

PART III

Individual Cases



## Runaway Women

### INTRODUCTION

This chapter investigates the controversies surrounding three young women who embodied the role that had implicated the shelters in so much controversy—that of the “runaway” woman.<sup>1</sup> I learned their stories only after hearing of the violence later inflicted on them—murder, rape, and stoning. Only when I started to retrace the series of events that had preceded these violations did it become clear that all three women had first run away from abuse at home. Moreover, it became apparent how framing “escaping from the house” as a subversive act strongly bore on the women’s options and directly made them vulnerable to the violence that was later inflicted upon them.

In the following discussion, I explore the trajectories of the three women, as well as the competing interpretations and assessments of their actions and the actions of those around them. Rather than focusing only on the formal justice system, I expand my lens to map how multiple legal orders intervened in the three cases at different moments. I employ the idea introduced at the beginning of this book, namely, that what is considered violence or a violation can tell us a lot about prevailing gender orders and other forms of power in a given context. By probing the fault lines revealed in these three episodes as they were taken up by very different mechanisms of justice, I ask the following questions: How were these series of events defined and spoken about by various groups of people—relatives, religious authorities, government officials, and the women themselves? What kinds of claims about violations or transgressions were recognized by public institutions, whether these were *jirgas* of elders,<sup>2</sup> government courts, or Taliban councils? Just as importantly, what was *not* recognized or named as offenses?

Posing these questions makes it clear that in both government and nongovernment forums, the loss or infringement of family or kinship sovereignty over female sexuality—as could occur when a woman runs away or engages in illicit relations—counted as a central violation. At the same time, this was not due to some predetermined cultural script, but a more tenuous construction, actively forged out of contingent struggles. A runaway woman was not automatically the main culprit in all cases; family honor was not always a key reference point. Alternative forms of intervention existed and were sought out, with various degrees of success. In other words, whether a runaway woman was, in the end, treated as a criminal to be punished by public authorities, a fugitive to be returned to her family, or a victim of abuse entitled to protection was, in most incidents, an open question. Nonetheless, the stories of Nafisa, Fereshta, and Siddiqi show how difficult it was for individual women to escape family abuse when state and non-state mechanisms aligned to cast women who left their family settings as inherently suspect. Even if some women might receive a sympathetic hearing when they finally reached a government's court, the paths they had to take to escape from abusive situations typically involved difficult choices that left them irrevocably tainted in the eyes of their communities and the law itself.

#### THE POLITICS OF SHAME

During the Afghan year of 1387, in the winter of 2008–09, a judge in a conservative Pashtun district in central Afghanistan was entrusted with a task he would later feel he failed at. The judge's cousin was looking for a girl to be his second wife, and the family of the prospective groom approached him for help. The judge accepted the task, and when he heard that Mohammad Ajmal, a local farm laborer, had a good and decent daughter, he sent his female relatives to see the girl. They came back with reassuring reports—Ajmal's daughter, Nafisa, was a good and hardworking girl—and the engagement was soon confirmed. The judge received from the groom-to-be a new suit as a token of appreciation for his efforts. But later on, after the ensuing scandal, he reflected on whether he should have been more thorough in his investigation. People had come to blame him for the scandal that followed, he later recounted. They said he should have asked more questions: Did the girl love someone else? At the very least, was she happy with the marriage? But, as he asked, how was he to have thought of such things? The custom in investigating a prospective bride was to send women to visit the girl, and the kind of things they would look for was whether she makes tea and looks after the guests properly, and of course, if she is beautiful. "It did not even occur to us that she could have a relationship with someone else. She was a Pashtun girl—how could she have a relationship? That Ajmal's daughter was completely without morals [*bad akhlaq*—how were we suppose to know?"<sup>3</sup>

Nafisa, in fact, proved deeply unhappy with the engagement. She was only sixteen, and her fiancé was forty, considerably older. She was also to be his second wife. Nafisa's family was poor; her father had casual employment as a farm laborer. The bride-price, reported to be around 250,000 *afghanis*, the equivalent of US\$5,000, played an important role in her betrothal. As was customary in many circles, once the engagement had been confirmed through a *nikah* ceremony, her fiancé was granted nocturnal visiting rights.<sup>4</sup> This kind of arrangement, referred to as *namzad-bazi* (literally, "engagement play"), was often—or could be—a time of playfulness and excitement when couples got to know each other in an air of quasi-illicit mischief.

