of young women; high bride prices (walwar), education of the girls, honor killings, and all other matters concerning issues in a family. In addition to close family, extended family also have the same conflict resolution system; however, the extended family matters are usually decided based on family gathering council or Jirgas. In these Jirgas, elders of immediate family decide on conflicts and feuds.

Second category of conflict resolution and decision-making is Council based on conflicts within tribes and outside tribe. The leaders or authorities of these councils are usually elders of tribes, Maliks and Mullas. Jirga tries to ensure peaceful solution of feuds between parties in many different ways. One way is that both parties consult the Jirga to resolve the dispute. Secondly, when there is a chance of feuds among community, self-appointed negotiators gather a Council to meet with parties for arriving at a possible solution. Besides, a weaker party can seek assistance from any tribal or religious leader. This can be done by sacrificing an animal and taking it to elders house to get into Jirga (council) help in resolving the dispute (Barfield 2003).

Role of women in Pashtunwali has been little studied and even less understood. All the decision making from every aspect of life is in the authority of the male member of the family, extended family and tribe. While the tribal laws are controlled by the men, there are different layers of authority in structure of the rural society, and they function as gender segregation networks (Kakar 2003). Moreover, decision which are regarded as very personal or intimate are not at the will of women in afghan rural society such as education, right of marriage, inheritance, number of children, career and many other issues that are considered by as individual rights, are at the mercy of the male members of the family.

Afghan society especially Pashtunwali codes of conducts have a lot of segregation of man and women and the authorities powers are most of times in the hands of men.

However there are some privileges that a woman enjoy better in Pashtunwali more than any other social framework. (Mujeeb 2010). In Pashtunwali the dignity and honor of a woman is considered above all and some believe this could be one of the reasons behind harsh rules and gender segregation. At later stage of life, elder women are the considered the leader of household and their decision regarding household and family affairs are valued and decisive. (Mujeeb 2010).

CHAPTER IV

EMPIRICAL FINDINGS ABOUT THE DE-FACTO STATUS OF WOMEN

Introduction

The puzzle in this study is: Why in Afghanistan are women rights violated while they are guaranteed by the Afghan formal laws? The dependent variable in this study is de facto women's rights or women's rights in practice and the independent variable is formal and informal institutions. This means that there is a conflict between formal and informal institutions in Afghan society. The social system in Afghanistan is male dominant and traditional. The system favors informal institutions, which undermine the formal institutions. The formal institutions promote women's rights and guarantee equality between women and men; however, in practice women's rights are violated because the social system follows traditions based on patriarchy and the endurance of men's dominance over women. In order to analyze the argument (measure the dependent variable), I examine four fundamental human rights indicators: access to education, freedom to marry, freedom of employment, and freedom of movement. I have chosen these four indicators because they are they basic freedoms that all human beings should have and are guaranteed by the formal institutions. There are other rights such as right to divorce, right to inheritance and so on that could be studied but the contradiction between the democratic provisions and Sharia would make it hard to find a dividing line between *de jure* and *de facto* rights. Thus, in order to study the conflict between formal and

informal institutions in guaranteeing women's rights, I chose the indicators that are clearly guaranteed by the formal institutions. In Chapter Three I studied the de jure women's rights and in this chapter I will study de facto women's rights. The de facto women's rights will be studied through the empirical research that was done by interviewing national gender experts in Afghanistan. Eleven gender experts were interviewed from March 2014 to May 2014 via Skype and telephone from all five regions of Afghanistan. The experts are all women and have come from different family backgrounds and four major ethnic groups.

Overview

Afghan society supports traditional beliefs and these traditional beliefs favors patriarchy and dominance of men over women. According to experts who were interviewed for this paper, in a traditional way of living in Afghanistan women have no rights to make any kind of decision about major issues that deal with their lives. Afghan society is based on a communal social system. In a social system decisions are made by a group of individuals, not by one particular individual even if the decision only concerned that individual. For instance, Afghans are very particular about their clothing codes. Some families in the big cities might be fine if the women go out without burqa (covering the whole body and face). Some other families would allow their women to go out only with nikab (covering the body and face but not eyes). Though, almost all families in the rural areas would not allow the women to go out without burqa. This decision is not made by the women themselves but by the family as a whole. In such kind of decision-making

processes not just men but also elderly women such as mothers, mother in-laws play a role. In other words, as the experts explained, when a girl reaches age of 12 or 13 years old or when a woman gets married and becomes member of a new family, she will be told by the family how to appear in the public. Once the decision is made, the woman does not have any right to disregard it; otherwise, she would break the family rules and she will be punished for it. Punishments for breaking such rules differs, sometimes the woman would be locked up and beaten or she would suffer verbal abuse, or she would lose the chance to attend school or go to work and, worst case scenario, being killed (Region 4, NGO 1, Activist 1). Some of the experts from different parts of Afghanistan said that there are cases that women were beaten and even killed by their immediate or extended family members for disobeying their family or tribal rules and revealing their faces to the public. They emphasized that such kind of cases do not get exposed in the public and if it did then the families would make a different story to cover the truth. For instance, sometimes a family will kill a female family member who ignored to follow the decisions that were made for her by the family; however, the public will be told that she committed suicide or a stranger killed her for unknown reason (Region 5, NGO 1, Activist 1).

The families that are not so harsh as to beat or kill a family member have other kinds of emotional punishments for the ones who dare to ignore family rules or resist a decision that was made by her family. Such punishments would be stop talking to her, ignore her, or even disown her. One of the experts from the central region said that her

grandmother belonged to a conservative family and before marriage she had to put on burqa in the public because it was the family rule and she had to follow. However, when she got married, her husband belonged to a more liberal family and in the new household she was not required to wear burqa in the public. Thus, she stopped putting on burqa in the public. When her brothers found out about this decision that she had made, they stopped having any contact or relationship with her for years just because she had made her own decision and had broken her biological family's rules (Region 1, NGO 2, Activist 2,). On the other hand, if a woman comes from a more liberal family and she gets married to a more conservative family she has to stop following her biological family's rules. For instance, if she used to go out without burqa before marriage, she has to now put it on if her husband and in-laws require her. One of the experts said that most of the time when women get married they are made to leave their schools and jobs, stay at home, and wear burqa in the public. If a woman insists not to follow her in-laws' rules, she will be beaten or be sent back to her parents. Once she is sent to her parents, the parents have to make her accept whatever her in-laws demand from her otherwise she would be remained to her parents and the husband will marry a second time. Almost always the biological family will make her accept whatever her in-laws demand and then they will take her back to her in-laws and will apologize for the trouble she had made for the in-laws (Region 1, NGO 3, Activist 3).

Thus, it is found out from the above examples and explanations that a woman often has no or little role in making any kind of decision about her life and about the way

she wants to live. The above examples were just a minor hint to light up the role of woman in making any kind of decision in Afghan society. In order to find out about Afghan women's rights in practice, their access to four fundamental human rights indicators will be studied.

Access to Education

It is stated in Article 43 that “education is the right of all citizens of Afghanistan” and also it is mentioned that programs should be implemented to foster balanced education for women (Afghan Constitution, Art. 43, 2004). Moreover, The Elimination of Violence Against Women Act (EVAW) of 2009 has criminalized the prohibition from education and has indicated specific punishment for the offenders. However, in practice the laws are not given importance. According to almost all experts who were interviewed for this study, in rural areas getting education is not an option for women. Women do not have the option whether to go to schools or not. Their families will make this decision for them. In some households the family rule is set in a way that women should not even think that education is something that they could get. In other words, girls are taught from the beginning that they do not have the right to get education and education is not what they need to get. Thus, because it is a rule, it should be followed without any objection. One of the experts from the southern region said that none of her female cousins, from her mother side, have been to schools while her male cousins have been to schools and universities and they are successful doctors and engineers. She said that according to her uncles' family rules women should not go outside to get education; therefore, the women

in those households have not even been to the primary schools. She said that in her uncles' households women do not even mention that they need to get education.

According to her, it is the family rule and women ought to obey it (Region 4, NGO 1, Activist 1).

Experts stated that some families in rural areas allow their daughters to attend schools but only until they reach a certain age. In such households girls can only go to school before they are 12 years old. Once a girl reaches the age of 12, she will not be allowed to attend school even if she was smarter than her brothers or other fellows, or even if she insisted to continue getting education. "Most of the times these girls would be dreaming to become a doctor or a teacher, but their dream will remain dream forever because their families will not allow them to continue getting education. I have witnessed this reality being exercised on my childhood friends" (Region 1, NGO 3, Activist 3).

According to experts, those people believe that the girls only need to know how to read and write, nothing more than that. Some girls would only be sent to madrasas (Islamic Schools) or masjid (mosque) for primary religious lessons and once they reach the age of 12 or 13, they would be banned to attend their classes. This is accepted as a part of Afghan tradition and is practiced all over Afghanistan even in some households in the big cities. One can find examples of such families in every neighborhood in Afghanistan.

One expert from the central region said that she used to live in a neighborhood in Kabul and in that neighborhood none of the girls had been to secondary schools. She said that she could notice how eager the girls were to continue their education but they could not

because once they reached age of 11 or 12, they had to quit their schools. She said that it was very uncomfortable for her family and her to live in that neighborhood because her family was the only family that had allowed the women to attend schools. She said in such neighborhood most of the families will belong to one particular tribe and all households will follow the same rules (Region 1, NGO2, Activist 2).

