

Persecuting the Persecuted and Protecting the Offenders: Afghanistan's Failure to Adjudicate Crimes Against Women.

Afghanistan is in violation of several treaties on human rights which prohibit violence against women. These treaties include the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which have been ratified by Afghanistan yet Afghanistan has failed to comply with their obligations under these treaties. Specifically, two “moral crimes”, that of *zina*, which is the crime of adultery, and women found guilty of “running away” from abusive domestic environments, are violations of international law because they discriminate against women by depriving them of personal liberty. These women are imprisoned for attempting to flee from abusive marriages, thereby the criminal justice system forces them to endure inhumane treatment which violates basic human rights and offers these women or young girls no redress for wrongs committed against them.

These “moral crimes” are so closely intertwined with religion that the government often tolerates the brutal conduct which infringes upon women's rights. In most instances, women found guilty of these “moral crimes” run away from their homes to escape abuse, a forced marriage or the marriage of an underage girl to an older man. The legal age for marriage in Afghanistan is sixteen for females, however many young girls become child brides forced into marriage as young as fourteen years old. Despite the abuses suffered by women, their only recourse, “running away”, leads to their own

persecution because judges and prosecutors argue that a woman intentionally puts herself at risk of *zina* by choosing to run away because she is no longer within the “care” of her family. In fact, many women are often imprisoned simply because the court capriciously holds that they had “**intent** to commit *zina*.”

For a criminal justice “system” so grounded in faith, there appears to be inconsistencies in how Afghanistan prosecutes offenders. The Qur’an states that *zina* is a major sin equally punishable for men *and* women and speaks to the appropriate punishment:

The woman and the man guilty of adultery or fornication,- flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the Believers witness their punishment.

— Qur'an, Sura 24 (An-Nur), ayah 2

Yet, courts rarely prosecute men who are accused of rape, abuse or any other instances of reported violence against women while the victims who run away from these cruel environments are punished. Equally inconsistent is that the Qur’an speaks of forgiveness of *zina*, stating:

Say: Oh my servants who have transgressed against their souls! Despair not of the mercy of Allah, for Allah forgives all sins; for He is oft-forgiving, most merciful.

— Surah 39, Verse 53

This passage seems to suggest that the crime of *zina*, while still a major sin, does not warrant imprisonment as a form of punishment, but offenders can be absolved of their sin by asking Allah for forgiveness, and he is professed to be a merciful God. Despite

evidence from the Qur'an that *zina* is absolvable and men and women are to be equally admonished for committing the sin, the laws in Afghanistan are manipulated to discriminate against *women* by imprisoning them for having the audacity to seek a safe haven from inhumane treatment by accusing them of a crime, *zina*, which they often have not even committed. This is, again, is a violation of personal liberty protected under the ICCPR and CEDAW.

A recent example of inequality in the justice system of Afghanistan can be found in the story of fifteen-year-old Sahar Gul who was trapped in the basement of her in-laws' home for six months and tortured with hot irons, electric cables and had her fingernails ripped off for refusing to enter into prostitution. Her captors were sentenced to ten years in prison, a punishment hardly comparable to the suffering she experienced. As demonstrated by the cases described in the reports from the Human Rights Watch, such disturbing tales are not uncommon and the abuse endured by victims subjected to such violence goes unanswered far too often.

In the United States, pernicious sex crimes, including the trafficking of young girls, often escapes our consciousness. However, it has been reported that over 1.6 million children, many of whom are young girls under the age of eighteen, are unwitting victims of the sex trade. According to the Bureau of Justice statistics, between 2001 and 2005, of the 555 suspects involved in human trafficking, 58% were investigated and 146 were prosecuted. This is a significant difference from the process in Afghanistan where women are also the victims of sex crimes and other inhumane treatment yet the percentage of offenders prosecuted is miniscule. In the unlikely event that offenders are

prosecuted, their sentences are hardly comparable to the abuse they meted out to their victims, young girls like Sahar Gul.

Another distinction that can be made is the stance taken in the United States and that of Afghanistan regarding the attitude of gender equality and personal liberty. In the United States, women who are victims of sex crimes are not imprisoned for running away from domestic violence, where women in Afghanistan are accused of and often found guilty of *intent* to commit *zina* should they try to escape. For these women, there are few, if any, safe havens. Perhaps even more interesting is that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has been signed but not ratified by the United States, whereas Afghanistan has ratified the treaty but still fails to comply with the conditions therein. The CEDAW is just one step in an uphill battle to give a voice to the young girls and women robbed of their tongues, and through zealous advocacy, hopefully the hostile climate will change.

Sources

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