This was not Nafisa's experience of *namzad-bazi*. She proceeded to make contact with a young man working in the village as a servant. As Nafisa said when she was interrogated later on, "I was forced to marry someone. . . . He was an old man. I became friends with Amin, and I wanted to be with him. He became the one I loved. To run away was the only option I had."<sup>5</sup> Amin was the cousin of the host of a radio program, and Nafisa had called the program with her cell phone to place a song request. The radio host had passed on her phone number to his cousin, and Nafisa and Amin had struck up a kind of courtship over the phone. They then met in person and agreed to run away and get married. Theirs is not an unusual story—since the arrival of the cell phone network, many Afghan girls have attempted to escape unwanted marriages by seeking out men to elope with over the phone. But Nafisa and Amin's intention to escape to relatives in Pakistan was thwarted en route, in the eastern city of Jalalabad, when they were reported to the police by the manager of a hotel where they were staying. They were detained and sent back to their home province, the scene of the crime. In court, Nafisa was sentenced to serve seven years in juvenile detention for running away and *zina*. Amin received a similarly lengthy prison sentence, although his sentence was reduced to two years after an appeal.

In the couple's village, Nafisa's fiancé and his family had been outraged when they heard of the elopement. They immediately went to Nafisa's father, Ajmal, who agreed to hold a *jirga* to settle the matter. For two days, the proceedings went on, presided over by two elders from each of the families' tribes. The discussion centered around one issue: under whose supervision had Nafisa been when she escaped, and therefore, whose shame (*sharm*) was it that this event had occurred. The fiancé and his family demanded two *baad*: one girl as a replacement for Nafisa and one girl as reparation for the dishonor that Nafisa's family had caused the fiancé with her elopement. But Nafisa's family rejected this demand. Ajmal argued that the fiancé had been visiting her, spending time with Nafisa in her room. Therefore, he should have known about her relationship. Eventually, the elders reached the decision that one *baad* would suffice. She was to be Nafisa's younger half sister, Ajmal's daughter by another wife. The mother of this girl found the

arrangement deeply unjust. It was Nafisa and therefore also her mother who had proven themselves to be the spoiled (*kharab*) ones; why should she and her daughter have to suffer the consequences? Her protests were to no avail, however, and after two days, she gave in. Nafisa's half sister was to be handed over to the fiancé within ten days.

Meanwhile, Nafisa was in the juvenile detention center in the provincial capital. A senior official arranged to have a room for himself in the compound of the detention center, under the pretext that he could not travel back to his house in Kabul on a daily basis. This was a violation of the rules, but his subordinates dared not protest. Through deceit and threats, he sexually abused Nafisa, and she became pregnant. He had told her that he was in a position to influence her legal case, and at first, Nafisa told no one about what had happened. But when the prison attorney came on one of his regular inspections of the detention center, she spoke out, as he later recounted.

I went to Nafisa's room and asked for permission to enter. . . . When I asked her whether she had any difficulties with the juvenile rehabilitation center staff, she started crying and she was unable to talk for two minutes. I understood that she had a problem, so I insisted that she tell me. She said, "Something has happened to me that I cannot tell you." Then she started crying again and said, "The [senior official] has raped me. . . . He called me to his room, and when I went there, he asked about my case. I told him that I had escaped to Jalalabad with Amin. Then he said, 'I will ensure your freedom. I will marry you to Amin, and if he does not want to marry you, I will.' After he had said this, I went back to my room. After one hour, Jalaluddin, who was his abettor, came to my room and said, '[the senior official] wants to see you in his room.' When I went to his room, he locked the door and tried to hug me, but I didn't let him. I told him, 'But you are like my *mama* [maternal uncle].' He said, 'Who cares for the *mama*?' and he threatened me with his pistol and tightly closed my mouth with his hand, and after that I couldn't do anything, and he raped me."<sup>6</sup>