Freedom of access to education means that one should be free to choose whether to get education or not. As well as, in a society that freedom of access to education exists, the individuals are allowed to choose to what extent s/he wants to continue to get education. In Afghan society the immediate and extended families members would make this decision for women. This means that in practice women do not have freedom of education. The experts noted several points that could show that de facto freedom of education does not exist in Afghan society. Experts said that in urban areas in some households women can only study until 12th grade; while, in rural areas most women do not even get the chance to attend primary or secondary schools. In urban areas some will have the chance to at least go to high school but not all of them will be allowed to apply for higher education. Majority of high school graduate girls would be prohibited by their families to go to universities. One of the experts who used to teach at a girls' high school said that that majority of her students wore Burka when they commuted to school. She said that only one or two, out of all students who graduated each year, could go to university. "It was not that they did not want to get higher education. It was because they were not allowed to go to universities" (Region 4, NGO 1, Activist 1). According to

experts the reason that families do not allow the women to get higher education can be due to the co-education system and families do not want their daughters, wives or daughter-in-laws to study at the same class with men. Experts also believed that some families might be scared to allow the women to get education because women tend to become rebellious or hard to control after getting higher education. The reason can be anything but in here it is important to note that legally women have the freedom of education but in practice they do not have it because people follow informal system not the formal one. It is also important to note that even the women who have or have had the chance to get education, had to go through the process of approval. It means they never had the freedom to make their own decision and follow their own decisions. Those who have studied or are studying right now are the lucky ones who got the chance to be born into liberal families and the families allowed them to get education. One expert said that there are girls who apply for scholarships, they go through exam and interview processes and they get accepted; however, their family do not allow them to travel and study overseas. Thus, there is no de facto freedom of education in Afghanistan for women. If a woman's family wants and allows her to study, she will study; if her family does not want and does not allow her to study, she cannot study. According to experts, the issue of women's access to education is considered a family issue and almost always the women who are banned by their families to get education will stay quiet and accept the decisions made by their families. In some cases the women will try to deal with the problem by themselves without involving the organizations that work for women's rights. Though, if they file complaint they might be helped since there is a penalty for those who banned

women from getting education in the formal laws. “ So far I haven’t heard of education prohibition case to be filed in the organizations that I have dealt with” (Region 1, NGO 1, Activist 1).

Freedom of Employment

In Afghanistan women work in different sectors such as in agriculture and livestock, medical sector, education sector, craftsmanship sectors, and to some extent in administrative service sectors. Most of the employed women are teachers, doctors, nurses, midwives and to some degree women work in administrative positions. Though, majority of women are unemployed. In most households especially in rural areas of Afghanistan people think a woman’s place is at home and her job is to take care of the house chores. The most favored income-earning work for a woman is only the one that does not require them leave their homes. These works are traditional income-earning occupations such as carpet weaving, traditional cloths tailoring and handicraft manufacturing at homes.

In Afghanistan the employment rate among women is very low. According to experts in some provinces one could hardly find a woman working in an office. Sometimes even majority of the employees of Directorate of Women Affairs in provinces would be men (Region 4, NGO 2, Activist 2). Majority of Afghans do not accept the idea of working women. Most of the times even those woman who are educated will not be allowed to work outside their homes. According to the experts from the central region,

most women who get higher education will not be allowed to work outside their homes due to the family rules. The experts mentioned that in big cities of Afghanistan some families would allow women to attend schools and even get higher education but they will not allow them to get a job outside their homes. For most families the best job for a woman is to be a teacher in girls' school or to be a gynecologist or midwife, because they will be in contact only with women. One expert said that "sometimes a doctor or nurse would get a good offer from the military hospital, but her family will not allow her to accept the offer even if she wishes to get the job and build her career". It is because most of the families think that those doctors and nurses that work in the military hospitals are not 'good women' and working in those hospitals will disgrace the family (Region 3, NGO 1, Activist 1). According to experts, Afghans have this idea that military work is men's work and women should not work there. The same goes with other kinds of works that requires a woman to be in contact with men. Afghans believe that women who work at the same office or field with men are at higher risk of committing unethical acts and causing disgrace to family's name. In Afghan culture family's name and grace is more important than anything else and people would do anything to protect it. That is why the families do not allow the women to work in any field that they like to work.

According to Afghan laws both woman and man have the liberty to work in all economic sectors, inside and outside the households. Article forty-eight of constitution states, "Work is the right of every Afghan. Choice of occupation and craft shall be free for every Afghan within the bounds of law" (Afghan Constitution, Art: 48). This means

that women should also have the right to decide what occupation they shall attain and where they shall work. However, according to experts, the informal system violets the women's right to employment when it comes to acquire jobs outside their households. In other words, almost in all households, though exceptions are everywhere, a woman cannot obtain an occupation without approval of her family. Choice of woman would not matter if she desires to get a job that is not favored by her family (Region 4, NGO 1, Activist 1). It is also important to mention that a family in Afghanistan is not only parents and siblings but also paternal uncles and cousins and their families. It is because Afghans are communal people and in most parts of the country especially in rural areas a family consist immediate and extended family members.

Most experts mentioned that abrogation of a woman's freedom to employment by her family is something very normal in Afghan society and is practiced by majority of households. Women do not even complain if they are banned to get a job outside their homes or if they are not allowed to get a job that is not favored or approved by their families. Almost all experts mentioned that even they, themselves, have to follow these informal rules. "I would have never been able to get the job that I have now if my family, especially my father and elder brothers, had not approved it", said one of the experts from northern region (Region 4, NGO 2, Activist 2,). One expert said that she always wished to get a job in the police force and become a successful police investigator but her family did not allow her. She said her father had no objections but her elder brother, uncles and even cousins did not allow her. She stated that she wanted to work for women and

investigate the cases that concerned women but her extended family members did not allow her because according to the family rules women should not work in the military and police force. “If I had insisted and filed a claim, I most probably could win the case and get the chance to start my career as a police investigator; however, I would be punished by my family and relatives”, said the activist. She said the punishments are not always physical but also psychological, and they always don’t take place right away but it can be done later. She believed that first of all the whole family could abandon her father and her forever. According to her, no one wants to be punished this way because Afghans are not individualists and they are bonded to their families since the social system is promoting communal system. She also believed that the offenders could torture her or kill her later on and make it seen as an accident (Region 2, NGO 2, Activist 2).

Family rules are above all laws in Afghan society. One cannot reject her/his family rules for the sake of her/his individual desire. Sometimes after marriage a workingwoman will be prohibited by her husband and her in-laws to continue working outside. According to experts, the woman has to comply with family rules even if that is against her will. One of the experts from western region said that her sister has a university degree and she used to work in an organization before she got married; though, when she got married her in-laws asked her to quit her job. She had no choice because it was the family rules and she had to follow it (Region 5, NGO 1, Activist 1). The experts said that this is very normal in Afghanistan for women to quit their jobs because of their husband’s family rules. Some experts believed that most of the time young women

would be scared to get married because they do not want to give up their professional career. They believed that this might be one of the issues that most of the employed girls would remain single because sometimes they have to choose between marriage and career. Afghan tradition is very complicated. Some families would be fine with a woman working outside the houses but others would not be fine with it. This makes it hard for the young women who come from open-minded families and marry the men who come from conservative families. These women either soon or later have to quit their jobs and stay at home. According to experts, it is a matter of traditions and family rules so most of the women will not fight against and quietly give up their professional career; though, legally they have the freedom of employment. An expert from the central region said that the formal institutions that work for women would be able to help the women whose right is violated, only if they file a complaint. However, it should be noted that there will still be a price to pay from the sanctions that come from informal institutions (this issue will be covered later in this chapter and the next).

Freedom of Movement

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As an Afghan citizen a woman has as much freedom of movement as a man has. The Afghan laws guarantee freedom of movement of all Afghan citizens; though, in practice the women's freedom of movement is taken away by their male relatives. Men almost all the time have the freedom to travel, reside anywhere they want, and/or work in any part of the country or even other countries but women do not have this right, with

some exceptions. According to Afghan traditions a woman has to seek permission from her family when she needs to travel outside the house.

According to experts, the issue of women's travel out of homes is very sensitive in the Afghan society, even if it is to go out for shopping or visiting a relative. Women do not have the freedom to visit their close friends or close relatives without getting the approval from their families. Even if the woman wants to visit her sister or brother, she has to have the approval from the family. There is a whole process of permission seeking and keeping promises of returning on time when a woman decides or needs to go somewhere. The process differs from household to household but in general a woman should seek permission from the elders and male family members. While seeking the permission she has to provide detailed information about where she goes, whom she meets, how long will it take her to return, why she has to go and so on. If she had justified reasons, she gets the chance to go; if her family members think that her travel was unnecessary then she will not be able to leave the house (Region 3 and 4, NGOs 1 and 1, Activists 1 and 1). For instance, an expert from eastern region said, when a married woman wants to visit her parents or siblings, she has to seek permission from her husband and in-laws. She has to provide justified reasons for her visit that why she wants to visit her parents and for how long she is going to stay with them. The husband and in-laws will see if she had logical reasons then they will let her go and visit her parents or siblings. If the husband and in-laws thought it was an unnecessary visit, they will not allow her to visit her parents or siblings, "this is the process I and my husband's sister-in-

laws always have to go through when we want to visit our parents and this is the process my sister-in-laws and all other women that I know have to go through when they want to visit their parents” (Region 4, NGO 1, Activist 1). She emphasized that the same goes for shopping or visiting other relatives or friends. The above example is about married women and the same thing is true for single women too. Experts also mentioned that there are always punishments for those who dare to travel outside the houses without asking for permission. “If a woman is not permitted to travel but she ignores it and travels, she will be punished; if a woman travels and returns later than anticipated, she will be punished” (Region 2, NGO 1, Activist 1). Sometimes a punishment might be physical, if the family is harsh, but most of the times it is psychological and emotional. Experts supposed that the psychological and emotional punishments will be for instance, verbal abuse, giving warning that if she repeated the mistake she will be beaten, stop talking to her for some days, being upset from her, banning her from going anywhere for a particular period of time and so on. On the other hand, most families do not allow women to travel alone even if they go for shopping or to her parents or relatives who live in the same city. Most of the time a male family member will escort a woman or a number of women. Usually the men would drop women off and then pick them up when they return.

Traveling outside the village, district, province, or country is even a bigger issue. Most of the times women will only travel outside their villages or districts or provinces if they face health problems and have to visit the doctor in the bigger cities. Such travels are

also planned by their families and they will be accompanied by one or several family members. Sometimes women will travel from their villages to other villages or cities to attend parties or funerals but those travels will be a group travel and the entire family will travel together. A woman will not be allowed to travel outside the village or city by herself, though exceptions exist, especially if she is required by her job.