After his initial shock and disbelief, the prison attorney arranged for Nafisa to make a statement in front of all the detention center staff, and then, in front of a judge. The senior official was subsequently taken into custody. At the primary court, he bribed the judge with a sum of around US\$20,000 and was acquitted. It was at this point that I first heard about the case, through the lawyer who had just been assigned to defend Nafisa during the appeal for the charges of running away. At that point, the first trial of the senior official had concluded, but Nafisa was still being held in the juvenile center in the provincial capital, the location where she had been raped. Her lawyer and human rights officials were trying to get her transferred to Kabul, amid speculation that she would be released and killed through collaboration between the senior official and her family. The United Nation's human rights section and the Afghan International Human Rights Commission (AIHRC) had also become involved. Since the case was sensitive and the

girl's life appeared to be at risk, these organizations decided to involve themselves in a discreet manner and to not make public statements about the case. The United Nations would contact the Supreme Court about the release of the official, and the AIHRC would press the Ministry of Justice, which had jurisdiction over detention centers, to transfer Nafisa to Kabul. The lawyer, as he explained the case to me, spoke of his frustration with the lack of progress about these things, but a month later, Nafisa had been moved to the juvenile center in Kabul, and the official was under arrest again, awaiting trial in the provincial court of appeals. After a few months, he was sentenced to twenty years in jail, the absolute maximum sentence. The prosecution had based their case on article 17 of the EVAW law and articles from the Penal Code on the misuse of office.<sup>7</sup>

A few months after this, I had negotiated the permits required to visit the juvenile detention center in Kabul,<sup>8</sup> where Nafisa was serving her seven-year sentence. I glimpsed her at the end of the long corridor, heavily pregnant. She looked at me from a distance, hesitated, and then turned back. The guards told me she did not want to speak to anyone. Four other girls volunteered to share their stories of how they ended up at the center. They were mostly around fourteen or fifteen years old, and their accounts were similar to Nafisa's. All four girls I spoke to in depth had fled unwanted marriages or engagements, either to older men or to their cousins. I sat with them one by one in the corner of a brightly decorated and surprisingly pleasant common room. They talked hurriedly, as if worried that time would not permit them to tell their whole story. One, when engaged to a man in his forties, had left home and had been taken in by an elderly woman. "At first," the girl said, "the woman treated me like a daughter, but soon she attempted to force me to sleep with a man for money." The girl tried to escape back to her parent's house, but the police picked her up and took her to prison. She had been detained for five months and thought she would go to court for the first time the next week. Meanwhile, her uncle had visited her and promised that if she returned to her family, she could marry a man of her choice. Another of the girls I spoke with had been engaged to her cousin in childhood but had run away with another young man right after her engagement party. They arrived late to the city of Mazar-e Sharif and decided to spend the night outside a shop. However, the shopkeeper discovered them and called the police. At first, she was put in a shelter, but when her father told the police she had a fiancé and had run away, she was sent to the detention center. The courts had decided that she should spend a year in the juvenile prison. After that, however, she would be free to marry whomever she wanted. Her eyes brightened as she spoke of her boyfriend, who was also in prison. She whispered about how much she loved him and hoped to marry him when they were both released.

The girls also said that Nafisa was always fighting with the staff, who thought her insubordinate and difficult. It could well be that this was the reason we were unable to meet. At this time—inexplicably, to the human rights officials who had

been following her case—Nafisa had been assigned a new lawyer from a different legal aid organization. The new lawyer appeared to take little interest in her case and was impossible to track down for an interview. He was thought to be less committed to Nafisa's case than to the money that came with it.<sup>9</sup> But even if Nafisa could have her sentence overturned or reduced, her life was in ruins, and her most likely prospect for the foreseeable future was to live in a shelter.

Still, what had happened affected everyone involved. None of the families recovered its standing. Amin's family, afraid of revenge from both Nafisa's family and her fiancé's family, moved back to their province of origin. For Nafisa's family, the shame was the worst, and they eventually moved to another province in a different part of the country. This was not surprising to people who had followed the case. "People will shame [*phivar*] this family; they will say 'you are a family who cannot control or protect your women,'" said one.<sup>10</sup> The fiancé and his family did not emerge unscathed either. Although friends and neighbors tried to console them, the family still felt that their standing had been severely damaged. "After a few days, people came to us and said that the shame [*sharm*] is related to her father. 'You do not need to be upset. . . . She escaped from his house and not yours.' . . . But we don't have any kind of relationship with this family anymore. People and the tribe [*quam*] are blaming us, [saying] that we allowed this to happen. Because of this incident, we have lost our honor [*izzat*] in the community."<sup>11</sup>

The fiancé was no doubt aware that he was an object of mockery in the area. People spoke of how Nafisa had used the cell phone he had bought her to make contact with Amin and how it was the day after one of his overnight visits that she had run away.