On the other hand, in Afghanistan the universities are located in some big cities and people have to travel from their villages and small cities to the bigger ones to get higher educations. According to experts, some girls who would have the chance and permission from the families to go to school might want to go to university; however, the issue of traveling to a big city and staying in a big city will make it hard and in most cases impossible for girls to attend universities. It is because according to Afghan tradition a respectful family never lets its women to travel alone and live alone. Thus, it will be a big shame for that family if it allows the women to travel and live alone in a different city, According to local traditions a man will loss his dignity and honor if he allows the women to travel alone and stay in another city without family. This belief makes men not to allow the young women to travel for study (Region 2, NGO 1, Activist 1).

In addition, nowadays the government, civil society, and international organizations are encouraging women to get education overseas. Every year a number of scholarships are offered for young women to get education in different countries. According to all experts, most of the girls that get these scholarships are come from

moderate families that have lived their lives in the big cities. Though, to compute number of girls who are allowed to get education overseas is almost zero percent (Region 1, NGO 1, Activist1). The experts also mentioned that a lot of these girls who apply for overseas scholarships, especially for undergrad scholarships, lose the chance to travel when their families get to know that they will be sent alone to overseas. Some experts who have worked with organizations that arranged scholarships mentioned that they have witnessed parents coming with their daughters when they were asked to take language exams. They also mentioned that these parents would always demand from the organizations to allow a male family member to travel and stay with their daughters while they study overseas. The experts mentioned that when the parents get the news that their daughters would be sent alone, they do not allow their daughters to travel. Experts from different regions had experienced this problem and shared their stories. Most of them had several chances to get scholarships abroad but were not allowed by their families to travel alone to a foreign country. It is also important to mention that exceptions exist; for instance, I got the chance to obtain my undergrad and grad education overseas. My family allowed me to study overseas by ignoring our extended family members who look down to my family and me. Those relatives think that my family and I have given up our traditions and my family was not able to have control over me. According to some experts, those who experience such violations do not bring their cases into the legal ground but some do talk to woman rights activists or NGOs that sponsor those scholarships. The activists or NGO employees would then talk to the families and try to convince them to allow their daughters or daughter-in-laws to study overseas. One expert said, “sometimes when

scholarships are announced the girls⁴ that I know would contact me and ask me to talk to her family and convince them to let their daughters or daughter-in-laws to apply for the scholarship.” She also stated that then she along with other colleagues of her will arrange a meeting and invite the parents to discuss about the scholarship and its benefits for the future of the women and their families. “I always give my example to the families, I tell them that I used to study in India and now I am back and nothing has happened to me. Sometimes I say; look! I still have my hijab on and I am still respect my family’s decisions”, said the expert⁵. The expert said that sometimes she can be very convincing but sometimes some families wouldn’t be convinced, though, this girls will not go further and file a complaint because it is against the traditions and they have to respect it.

Moreover, Afghans are very particular about their family ties. Afghan families always make sure that all members of a family live along with each other. As Afghan society is a community-oriented society, families are large. The majority of the families consist of parents, single sons, married sons with their wives and children, and single daughters. Some families are even larger; for example, one of my female cousins is married to a man whose family contains almost thirty-five members, including young children. When she got married her husband lived with his parents, his brothers and sisters, his grandparents, his uncles with their wives and children, his cousins with their

⁴ The girls most of the time belong to urbanized open-minded families because they could attend schools.

⁵ In here I am not going to reveal the region and NGO that this activists work for because it might be very obvious and she might be recognized as she has mentioned that she has studied in India and so on.

wives and children, and his other single male and female cousins. Thus, she had to live with all the family in one large house. Hence, when we talk about families in Afghanistan it is very rare that a family would be only consist a couple and their children. Moreover, in Afghanistan single women and single mothers do not live alone. According to all interviews, in Afghan society it is impossible for a woman to reside apart from her family, or in-laws in case she is married, even if she wishes. Experts mentioned that an adult girl can only reside alone if she attends a university and she has to stay at the hostel; though, it is extremely uncommon because almost 99.9% of families do not allow their daughters to stay at hostels. “A single woman is never left alone to reside by herself even if she is economically independent and wants to live by herself. It is the culture that does not let her live by herself and she has to follow it” (Region 1, NGO 3, Activist 3). Sometimes some women might not get the chance to get married ever, hence, in this case they have to stay with their parents and when the parents pass away they has to stay with their brothers or other biological family members. It is impossible to find a single woman residing by herself in Afghanistan because the culture never allows a woman to make her own decision about residing wherever she wants to reside.

Furthermore, when a woman gets married she automatically shifts with her husband’s family and will not have a chance to decide if she wants to live separate from her in-laws. Most of the times women wish to reside along with their husbands and children apart from their in-laws but the families will not let this happen. In some cases if the husband decides to live apart from his parents and siblings and reside somewhere else

with his wife and children, it happens but if wife wants it will not. According to experts, sometimes women would get into verbal arguments with their in-laws, they will be beaten by their husbands and in-laws, or they will receive other types of physical and emotional punishments, if they demand and insist to get apart from their in-laws.

“Sometimes women even attempt to commit suicide when they get fed up with living together with their in-laws and on the top of that having to obey whatever their in-laws want. Though, nothing works because tradition is important than everything else, even a person’s life” (Region 5, NGO 1, Activist 1). In addition, in case a woman losses her husband, she has to stay either with her in-laws or in some rare cases with move to her biological family along with her children. According to experts, most of the times a widow will not have the right to decide where to reside because her in-laws will make the decision for her. In some cases her in-laws together with her parents or other biological family members will decide where she could stay and with whom. In case the widow has adult sons, she will live with her sons and their wives and children. In case a widow is young and has younger children, she will not be left alone with her children. Widows like all other women would hardly ever given the chance to decide if she wants to live separate from her in-laws or biological families. Thus, according to Afghan culture a family should be as big as possible and it is against Afghan traditions to divide a family. According to experts, in most cases of polygyny, all wives of a man will have to live together in one household with together with their in-laws. “A woman cannot refuse to live together with his husband’s other wives if her husband preferred to have them all in the same house” (Region 4, NGO 2, Activist 2).

In addition, it was also noted by the experts that if the women file complaint or contact to civil society activists and ask for help, they would get help. Experts said that there are some rare cases that women have filed complaints that their in-laws are harsh on them and they want to live apart from them. “Respective organizations always try to follow up with the complaint cases and try to help the women if the women would not decide to give it up” said the expert (Region 5, NGO 1, Activist 1). “I have witnessed a case of violence in which the in-laws used to beat the teenage girl who was married to a man almost her father’s age. This girl had filed a claim and had sought refuge from her in-laws” (Region 1, NGO 1, Activist 1). According to the expert, the local activists and human rights organizations had helped her to win her case. “I was present in the trial, the girl had a lot of injuries from the beatings and her case was very strong”, said the expert. According to expert, the girl’s in-laws were penalized based on laws and her husband was made to settle with the girl’s parents until she reaches adulthood to be able to reside alone with her husband. “Such cases are extremely rare because first women don’t dare to file a complaint, second they quit following up their registered cases” (Region 1, NGO 1, Activist 1).

Freedom to Marry

Afghan tradition highly supports arranged marriages while dismisses love marriages. In Afghanistan families arrange almost all marriages, according to experts. Most of these marriages are different kinds of forced marriages. Experts believe that most of the marriages are arranged by the families without even asking the young women if

they want to be married to the particular men or not. In some countries the families arrange marriages but they make sure that both, bride and groom, are aware of it and are approving it. However, in Afghanistan only men have to approve their marriages to particular women and in some cases even men would not be asked for approval but he would be kept informed. Experts emphasized that in general women are not given the right to talk about their choices and preferences of men they want to marry. Even in the wedding day instead of bride one of her older family members (her guardian) will say her vows. Some believe that the right of saying vows is abrogated from women because the families would be concerned that she wouldn't change her mind at the time of marriage and say no to the Imam who presides over the wedding vows. In Islam the presence of groom and bride during their marriage is essential; however, Afghans have ignored the part that the bride should be present. According to experts, during the wedding ceremony, groom will sit in one room together with other men and the Imam and witnesses and the bride will sit in a different room with women. Only once the witnesses will come and ask the bride whom she wants to choose as her guardian but they will not ask whether she wants to marry the particular man or not. In most cases she will be already told whom she should choose as her guardian, which means she has no role in her wedding. The bride and women will not have any idea when and how the vows were processed. Once process is finished the men will inform the women to celebrate and congratulate each other.

Before talking in detail about abrogation of a woman's privilege to choose her life partner, it is important to know how marriages are arranged in Afghan society in general.

According to afghan culture the man or his family chooses a girl and then propose her for marriage. The proposal is not directly referred to the woman but to her family. The man's family visits the woman's family and ask them for their daughter's hand, in case her parents are not alive they will ask the relative that she lives with (siblings, uncles, aunts or cousins). It will be a long process and the man's family has to visit the woman's family several times until the family makes a decision. The decision will be made not based on the young woman's choice but based on the man's family background, in some cases his employment, his financial status, and in most cases whether he will pay the bride price or not. Finally, the family will arrange a marriage if they like the man and his family. Sometimes a woman would prefer a particular proposal but her family will reject that proposal if they didn't like the man or if the man was not be able to pay the bride price.

In addition, forced marriage is practiced very often in Afghan society. There are different types of forced marriages. One popular kind of forced marriage is called ba bad dadan (forcing a woman to marry a particular man in order to settle a dispute between families). Ba bad dadan is when a girl is married to a man in order to settle a blood feud. "When a man commits murder, he must hand over his daughter or sister as a bride for a man in the victim's family" (Tang, 2007). According to experts, ba bad dadan is practiced in rural areas most frequently. Sometimes young girls are forced to marry older married men just to settle the dispute that was caused by the girl's male family member/s. The process of ba bad dadan differs from the process of arranging other kinds of arranged or

forced marriages. In ba bad dadan female family members have no voice while in other kinds of arranged marriage sometimes mothers have a voice. In ba bad dadan the male elders of families who are in a battle hold an assembly and decide about settling the dispute by trading a young girl for the blood feud. Ba bad dadan is common in Afghan society and it is always the best option for men to escape prosecution and execution. There are a lot of examples of ba bad dadan and almost all experts that were interviewed for this research had examples. Here I would like to share an example that I have witnessed. Years ago my uncles had some problems with another family over a land. Finally, a member of the other family murdered one of my uncles. In order to prosecute the murderer a Jirga was held. In this Jirga elders of the village, members of my uncle's family and members of the murderer's family participated. According to religious law as well as Afghan Penal Code, a person who murders a human being shall be sentenced to death (Afghan Penal Code, Article: 395_5). In this Jirga my uncle's family demanded a death sentence for the murderer but the Jirga offered the ba bad dadan option. After talking and convincing my uncle's family the Jirga decided to force the murderer's eight years old daughter to marry one of my cousins who were in his 20s by then. The decision was made and no one had a chance to object. The murderer accepted the decision in order to escape the death sentence. In a couple of days the wedding ceremony took place and the eight years old girl was married to one of my cousins. Fortunately her husband did not sexually abuse her before she reached adolescent; however, she had been through domestic violence ever since she was married because her husband and her in-laws hate her since she is the daughter of our uncle's murderer. She is kept like a slave and she

receives no love from her husband and in-laws. In the meanwhile she is not allowed to visit her biological family. Finally, her husband got married a second time and now she has to live with the second wife of her husband besides her in-laws. The members of Jirga who had decided about the case have never followed up about her and her life. The case was never referred to police or legal court it is because Afghans, in particular those who live in rural areas, would like to solve their problems through local Jirgas and the Jirgas do not always make a fair decision. There are plenty of ba bad dadan cases in Afghanistan and it is still practiced although it is formally illegal.

According to experts, a lot of ba bad dadan is practiced and happens everyday in one or another part of the country. The experts believed that ba bad dadan is a very controversial issue and is not reported to the legal entities. It is because the girl is traded for the blood feud and if she files a complaint then the family member who has committed murder would be sentenced to death. Thus, she has to keep quiet in order to save the murderer. One expert said that she had witnessed a case of ba bad dadan that was submitted to the police. In this case the girl's mother had gone to the local police to help her daughter escape the arrangement. According to the expert, the police had come to the village to investigate the case but the girl had drop the charges against her family in order to save her uncle who had committed the murder. According to the expert, the case then got disappeared. The expert said that she had heard that even the police knew about the case but because they have also come from the same background and believe in the

traditional way of living so they would also ignore following such cases (Region 1, NGO 2, Activist 2).

Another kind of forced marriage is called badal. Badal means exchange and a young woman can be exchanged to another woman, to a piece of land or property or exchanged for debt. According to experts, badal or badalak is also common in rural areas and most of the time a young woman will be exchanged with another woman. It is because in Afghanistan getting married can be very expensive for some people since some families have a high bride price. Thus, in order to escape the bride price a man will offer his daughter or sister or cousin in exchange to a young woman from the other family whom he wants to marry. “Sometimes they might offer a young girl to get married to an older or even married man in order to take hand of a young woman from that family” (Region 2, NGO 1, Activist 1). In the case of badal also the girls do not have a voice. They will be forced to marry the men that their family chose for them. Case of badal is also very common in Afghanistan and all the interviewees had examples of this kind of forced marriage. An example illustrates badal. A family wanted to arrange their elder son’s marriage. They had chosen a young woman from their village but when they proposed her the family asked for a high bride price. When they man’s family said they could not afford to pay the bride price, the girl’s family said that instead of money they could marry their daughter to the other girl’s father who wanted to get married second time because he did not have a son from his first wife. The families agreed and exchanged their daughters. In this case both girls were forced to marry the men that their

families had chosen for them. The first girl got married to the poor man who gave up his sister in order to get married and the second girl got married to an old married man who was her father's age (Region 3, NGO 1, Activist 1). In the case of badal women have no voice and they have to accept the decision in order to satisfy their male family members. One recent case that expert from central region noted was the case of exchange of a girl to another for her brother who was mentally ill. In this case one girl was forced to marry the mentally ill and disable person in order to help her brother get a wife and the other girl was forced to marry the person she did not even know in order to help her disable brother find a wife (Region 1, NGO 3, Activist 3).

Badal is also trading of a girl for property or debt. This kind of forced marriage is also common in Afghanistan, particularly in rural areas where people are very poor and uneducated. Recent cases mentioned by the experts show that women are being traded for a debt that her father or brother or even uncles and cousins have to pay. Most of the time this trade takes place when the elders (Jirga) decides that the person who is in debts cannot pay the debt and instead can trade one of his daughters, sisters or even cousins. One expert said that a girl who had lost her father during the civil wars was traded by her uncle in order to pay his debts. In this badal (trade) the girl had to marry an older man how was already married and had children in her age (Region 1, NGO , Activist 2). In another case in eastern region a man had lent money from a friend to start a small business but he could not pay the debt back on time so the elders decided that he should give his teenage daughter's hand to the other party in order to get done with the debt

(Region 3, NGO 2, Activist 2). According to experts, there are plenty of badal cases in which girls are traded for property, land and debt every day but they are not publicized. It is taken as something normal and even girls do not dare to complain about it in the public or to file a complaint in agencies that work for women's right. In some cases some girls will file a complaint, like one out of hundreds, but before the formal institutions take care of it the informal institutions (Jirgas) make the decision and take it away from the formal ones (Region 1, NGO 1, Activist 1).

Sometimes a girl will be exchanged or traded for a piece of land or property. According to some experts in some areas the families trade their daughters for a car, a number of sheep or cattle or something else. The experts mentioned that nowadays in some western and northern regions fathers exchange their daughters for a brand new car. "You go to his home, park the car in front of his house and offer him the car key in exchange to his daughter, he goes home and tells his family to get ready for the wedding" (Region 4, NGO 1, Activist 1). The same goes with a piece of agricultural land. In most households girls are not given importance and it will not be a hard decision to make when it comes to exchange a girl for a property. In this kind of cases the girl and other female members of families wouldn't be aware when the decision is made because the decision is made by the men in the absence of the girl and her other female family members. Once the car key or any other property is taken by the male family members, the girl has no right to reject the arrangement. Most of the time the girls who are traded for property are the most beautiful and smart girls in a village. These girls would be famous for their

purity, beauty, talent in house chores and handicraft arts, talent at schools, knowledge of religion and so on (Regions 3,4,5, NGOs 2, 1, 2, Activists 2, 1, 2). Most of the times in badal cases the families wouldn't be concerned about the compatibility between the bride and groom. One of the experts from the western region said that she had witnessed a badal case in which a young woman was traded for a truck. She said that the girl was famous for her beauty and talent and she was around sixteen or seventeen years old. The girl was almost done with her high school and she was famous for her talent in making handicrafts. She was a very good cook too. The warlord (an influential man of the village) proposed her from her father and brothers and offered a truck and some money in exchange. Warlord had already married twice and his both wives lived with him and this time he wanted to have a third wife. The girl's family agreed to exchange the girl with a truck and some cash after the (Jirga) advised them to happily give the girl's hand to the warlord before he kidnaps her. Finally, the warlord arranged a fancy wedding party and got married to the girl against her will. The expert said that she witnessed the bride was crying and shouting and calling her father and brothers by names such as 'pimps' and traders of women at the time of farewell (Region 5, NGO 2, Activist 2).

Moreover, these girls tolerate the injustice but do not file complaint against their families. On the other hand, badal is taking place in rural areas where people prefer jirgas to solve their cases rather than formal organizations. In addition, in places that badal occurs either people do not have access to formal institutions or the formal institutions would also refer them to the jirgas. According to some experts, in the rural areas even

those people who work in the police or other legal entities also support the traditional way of decision-making. “Even the judges will support the Jirga’s idea and will advise the victim to follow those decision” (Region 1, NGO 1, Activist 1). One expert said that in one case the girl who had complained about her family for exchanging her to debts was referred to the Jirga by the local judge. “The judge himself had called for a Jirga between the families and had ask them to solve the problem peacefully” (Region 1, NGO 1, Activist 1). According to this expert, the judge had also come from the same village and he knew that the girl’s family was not able to pay the debts and the only peaceful alternative was to exchange this girl for the debt. The expert said that if the girls directly file their complaints to the organizations that work for women rights and human rights, they would be able to get some help legally. The expert said that there are some rare cases⁶ that girls have complained about their brothers, fathers or uncles who have tried to sell them or exchange them for their gambling debts or for their drug’s money. “In such cases the girls will be provided with a shelter⁷ and the case will be followed until the offenders are punished” (Region 1, NGO 1, Activist 1). The experts on the other hand also emphasized that sometimes mediators might get involved with such cases and make the girls to give up and accept whatever decision is made about her life. These mediators can be either the members of jirga (elder wise men of the village or community) or

⁶ The expert emphasised that by rare cases she does not mean that such cases are rare or such practices are not common. She said by rare cases she meant out of hunderds of such cases only a couple might get the chace or dare to file a complaint to the organizations that work for human rights or women rights.

⁷ Most often the shelters are provided by the diroctorate of women affairs or in some cases by the respective organization.

friends of the family who have access to the formal institutions. One example was shared in which the girls' brother knew some high ranked police officers who had dismissed the girl's case and had took the girl back to her home and had warned her that she will be jailed if she stood against her family again (Region 2, NGO 1, Activist 1). According to experts most of the people who work for the police or any other formal institutions are the ones that follow and foster informal rules.