The *jirga* proceedings were criticized from several quarters. Local *jirga* "experts," men who were reputed to be particularly knowledgeable about the traditions and rules of resolving conflicts, were dismissive of the way that the people involved had conducted themselves. They argued that the people in the *jirga* had been ignorant of real Pashtun traditions. They had completely failed to deal with the two people who had escaped. It would have been more appropriate for Amin's family to give a girl in compensation for Nafisa. Moreover, the two elopers should have been found, and the fiancé's family should have had the option of forgiving them or killing them.

"Oh, it was not a good and proper *jirga*, especially because Ajmal [Nafisa's father] was not a powerful man. The subtribe that this man belongs to is one of the weakest subtribes. And his subtribe did not support him in this case. If he was capable, if he understood how *jirgas* worked, he would not have accepted [the demand] to give another daughter to this man. This is how he should have formulated himself: 'My daughter was not only engaged, she has had a *nikah*. She was your wife, so the problem is not mine. If you want to kill them, it's up to you.'"<sup>12</sup>



This would have launched a challenge to the fiancé to admit “ownership” over Nafisa, an ownership that would have implied that he alone was responsible for rectifying the situation and thereby vindicating his own reputation. Another *jirga* expert concurred, saying that in this case, the best solution would have been to kill the eloping couple. But, he contended, the people on the *jirga* did not follow this principle, because they did not actually seek to restore the rights of the people who had been wronged. He concluded that, since the people on the *jirga* were weak, they instead sought to make peace between the two parties. He also blamed Amin for what happened with Nafisa after she was arrested: “What happened was very shameful, but [it is] connected to what had happened earlier. The boy has to be blamed for both. If he had known about Pashtun traditions, he would not have accepted [the demand] to give the girl to the government. He should have escaped to an area where there was no government presence, where he could have asked for protection. What he did [is that] he turned a Pashtun girl over to the government.”<sup>13</sup>

A government official also disputed the *jirga*, but as he was a trained religious scholar, his objections were based on religious grounds. He argued that the girl, a married woman, should have been stoned, and the boy should have been punished. The problem with the *jirga* was that neither of the guilty parties (the elopers) were punished and, moreover, that an innocent person (the sister given in *baad*) was penalized in their place. He said that Nafisa had made many mistakes. If she had disagreed with the engagement, she should have gone to the authorities to complain, not run away in secrecy with a man and without telling anyone.

In fact, however, elopement was often the only attractive option open to girls who found themselves in a situation like Nafisa’s—married or engaged against their will. If they chose to go to the authorities, there was a good chance that they would just be sent back home—and that was if they were not intercepted and detained by the police even before reaching a government office. Leaving with a man offered them protection along the way. A couple was less likely to arouse suspicion than a young woman traveling on her own. It also promised a future, since single women without family support were often condemned to a life in a shelter or an unfavorable marriage arranged as a last resort. Ironically, then, constraints were stacked against them in such a way that young women saw embarking upon an affair as their only option—the most grievous transgression in the view of their communities and the government. The directive from the Supreme Court, prohibiting women from leaving their homes in the company of non-*mahram* men (see chapter 4), in effect often closed off the option of appealing to the authorities to escape abusive situations and coerced marital unions.

Unlike the others who commented on Nafisa’s case, the religious scholar faulted Nafisa for what had happened in the juvenile detention center, arguing that the senior official had offered her a bargain for her freedom in return for sex. He stated

that she had “agreed to this intercourse, without regard for laws or traditions,” and only when the official had failed to fulfill his promise did she make accusations of rape. On the other hand, many government employees pointed out that Nafisa should not have been the only female staying in the juvenile center. A few people argued that the chief of the Department of Women’s Affairs (DOWA) in the province was to blame for this. One female official from the province stated: “In our environment, a mother is responsible for her daughter, to keep her safe and to control her. When a woman has a legal case, DOWA is responsible for her. But the head of DOWA [in Nafisa’s province] has her own issues, and there is no activity of DOWA in this case. Look, both the boy and the girl are in prison, and nobody has helped the girl.”<sup>14</sup>

The former head of DOWA in Nafisa’s province said that when she held this office, she would bring women in difficult situations to her home:

There was a girl from an insecure district who came to the governor’s office, and she was referred to me so that I could find a solution. Her problem was that she had no brother, and she was in a land dispute with her cousin. I brought her to stay in my house. People from [her district] were coming to me and threatening me. I said, “I don’t have any special interest in this case. I have no young son, and my husband is very old. I am just solving her problem.” . . . She was in my house for several days, and then there was a meeting of elders, who decided that she could marry anyone she wanted and that nobody had the right to deny her this. Many proposers came forward, and she chose an MP. Now she is living with great honor in her husband’s house.<sup>15</sup>

But the present head of DOWA protested that she had security problems and had repeatedly asked for a women’s shelter to be built in the province. She could not take anyone in to live in her own house because of threats and insecurity. In other provinces, shelters sometimes served a dual function; the police would place women they had arrested in a shelter when there was no special women’s section in the prison or detention center or when there were no other women detainees. This comment by the head of DOWA shows that the distinction between protective spaces and places of detention was blurred and reinforced the notion that women fleeing violence or abuse were criminals. However, the suggestion that the head of DOWA should, by virtue of her personal and political abilities and connections, serve as a protector of women, was an accurate reflection of how the office was functioning in most provinces. When the head of DOWA was a forceful personality with a political and family background enabling her to withstand pressure, the office could be an important ally to women who were in disputes with their families. In provinces where the DOWA chief lacked political clout or took less personal interest in these matters, the local DOWA office was of little help and sometimes even assisted families in pressing their claim over women. The latter

was the case in the province of Parwan, where, as related below, DOWA was one actor in a series of events eventually leading to the death of Fereshta, who had fled a forced marriage with her cousin.

### THE KILLING OF FERESHSTA

Fereshta, from a village in Parwan near the provincial capital Charikar, north of Kabul, had been engaged to her paternal uncle's son in childhood, and Fereshta's brother to her fiancé's sister. When Fereshta's father was martyred during the jihad, her mother married her late husband's brother, and the family moved into his household. As she grew older, Fereshta began to dislike the idea of marrying her cousin, with whom she was now living in the same house. Many who spoke about her case later on suggested that it had been unseemly to expect her to marry a boy she had grown up with; she now looked at him like a brother. Perhaps there was also a looming conflict within the family; the engagement between Fereshta's brother and the sister of Fereshta's fiancé had already been broken, and the girl had married her maternal cousin instead. Whatever the case, when Fereshta turned twenty, she was told in no uncertain terms by her stepfather and uncle that her engagement would not be broken and that she would marry her cousin, whether she wanted to or not.

When she started to protest her impeding marriage, she was beaten, and her wedding eventually proceeded against her will. Fereshta's mother, her striking features painted with grief, later spoke bitterly to me of how her daughter's wedding had been a cheap, rushed affair. The cousin, who was illiterate, was widely thought of as an unworthy match for the attractive and articulate Fereshta, who had completed nine years of school. On the evening of the *nikah*, Fereshta was given a sedative, and the marriage was consummated while the bride was unconscious. Her grandmother, who played a pivotal role in the attempts to make Fereshta submit to the match, reportedly told Fereshta when she regained her senses that she was no longer a virgin and that she therefore had no choice but to stay in the marriage.

But Fereshta rebelled. Some forty days after her wedding, she left the house and headed south to Kabul. She traveled with her neighbor and boyfriend, but once in Kabul, she went to a shelter run by Women for Afghan Women. The shelter took her in and started to look at the possibility of invalidating her marriage or getting her a divorce. Meanwhile, Fereshta's grandmother appeared in the Kabul offices of the Afghan Independent Human Rights Commission, presenting a formal letter issued by DOWA in Parwan. The official who received the grandmother later told me, "The letter introduced the grandmother of Fereshta saying, . . . 'Fereshta has run away, but she is married. Please offer her your assistance so that she can find her granddaughter and take her back to Parwan.'"<sup>16</sup>

Attempting to strengthen her story, the grandmother explained to the officer at AIHRC that Fereshta was not only married but also pregnant, and being young and innocent, she had been tricked by another man, with whom she had escaped. The officer decided to call the various shelters in Kabul, and once she found out which one Fereshta was at, she asked her to come to the AIHRC office, where her grandmother was waiting. When Fereshta arrived and saw her grandmother, she immediately started to shout at her, saying how she had been forced to marry her cousin despite declaring that she had not wanted to. The AIHRC staff decided that the case was more complicated than the grandmother had led them to believe, so they asked the grandmother to return to Parwan and let Fereshta go back to the shelter.

A few days later, however, when Fereshta had been hospitalized for an appendix operation, the police arrived. How the police knew that Fereshta was at the hospital was never clearly established. It was speculated that someone in DOWA or at the hospital had tipped off the family, who had mobilized the police to arrest her. On the basis that Fereshta was married and had run away, the police arrested her and took her to the juvenile prison in Parwan, the scene of the alleged crime. The prosecution put together a case whereby Fereshta was charged for running away while being married, with reference to article 130 of the Constitution, which grants judges permission to apply sharia in cases in which no other laws applied (see chapter 4).