The bride price, which is called *toyana* in Dari, *walwar* in Pashtu, and *qaleen* in Uzbek, is also very important for the arrangement of a young woman's marriage. Sometimes the families will not see the age and comparability of a girl with a man but only see the amount of bride price that would be paid for the bride's family. In some cases the young women will be married to older and married men and sometimes to someone comparable to them. As Afghans say, "it is the matter of one's luck, either to get a comparable husband or not". According to some experts, sometimes the bride price would be very high so that the woman would remain single until she reaches mid-age and finally she would be married to an older married man as his second, third or fourth wife. One expert said she knows a woman who is now in her mid-age and still single because her bride price was high and her brothers never compromised. She used to be interested to one of her relatives and he also used to like her thus had sent his family to ask for her hand but her brothers never compromised about the bride price. The young man was not rich enough to pay the bride price so he gave up and got married to another girl. She really wished to marry this man but she did not have the right to show her interest or ask

her brothers to compromise (Region 1, NGO 3, Activist 3). According to experts, sometimes girls will be married against their will to mentally ill or disabled men just because the men's families would be able to pay the bride price. Experts emphasized that this kind of forced marriage also brings hardship for the woman once she is married. In some cases woman would be treated like slaves at her in-laws and the husband and in-laws will always remind her that they own her because they have bought her from her biological families. According to experts, this kind of marriage is practiced by majority and women live with it without objection.

Other kind of forced marriages is forcing a widow to marry her one of her in-laws. In Afghan society when a woman's husband passes away she should either stay single and live with her husband's family or marry one of her in-laws, particularly either one of married or single brother in-laws or father in-law. It is very rare that a widow would be allowed to get married to someone other than her in-laws. According to experts, some tribes are very particular about this issue; for instance Pashtun tribes never let their widows to marry anyone other than her in-laws. Sometimes the widow will be married to a brother in-law whom she had raised like her son and sometimes she will be married to a brother in-law with whose wife she had lived like sisters. In some cases if the brother in-law is very young then the widow has to wait until he reaches adolescent and then they will be married to each other. Though, the man would be allowed to marry a second time if he wished. There are cases that widows would be married to their younger brother in-laws but the husband would get married a second time with a young single woman. Most

of the times the second wife of husband would bring a lot of problems to the first wives out of jealousy and other domestic issues. The same goes with marrying a married brother in-law. In none of these marriages the woman would have a saying and she would never be happy. According to experts, these kinds of decisions are made by the Jirga of elder relatives some days or weeks after the death of the husband. In order to make this kind of decision the elder men of the tribe or relatives will hold meetings in order to make a decision about who should get married to the widow. Finally, the Jirga will decide and the both parties have to accept. The first options will be brother in-laws, and if she didn't have brother in-laws then her marriage will be arranged with one of husband's cousins.

In Afghan society love marriage is considered something immoral and against Afghan culture. It will not be accurate to say that love marriages never take place in Afghan society but to compare numbers of love marriages with those of arranged and forced marriages it will be near zero percent. Even the love marriages have to appear as arranged marriage in order for the family to keep their 'good name' in the society. When there is a love marriage it should be kept in secret from the public and even relatives of the young man and woman. When the man and woman decided to get married the man has to talk to his family and convince them to ask the girl's family for her hand. Most of the times the girl should hide the fact that she loves someone since Afghan families do not expect their daughters to fall in love or to have an affair with a man. If the family gets to know that the girl is in love with a man, they will punish her. In Afghan society a girl is

not allowed to find and choose her life partner because it is the task of her family to decide for her, there are some exceptions though especially with educated girls. Most of the times girls will be subject to honor killing if the family find out that she has a love affair with a man. Running away with a lover to get married is always subjected to honor killing or other punishments such as disowning or finishing all relationships with her. There are cases that women and their husbands have been killed after running away and getting married in the absence of the women's families. One expert from the central region said that she has witnessed a case that the couple was killed by the woman's brothers almost ten years after their married. She said that the couple used to be in love and the man had sent his family to propose his beloved for him but the woman's family had for some reasons rejected his proposal. As a result, the couple had run away and gotten married in a mosque in the presence of the man's family and relatives and had escaped from their village to Kabul city. They used to hide themselves from the woman's family. After ten years when the couple already had some children, the wife's family had seen the husband in the street and had followed him to find his house. Next day the wife's brothers had come into the couple's home and shot them both. According the expert, the murderers had very close relationship with the warlords so they could manage to escape and they were never found. When asked from the wife's family, they had said that in the day that the girl run away the family had made the decision that whoever finds them should kill them (Region 1, NGO 2, Activist 2). Recently there was a case of honor killing in my father's village. In this case years ago a young man and a young woman were in love but the woman's family had not allowed them to get married to each other.

As a result, the couple had decided to run away and they had fled from Afghanistan to Iran to hide themselves from the woman's family. The family and relatives had decided to kill her, once they find her. After 20 years the family found out her in Iran and send one of her nephews, who was only 19 years old and was not even born while she run away, to kill her. The nephew had gone to her place and killed her with her kitchen knife and in the same day he had fled back to Afghanistan. Once crossed the border, he had informed his family about the honor killing of his aunt and the whole village had come to his way with flowers to welcome him and reward him for what he had done. His father who used to be a Jihadist (warlord) had bought him a brand new car as a reward. The young man is now seen as a man of honor and a brave man. Yet no one knows what happened to the victim and her husband and children in Iran. Those people who commit honor killings believe that it will remain as a lesson for other girls and women so that they would not dare to choose their life partners and run away. In addition, girls are being beaten and locked up if they are found to be in a relationship. The experts mentioned the cases in which girls were beaten by their male family members including their father, brothers, uncles and even cousins when they were caught having relationship with men or insisted to marry the men that they loved. Thus, Afghan traditions and Afghan informal system give no freedom or right for women to choose their life partner. If they dared to do so, they will be punished.

According to experts, those girls who initiate to complain about the fact that their families do not let them get married to the men they love, might get help. One expert said

that she knows a young woman who was in a relationship with a young man and they wanted to marry but her family had already engaged her to someone else against her will. The girl and her beloved had gone to the Directorate of Women Affairs in her city and asked for help. The Directorate of Women Affairs with the help of local court had helped her to end her engagement with the other man and get married to the man that she loved. “Once married, she and her husband had to escape and live somewhere that her ex-fiancé and his family would not see them or they would get hurt. Though, who knows maybe one day they will be found and harmed”, said the expert (Region 5, NGO 1 Activist 1). The experts believe that if the complaint could make it to reach to the reliable organizations on time, it might get some help. Some complaints might remain in some official agencies and the mediators will take care of it before it reaches to the respective organizations that deal with women issues. These mediators will solve it in an informal way and probably against women and for the offenders.

The Limits of Legislation

According to experts, Afghan Society is a traditional society and people prefer following their local tradition rather than laws that are brought from outside or imposed on them. By following traditions people nourish informal institutions and disregard the formal ones. Moreover, these traditions have been there for ages but the law is very new. The Afghan social system is concealed by informal rules, which has made it hard for the formal rules to get into the system. In addition, most of the informal rules are in favor of men and against women, which encourage men to support and preserve them.

“Laws cannot break people’s walls and enter into their homes to find out if women are discriminated or not. Afghanistan is a democratic state and in democracy no one can force others to do what they do not want to do” (Region 1, NGO 2, Activist 2). According to this expert, people are free to practice their family rules and local traditions inside their homes. On the other hand, the social system has constructed behaviors in a way that nobody feels the necessity to adopt a different life style. Women are used to being enslaved by men and beaten by male family members. This is accepted as something normal in a woman’s everyday life. “Even when you ask a woman why she tolerates all the violence and does not fight against it, she replies that she is a woman and that is how her life should to be. The system has made women accept and tolerate any kind of violence” (Region 2, NGO 1, Activist 1).

According to experts, laws will be effective only if the women dare to get out of their homes and file complaints when they face discrimination at homes. However, if the women keep silent and tolerate burdens, no law would be able to help them. There are cases that women have gone to the local police offices or organizations that work for women and have filed complaints about domestic violence. Most of those cases have been followed up and in some cases the offenders have been punished. According to experts, everyday thousands of women face one or another kind of domestic violence but only a couple of women out of those thousands might dare to report the issue to the respective organizations. According to experts, one main reason that these women do not file any complaint is that they are afraid of the sanctions that could come from the

informal institutions after filing a complaint. For instance, if a woman files a complaint and states that her family does not let her become educated, the formal institutions might be able to punish the offenders and help the woman to get access to education but she will be punished at home. The punishment does not necessarily have to be physical but it can be psychological and emotional such as disowning, stop talking to her, not treating her well and so on.

On the other hand, according to one expert from western region, most of the women are told by their families and societies that the organizations that work for women are fake organizations that they persuade women to commit immoral actions. The expert shared a story about a woman that she had met in a bus. She said the woman was crying and telling her story to another woman in the bus. “When I asked the woman that why she was not going to the Directorate of Women Affairs and file a complaint, she responded that she is scared because she has heard that the employees of those organizations encourage people to run away and become prostitute” (Region 5, NGO 1, Activist 1). The expert said that most of the women are not aware of their rights and do not know about the activities of the organizations that work for women’s rights. They are told by the male family members that those organizations will destroy their life rather than helping them. According to experts, the law would matter more when women get to know about the existence of those laws. “More than 85% of women are illiterate and are not able to read and write: how can they get to know about their basic rights? Majority of women are not allowed to get out, which makes it even harder for us to teach them about

their basic rights” (Region 5, NGO 1, Activist 1). The majority of women do not know about their basic human rights, which means that the laws remain only on the papers.

On the other hand, it is also believed that the informal rules are so powerful that the laws cannot compete with them. According to experts, the cases that are filed against domestic violence will remain on the shelves since most of the times women give up and return to their normal lives. Sometimes women give up because the law or the organization that works for women might not be very efficient and helpful. Though, most of the time the women quit following up their cases from the fear of being punished by their families for rejecting the family or tribal rules. There are cases that women were beaten and locked up by their families right after filing a complaint. There are cases that women were made to tell lie for the officials and tell them that the violence is ended (Region 5, NGO 1, Activist 2). For example, an expert from the northern region said that she has witnessed a case that the woman had come to the police and filed a complaint against her in-laws and in particular about her husband and brother-in-laws who used to beat her. The police had arrested her brother-in-laws because that day they had beat her to the extent that she had blood all over her face and mouth. The case was in the police station and the woman was asked to go home and keep the Directorate of Women Affairs and the local police informed about future discomforts caused by the husband and in-laws. A couple of hours after going home, she had gone back to the police station with her husband and other in-laws and asked the police to release her brother-in-laws who had beaten her. The expert said that it was very obvious that she was made to give up the

case. After a while it was found out that her husband and in-laws had warned her that if she hadn't dismissed the claim, she would have be sent to her parents forever (Region 2, NGO 1, Activist 1). In Afghanistan the worst indirect punishment for a married woman is to send her back to her parents since it is considered as something shameful for the parents. The society would look down on the parents for failing to raise a decent daughter who would be patient enough to treat her husband and in-laws with respect, obey them and stay with them forever. Thus, the parents do not expect their daughters to be back and embarrass them in front of all. Even if the married daughters were sent over, the parents will take their daughters back and will apologize for their daughter's fault and would tell their daughters to be patient and put up with whatever comes from the in-laws (Region 4, NGO 1, Activist 1).

According to experts, there are also cases that women have resisted and have gone through different legal stages to reach their goals. Sometimes women have resisted and finally ended up in the shelters that Directorate of Women Affairs provide for women who escape domestic violence. Sometimes they have ended up in the places that they wanted to be. Though, in any case they have received their punishments, either directly or indirectly, from their families. Sometimes they would end up being killed by 'unknown people' and sometimes they would be disowned by their families. It is because where there is a rule there is a reward for following it and there is a punishment for not following it. In order to illustrate the point I will write an example that an expert shared. The expert said that there was a girl who wanted to get married to a young man whom

she was in love with. Her family was against the love marriage therefore they refused to let her marry her beloved. Her insist had lead her family to beat her and lock her up. Finally, she had gotten the chance to escape and go to the Directorate of Women Affairs and file a complaint against her father, brothers, nephews and uncles who had beaten her and had violated her right to marry the man that she was in love with. The Directorate of Women Affairs with the assistance of the local police had managed to make her family allow her to marry her beloved. The police had warned the family that if they caused harm to the girl, they would be arrested. As a result, the family had let her marry the man that she was interested in but her family had disowned her forever. Her male family members had told her that she was not allowed to contact anyone in the family or enter their house in her life because she had ashamed them. She was not even allowed to meet her biological mother and sisters (Region 1, NGO 3, Activist 3). Thus, in this case the girl achieved her goal and got married with the man that she loved by the help of the law but she lost her biological family by ignoring the family rules (informal rules).

Conclusion

The above analysis shows that in Afghanistan informal institutions are very strong and has undermined the formal ones. The informal institutions, traditions, are involved in discrimination of women's rights and because they are very strong women cannot dare to stand against them. Formal institutions on the other hand are kept as much away from the society as possible. It is because the informal rules have concealed the society and have left no way for the formal rules to enter into the society. This makes it hard for women to

dare to ignore or oppose informal rules and ask the formal institutions for help in case of discrimination. Though, those who dare to oppose those informal institutions either would be able get help from the formal institutions or would be punished by the informal ones.

CHAPTER V

DISCUSSION AND CONCLUSION

“Informal institutions are important potential causes of and solutions for social problems, and those seeking to address these problems should not overlook the importance of these 'unwritten' rules” (Raymond and Weldon, 2013). In Afghanistan the source of problem and the basis of dispute resolution is informal institutions since the society is a traditional society that is dominated by informal rules. Institutions, formal and informal, are established rules or set of rules that shape behavior of its agents in fundamental ways (Goodin, 1996; Knight 1992; Hodgson 2006).

Institutions can be either formal, officially accepted and enforced into a society, or informal, unwritten and enforced outside of the official channels (Helmke and Levitsky, 2004). Both types of institutions exist in Afghanistan; though, the informal institutions, traditions, are very strong and shape behavior. In Afghanistan the formal and informal institutions are in conflict with each other because the two do not follow the same principles. In fact, most of the formal institutions, especially laws, are written and adopted to fight the discriminatory informal rules. The informal institutions, traditions, are based on patriarchic beliefs; therefore, most of the traditional rules are unfair to

women. Thus, some formal institutions are adopted that directly address problems of women in order to fight prejudice, which is spread into the society by traditions.

To talk about women issues, at the present the society is trapped in between formal institutions that protect women's rights and informal institutions that discriminate against them. The two institutions are competing with one another. The formal institutions are first of all very new and secondly fragile. On the other hand, the informal institutions have been in place for ages and are very strong since they eventually flourished in society. The empirical analysis showed that informal institutions have penetrated people's lives to the extent that the formal ones cannot find a way to interfere and fight injustices created by the informal institutions. It was also demonstrated that the majority of violence against women is promoted by the informal rules of patriarchic traditions.

The literature on historical institutionalism and sociological institutionalism present that the informal institutions have their historical roots and were adopted because they were culturally acceptable. They are informal "procedures, routines, norms, and conventions" that existed in the society for ages and shaped the behaviors accordingly (Hall and Taylor, 2001, 938). In Afghanistan some practices, for instance forced marriages or other kinds of violence against women, were accepted and followed by the people for ages and are still followed because the society had always been patriarchic. However, most of the formal institutions, at least those that are devoted to women's rights, do not have a long history in Afghanistan. These formal institutions on one hand

are new and on the other hand are mostly run by those people who are already influenced by informal institutions and prefer informal rules to formal ones.

Informal institutions in societies like Afghanistan are very influential because they rule the social system. Informal rules are not optional; once they are a part of social system, they need to be followed. Thus, those who follow informal rules will be rewarded and those who do not will be punished (Helmke and Levitsky, 2004). That fact was examined through this thesis. The empirical study showed that those women who resisted following the informal rules were punished. It is also worth mentioning that those who follow those rules could be rewarded. The main reward that a woman would receive as a result of following the informal rules is to be liked by the community for being patient and obedient or being called a "good woman" and getting respect. Thus, for most Afghan women this reward is something they wish to have because it saves them from suffering punishment.

Afghan Traditions and Formal Rules

From the expert interviews it was learned that the Afghan traditional system is resistant to change from formal rules. Almost 99% of Afghans are Muslims (The World Factbook: Afghanistan). Afghans are very strict about their religion and they do not tolerate freedom of religion or any kind of rituals that would oppose Islamic rules. However, when it comes to their traditions, they overlook the religious rules and they follow their traditions. According to most of experts, Afghans might always declare that

they are very religious and they follow all Islamic rules but in practice they follow their traditional rules first and Islamic rules second.

Still, some of the experts blamed Islam for its influences in Afghan culture. According to them, Islamic rules support oppression and inequality between men and women. They believe that Afghan tradition is based on Islamic rules that promote discrimination against women. According to them, to some degree Afghan laws support democratic rules and encourage liberty; however, Islamic law and Afghan traditions endorse patriarchy and dominance of men over women. Thus, since people of Afghanistan are Muslims and are very strict about their religion, they adhere to religious rules. At the same time, Afghan laws such as the Constitution and civil code have also made it possible for the religion to play a major role in making decision about Afghan citizens. Some experts claimed that provisions of the Constitution contradict each other because right at the beginning it is strictly stated that no law shall contravene the provisions of Islam and then it talks about liberty, equality of all citizens, and freedom. According to these experts, Islamic law and democracy contradict each other. As a result, according to these experts even the Afghan formal institutions have problems. For these experts both formal and informal institutions are unsatisfactory. Thus, finding a dividing line between formal and informal institutions is not easy. According to these experts, the formal institutions could be more effective if they had not supported religious laws.

However, other experts thought that Afghan traditions do not follow any kind of systematic rules, neither Islamic laws nor state laws. According to these experts, Afghans follow their traditions that have been contracted by men and have always been patriarchic. These experts believed that Afghan tradition is not based on Islamic rules but on what favors men's domination over women while keeping women as silent victims. They also claimed that Islam is way more impartial toward women than Afghan traditions. The social system in Afghanistan favors patriarchy to an extent that it has made the men practice any kind of violence against women. These experts believed that if Afghan traditions followed Islamic rules, women would have been much better off and none of the violence against women would take place. According to these experts, Islam guaranteed women's freedom to choose their life partners, freedom to get education and share education, freedom to employment when necessary, freedom to travel but should be escorted by a male relative; though, Afghan traditions guarantee none of these. According to these experts, the Afghan Constitution is also very clear about equality of men and women and it guarantees the freedom of adult men and women to decide about their lives. However, Afghan tradition ignores the fact that all human beings are equal on one hand and it takes away the right of decision making from women on the other hand.

The Legal Ambiguity of Legislation and the Effects of Corruption

The formal institutions in Afghanistan are new on one hand, and fragile and contradictory on the other hand. One of the reasons that experts believed these laws are

contradictory is that legislation supports Islamic law while claiming to be democratic.

This is also true that Sharia law cannot be democratic since Sharia law conflicts with the liberal women's rights. Sharia law does guarantee women's basic rights such as the right to choose their life partner, the right to ask for divorce and some other rights; though, in most provisions a woman is counted as half a man. For instance, a single man as witness is equal to two woman, two sisters will get the same amount of inheritance that one brother will get, and woman judges are not allowed to make decisions on cases of murder, divorce and other important issues. There are other provisions too that directly discriminate against women; for instance, a husband is allowed to punish his wife by not talking to her, separating his bed, and finally beating her with a small stick if she refuses to obey him. Thus, liberal democratic stipulations would directly reject Sharia law for its discrimination against women.

Moreover, the legislation is fragile because most officials who are appointed to implement the laws are corrupt and they would easily give up their obligations for bribe or for the sake of their relatives and friends. In the meantime, most officials support traditional ways of living. Some experts who were interviewed believed that the police, judges, and other officials are themselves involved in promoting informal institutions. There were cases mentioned by the experts that the police or security officials had arrested young men and women for having a relationship out of marriage. Experts mentioned that sometimes the police would stop the cars and ask the couples if they are related to each other or are dating. If the police find out that the couple is not siblings or

spouses then they will be arrested and their families will be called, informed about the relationship and asked to come and take custody. If the case goes to the judges they will also blame the couple for disregarding the Islamic rules and traditions and having a relationship out of marriage. The same goes with the cases of domestic violence, street harassments and so on. According to experts, sometimes women would go to the police, judges or other officials and file a claim about domestic violence and the officials will blame them for being rebellious and not obeying their families. Experts said that sometimes in the case of street harassments the women would be blamed for their attractive apparel in the public.

A Brief Ethnographic Discussion

In this paper we have generally talked about all Afghans and all ethnicities. Afghanistan is a multiethnic society and is a home for more than fourteen ethnic groups. The major ones are Pashuns, Tajiks, Hazaras, and Uzbeks. It is worth mentioning that all ethnic groups follow the same traditions but some might be more liberal in one way or another than the others. During the civil wars and the subsequent Taliban regime a lot of people migrated to the neighboring countries, mostly to Pakistan and Iran. Most of Hazaras who could manage to flee migrated to Iran and other ethnic groups, in particular Pashtuns and Tajiks, fled to Pakistan. Once people returned to their motherland, they brought some new values with them. Among them Hazaras came with somehow more liberal values, particularly supporting education of women. Pashtuns as well as Tajiks who had migrated to Pakistan mostly remained the same.

To look at the development of women it is very obvious that Hazara women take part in almost all sectors. There are Hazara women in sports, in military, in police force, in administrative sectors, and so forth. Hazaras women take most of the scholarships that are offered for young women. Though, it is always important to note that it is only about Hazaras who live in urban areas. Those Hazaras who live in the rural areas are still practicing the old traditions; though, not a lot of physical violence has been witnessed among Hazaras both in rural areas and urban areas. One reason can be the way the women behave with their families. Sometimes women are very easy and obey and follow whatever is told to them. Thus, this might be a reason that not as much physical violence is witnessed among Hazara women (Region 1, NGO 3, Activist 3).

Moreover, Tajiks who live in the urban areas are more liberal. Some of those families who live in the cities let the women get education and work outside the home. Though they have limitations, women can hold some particular jobs but not others. For instance, families will not let their women to work in military or police force or any other job that requires women to travel and stay with male colleagues (Region 1, NGO 1, Activist 1). On the other hand, according to expert from central, northern and western regions there is a more physical violence against Tajik women than any other ethnic group. One reason behind this could be the rebellions of women against traditions. Some Tajik women who live in urban areas might dare to stand against injustice and that make them get hurt.

Furthermore, Pashtuns are stricter about their traditions. Pashtun women in some urban areas do get the chance to get education but they cannot be as rebellious as Tajik women. This is how Pashtuns are raised. They barely ever get the chance to talk to their male family members even to their fathers and brothers. Women are not supposed to interact with men or interfere in any decision making process. At least Tajik women sometimes get the chance to spend time with their fathers and brothers and interact with them (Region 4, NGO 2, Activist 2). In addition, Pashtun women hardly get the chance to get education or work outside their homes. Even in the cities Pashtun women are not as evident as Tajik and Hazara women. Cases of honor killing are more common than cases of physical injuries in Pashtun families that make it hard for women to even think of committing any action that is against the family rules (Region 5, NGO 1, Activist 1).

Uzbek and Turkmen women are more housewives or domestic-women. They are raised this way. Almost all Uzbek and Turkmen women are skillful women and their main job is to do the house chores and weave carpet. They only interact with other women and they are easy to deal with, as they are shy and obedient. Uzbek and Turkmen women have the highest bride price because of their carpet weaving skills. Almost in all households, in the cities and in the rural areas, men and women do not interact. Like Pashtuns the women don't get the chance to talk to their male family members or eat in the same room with them. They are not rebellious at all and they accept whatever decision is made for them. Very few of them might be educated or employed, but are materially better off than women of other ethnic groups. As they are not rebellious they

do not suffer as much physical violence (Region 2, NGO 1, Activists 1; Region 2, NGO 2, Activist 2).

To sum up, in Afghanistan all ethnic groups follow the same traditions. Those who live in urban areas are more liberal than those in the rural areas. There are some differences about the way different ethnic groups live. *Hazaras* are progressing because they are more tolerant toward women. In general Tajiks try to be more open to the world and they claim that they are more civilized than other ethnicities but are not very tolerant toward their women; meanwhile, the Tajik women are not as easy to deal with as women of other ethnic groups. Tajik women tend to be more rebellious and ask for their rights; that is why they suffer more physical violence than in other ethnic groups. Pashtun women live in fear and are very cautious not to disobey any decision that is made about them and for them. Uzbek and Turkmen women are also very patient and make sure to do whatever is told to them. Thus, when it is said that women of this or that ethnic group are easy to deal with it does not mean that they do not suffer. They do suffer and they do feel hurt but they are always told to keep their feelings inside. They do feel the injustice and they do want to stand against it but they know that they cannot (All experts that were interviewed, 2014).

Conclusion

After the fall of Taliban, existing Afghan laws were revised and several other new laws were passed. The effort behind revision of existing laws was to make them more

democratic and the reason new laws were adopted was to bring more justice and equality into the society. After experiencing several authoritarian regimes and harsh totalitarian regime of Taliban, Afghanistan needed a new regime that would bring liberty and guarantee people's freedom. The initiation of the new democratic regime to bring liberty is to some degree sufficient and it could guarantee people's political freedom, economic freedom, physical freedom and individual freedom. The only freedom which is not granted to the people is freedom of religion or any other freedom that would contradict Islamic rules.

However, after more than a decade still not all citizens have the chance to practice the freedoms that are granted to them by the state. It is because Afghans support traditional system thus the society is run by traditions and informal system. When it comes to people's everyday life, they do not give a lot of importance to the formal rules or law that is implemented by the state. This is how people are raised and this is how the society is constructed. The informal system is patriarchal, which promotes dominance of men over women. However, the formal system is more consistent with global norms and does not favor one gender or another. Thus, the formal and informal systems are in conflict with each other. In some areas the two systems clash and reject each other, for example, with respect to the issue of women's rights. The formal system regards women as citizens who are equal to men, whereas, informal institutions regard men higher than women and bestows the men the right and authority to rule over women.

The supreme law in Afghanistan is the Constitution. At the beginning of the Constitution it is cleared that all citizens of Afghan, men and women, are equal and have equal rights and duties before the law. The Constitution dismisses any kind of discrimination and violation against any citizen. Constitution declares that liberty is the natural right of all human beings and no body has the right to seize anyone's liberty. The constitution rejects any kind of judgment, justice or punishment in the absence of the court and judges. The constitution does not define any kind of division between men and women or dominance of one over another. It does though by quota encourage women to take part in political affairs. Civil code and sharia also to some extent ensures women's rights. There are other laws and institutions including Afghan family law, EVAW, Ministry of Women Affairs, and AIHRC that protect women.

However, unlike the formal institutions, informal institutions keep women in segregation, which leads to discrimination against women's rights. Tradition supports patriarchy to the extent that women are not given the right to make any kind of decision about their life. Meanwhile, the society is a communal society and any kind of decision should be made not by an individual (in particular if the individual is a woman or the decision concerns a woman) but by a group of individuals, most often male elders since in Afghan culture elders are respected to the extent that they have the most importance. Sometimes people would not even bother to know if those who make decisions are wise and just enough to make a decision; they just need to be men and most of the time older. Most of the time the decision makers will make a decision based on their life experience

and old patriarchic traditions (Region 1, NGO 1, Activist 1) The individuals who make decision about an individual can be members of immediate and extended family or elders of tribe and community. When it comes to a woman's concerns, it is always her male family members that make the decision for her or approve decision that is already made.

After the fall of Taliban women got the chance to go back to school, get jobs that required working outside the houses, travel and so forth. It is important to mention that despite the largely negative view of *de facto* women's rights, the fact that the formal institutions exist and have certain provisions for women's rights is an improvement over the Taliban years. During Taliban regime both formal and informal institutions violated women's rights. The government and laws were directly involved in discrimination against women. At the present the formal institutions mostly promote women's rights and equality among all citizens. The current laws encourage women to take part in social, political, economic and all other spheres of the society. At the present women are encouraged to get education and stand for their rights. The presence of civil society organizations that work for women, as well as the Ministry of Women Affairs and its directorates, all supports women's rights. Such organizations never existed during Taliban regime. During the Taliban regime the state had banned women from going outside their homes without the *burqa* but now the state has no intervention about women's apparel in the public. Taliban did not allow women to travel alone even if it was to travel within the village or city; however, now women are formally free to travel alone even to other cities and countries. After the collapse of Taliban the new government

handed women all their freedoms that the Taliban had curtailed. However, society is not ready to bestow women their liberty. The freedoms that exist *de jure* but are not accessible for women *de facto* include access to education, freedom of employment, freedom of movement, freedom of education and many more.

Why women do not obtain their liberty *de facto*? It is because in Afghanistan the formal institutions are weak and fragile and informal institutions are not ready to bestow women's liberty. In Afghanistan informal institutions shape people's day-to-day life and they are much stronger than the formal institutions.

BIBLIOGRAPHY

"Afghanistan's ERAW Law." *Canadian Women for Women in Afghanistan*. May 2013.

Web. 22 Feb 2014. <http://www.cw4wafghan.ca/Afghanistan_ERAW_Law>.

Afghanistan Research and Evaluation Unit, "*Women's Rights, Gender Equality, and Transition: Securing gains, moving forward*". Issues Paper 1308. Sept 2013.
print. 8 Apr 2014. P. 39.

Afghan Penal Code, Article: 395_5, October 1976.

AIHRC (Afghan Independent Human Right Commission). UNHCR. *Economics and Social Rights Report in Afghanistan-III*. 2008.

Ali Wardak, "Jirga- A Traditional Mechanism of Conflict Resolution in Afghanistan,"
<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan017434.pdf>.
(Accessed Dec 19, 2013).

"Bringing 6 Million Children Back to School in Afghanistan." *The World Bank*. The World Bank, 17 April 2013. Web. 19 Feb 2014.
<<http://www.worldbank.org/en/results/2013/04/17/bringing-6-million-children-back-to-school-afghanistan>>.

"Bonn Agreement", Embassy of the Islamic Republic of Afghanistan, Oslo, (Accessed: Jan. 02. 2014), <<http://www.afghanistanembassy.no/cat/31.aspx>>.

Dryzek, John S. "The Informal Logic of Institutional Design." *In the Theory of Institutional Design*, edited by Robert E. Goodin, 103-125. New York: Cambridge University Press, 1996.

Domínguez, Gabriel . "UN: Violence against women in Afghanistan 'pandemic' | Asia | DW.DE | 22.10.2013." *DW.DE*. DW, 22 Oct. 2013. Web. 8 Feb. 2014.
<<http://www.dw.de/un-violence-against-women-in-afghanistan-pandemic/a-17171157>>.

Elimination of Violence Against Women- Law, 2009, Chapter: 3.

Ginsburg, Tom. "An Economic Interpretation of the Pashtunwali ." . University of Chicago Law School, 15 Apr. 2011. Web. 2 Apr. 2014. Print.

Goodin, Robert E. "Institutions and Their Design." *In the Theory of Institutional Design*, 1-53. New York: Cambridge University Press, 1996.

- Hall, Peter A. and Rosemary C. R. Taylor. "Political Science and the Three New Institutionalism." *Political Studies* 44, no. 4 (1996)
- Helmke, Gretchen and Steven Levitsky. "Informal Institutions and Comparative Politics: A Research Agenda." *Perspective on Politics* 2, no. 4 (2004): 725-740.
- Hodgson, Geoffrey. "What Are Institutions." *Journal of Economic Issues*. XL.1 (2006)
- "Introduction to Ministry of Women Affairs." *Ministry of Women Affairs*. Web. 21 Feb 2014. <<http://mowa.gov.af/fa/page/1337>>.
- Kakar, Palwasha. "Tribal Law of Pashtunwali and Women's Legislative Authority ." . Personal Communication, Summer 2003. Web. 28 Mar. 2014. Print.
- Kamali, M. (1985) *Law in Afghanistan: A Study of Constitutions, Matrimonial Law and the Judiciary*, Leiden: E.J. Brill.
- Knight, Jack. *Institutions and Social Conflict*. Cambridge: Cambridge University Press, 1992.
- Lamb, Robert D. Center for Strategic and International Studies (CSIS). *Political Governance and Strategy in Afghanistan*. Washington DC: Center for Strategic and International Studies, 2012. Print.
- Landinfo. "Report Afghanistan: Blood feuds, traditional law (pashtunwali) and traditional conflict resolution." 1 Nov. 2011. Web. 2 Apr. 2014. Print.

Manganaro, Lynne L., and Amy L. Poland. "For Better or Worse? Gender and Perceptions of Formal and Informal Justice in Afghanistan." *Women & Criminal Justice*. 22.1 (2012)

Ministry of Women's Affairs. *First Report on the Implementation of the Elimination of Violence Against Women (EVAW) Law in Afghanistan*. Kabul:, 2014. Print.

Mujeeb. "Pashto Language Blog." *Pashtoonwali Pakhtoonwali*. Transparent Language, 1 Jan. 2010. Web. 3 Apr. 2014. <<http://blogs.transparent.com/pashto/pashtoonwali-pakhtoonwali/>>.

Mulla, Dinshah Fardunji, and M. Hidayatullah. *Mulla's principles of Mahommedan law*. Ed. 2008 / by Munir Ahmad Khan. ed. Lahore: Imran Law Book House, 2008. Print. Pp. 67-71, 282-300, 333-6, 295.

Qazi, Abdullah . "Afghan Women's History." *Afghanistan Online*:. Afghanistan Online , 24 Apr. 2011. Web. 12 Feb. 2014. <<http://www.afghan-web.com/woman/afghanwomenhistory.html>>.

Rostami-Povey, Elaheh. *Afghan Women: Identity and Invasion*. London: Zed Books, 2007.

Samandary, Wazhma. "Speaking Out for Justice: An Initial Victory for Women Victims of Violence." Afghan Analyst Network, 06/01/2013. Web. 21 Feb 2014.

<<http://www.afghanistan-analysts.org/speaking-out-for-justice-an-initial-victory-for-women-victims-of-violence>>.

Satow, Roberta Lyn. "Value-Rational Authority and Professional Organizations: Weber's Missing Type," *Administrative Science Quarterly* 20, no. 4, (Dec., 1975): 2-3, <<http://www.jstor.org/stable/2392020>>

Sieff, Kivin. "Fate of women still tied to arranged marriages in post-Taliban Afghanistan." *The Independent*. Independent Digital News and Media, 29 Nov. 2012. Web. 2 Mar. 2014. <<http://www.independent.co.uk/news/world/asia/fate-of-women-still-tied-to-arranged-marriages-in-posttaliban-afghanistan-8367593.html>>.

Sammon, Robert Lane. "MULLAS AND MALIKS: UNDERSTANDING THE ROOTS OF CONFLICT IN PAKISTAN'S FEDERALLY ADMINISTERED TRIBAL AREAS ." . The Lauder Institute, University of Pennsylvania, Apr. 2008. 29 Mar. 2004. Print.

Tang, Alisa. "Afghan girls traded for debts, blood feuds - USATODAY.com." *Afghan girls traded for debts, blood feuds - USATODAY.com*. N.p., 10 July 2007. Web. 7 Apr. 2014. <http://usatoday30.usatoday.com/news/world/2007-07-09-afghan-girls_N.htm?csp=15>.

The Constitution of Afghanistan, January 2004, Articles: 3, 22, 24, 27, 48, 83, 84.

“The September 2005 Parliamantry and Provincial Council Elections in Afghanistan”,

National Democratic Institute for International Affairs, 2006, P.3.

"The World Factbook: Afghanistan." *Central Intelligence Agency*. Central Intelligence

Agency, n.d. Web. 10 May 2014. <<https://www.cia.gov/library/publications/the-world-factbook/geos/af.html>>.

UNICEF. Central Statistics Organization. *Afghanistan Multiple Indicator Cluster Survey*.

Kabul: Central Statistics Organization, 2012. Web.

<<http://cso.gov.af/Content/files/AMICS-Jun24-2012-FINAL.pdf>>.

UN Women. United Nations Entity for Gender Equality and the Empowerment of

Women. *Afghanistan National Parliament to Establish Resource Centre to*

Promote Women's Role in Decision-making Processes. Kabul: UN Women, 2011.

Web. <<http://www.unwomen.org/en/news/stories/2011/8/afghanistan-national-parliament-to-establish-resource-centre-to-promote-women-s-role-in-decision-mak>>.

UNAMA (United Nations Assistance Mission in Afghanistan). *Way to go: A Way to Go:*

An Update on Implementation of the Law on Elimination of Violence against

Women in Afghanistan. Kabul:, 2013. P. 14.

"Women's Rights Unit." *Afghanistan Independent Human Rights Commission*. 2014.

Web. 22 Feb 2014. <<http://www.aihrc.org.af/home/women/486>>.

Interviews

Region 1, NGO 1, Activist 1, April 15, 2014.

Region 1, NGO 2, Activist 2, April 17, 2014.

Region 1, NGO 3, Activist 3, April 25, 2014.

Region 2, NGO 1, Activist 1, April 26, 2014.

Region 2, NGO 2, Activist 2, March 27, 2014.

Region 3, NGO 1, Activist 1, April 05, 2014.

Region 3, NGO 2, Activist 2, April 07, 2014.

Region 4, NGO 1, Activist 1, March 17, 2014.

Region 4, NGO 2, Activist 2, April 10, 2014.

Region 5, NGO 1, Activist 1, April 30, 2014.

Region 5, NGO2, Activist 2, March 20, 2014.

Appendix A: Regional Coding

Division of Regions

Region Number	Region Name	Provinces belong to the region								
<i>Region #1</i>	<i>Central Region</i>	Kabul	Parwan	Wardak	Bamyan	Ghazni	Day Kundi	Kapisa	Panjshir	
<i>Region #2</i>	<i>Northern Region</i>	Balk	Kunduz	Jawzjan	Faryab	Sari Pul	Samangan	Takhar	Baghlan	Badakhshan
<i>Region #3</i>	<i>Eastern Region</i>	Nuristan	Kunar	Laghman	Nangarhar	Logar	Paktya	Khost	Paktika	
<i>Region #4</i>	<i>Southern Region</i>	Uruzgan	Zabul	Kandahar	Helmand	Nimruz				
<i>Region #5</i>	<i>Western Region</i>	Badghis	Ghor	Herat	Farah					

Appendix B: Number of Activists and NGOs in Each Region



Region #1 (two Activists from Kabul: Activist #1, NGO#1 and Activist #2, NGO #2. One Activist from Bamyan: Activist #3, NGO #3.). In total three Activists from three NGOs.

Region# 2 (One Activist from Mazar: Activist #1, NGO #1. One Activist from Kunduz: Activist #2, NGO #2). In total two Activists from two NGOs


Region# 3= (One Activist from Nangarhar: Activist #1, NGO #1. One Activist from Paktia: Activist #2, NGO #2) in total two Activists and two NGOs

Region # 4= (One Activist from Kandahar: Activist #1, NGO #1)

Region # 5 = One Activist from Herat: Activist #1, NGO #1. One Activist from Farah: Activist #2, NGO #2) in total two Activist and two NGOs.

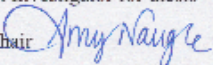
Appendix C: HSIRB Notification

WESTERN MICHIGAN UNIVERSITY

 Human Subjects Institutional Review Board

Date: March 11, 2014

To: James Butterfield, Principal Investigator
Marian Amiri, Student Investigator for thesis

From: Amy Naugle, Ph.D., Chair 

Re: Approval not needed for HSIRB Project Number 14-03-13

This letter will serve as confirmation that your project titled "Informal Institutions and Women Rights in Afghanistan" has been reviewed by the Human Subjects Institutional Review Board (HSIRB). Based on that review, the HSIRB has determined that approval is not required for you to conduct this project because you are analyzing a practice and not collecting personal identifiable (private) information about individuals.

Thank you for your concerns about protecting the rights and welfare of human subjects.

A copy of your protocol and a copy of this letter will be maintained in the HSIRB files.

251 W. Walwood Hall, Kalamazoo, MI 49008-5455
PHONE: (269) 387-8293 FAX: (269) 387-8276