Fereshta's grandmother, uncle, and self-declared husband appeared in court, now accusing her also of having aborted a child. Rather than having her imprisoned, they wanted her returned to them. Fereshta's defense lawyer, impressed by the way she was able to present her case, supported her by arguing that the marriage had been invalid and that there was no evidence of Fereshta having committed *zina*. The judge proceeding over the case agreed and ruled that Fereshta should be released. She had been punished enough, and there had been no proof of adultery. She was alone when she came to the shelter, and she was alone when she came to court, the judge later stated to me. He had felt no need to probe the matter further. He also regarded the marriage as having been forced (though there were no attempts to incriminate anyone for this) and recalled how Fereshta, "wise and beautiful," had been unjustly paired with an illiterate husband.

Having been acquitted both in the primary court and the appeal court,<sup>17</sup> Fereshta moved from the detention center into the shelter in Parwan. Shortly afterward, a "reconciliation agreement" was brokered with the help of DOWA and the local shelter. Such agreements were commonly used throughout the country in cases in which a woman had fled her family. Arranged by shelters, AIHRC, the police, or the courts, family members would normally sign a letter guaranteeing a woman's safety, and she would move back into the house she had escaped from or would live with other relatives. In Fereshta's case, she went to live with her maternal uncle

in a household different from that of her mother, uncle, and husband, and this maternal uncle acted as the guarantor of her life.

A few days later, however, this uncle invited Fereshta for what she thought was a reconciliation meeting with her husband's family. Perhaps hoping that this was an occasion to settle matters with her extended family, she went. After the food had been served, when it was getting dark, Fereshta declared her intention to return home to her maternal uncle's house. Defying her grandmother's and other relatives' protestations, she made her way out of the compound, but as she reached the gate, she was killed by two shots from a single-barreled shotgun. The police, alerted by neighbors hearing the shots, arrived promptly at the scene. There they found Fereshta's body and most of the family members, whom they arrested. Her husband and her father-in-law were not among them, having fled immediately after the murder. Nor was Fereshta's mother, who had been sent away days before the dinner party.

In the trial that followed, an elderly and frail relative of Fereshta—her grandmother's brother—figured as the perpetrator. He had voluntarily confessed to the murder, although Fereshta's mother and others claimed that the main culprits had been the husband, his father, and the grandmother and said that the old man was put forward as the scapegoat. His age meant that he was expendable as a breadwinner and that he was unlikely to be executed. To further mitigate the charges against her elderly brother, Fereshta's grandmother showed a video in court. It was of a woman dancing lecherously and appearing drunk. In a bid to portray Fereshta as a woman of loose morals and therefore make her murder less of an offense, relatives claimed that this girl on the video was her, something that was refuted by witnesses called in by the court. This and other attempts to justify the murder failed to convince the judge. The elderly granduncle was sentenced to sixteen years in prison for Fereshta's murder, within the maximum range of sentencing, although it was not the sentence that Fereshta's mother, now estranged from the rest of the family, told me she had wanted. As she publically declared following the verdict: "This horrible man had no right to kill my daughter. The government must avenge my daughter's blood by sentencing this man to death."<sup>18</sup>

#### A STONING IN KUNDUZ

On August 15 of the same year, a crowd of around two hundred men gathered near the bazaar of Mulla Quli, a small settlement in the Dasht-e Archi district of Kunduz. They were assembled for the stoning of Siddiqa and Abdul Qayam, who had confessed to the act of adultery. Sometime later, a cell phone video emerged, showing in gruesome detail what had happened that day.<sup>19</sup> Before the crowd, a Taliban mullah declares in Pashto: "When a married woman commits adultery, she will be struck by stones—this is called *sangsar* in Arabic. The women you see here today

committed adultery with this man. She has admitted this herself not once, but many times. . . . Islamic law will be enforced here in Kunduz, by the grace of God. They will both be punished, these two people.”

Siddiqā, who has been placed waist-deep in a hole in the ground, is then struck by stones thrown by the crowd. Her blue *chadari* gradually stains with blood until a large rock hits her head, and she slumps over. Subsequently, Qayam, a tall young man dressed in a fresh, white *shalwar kameez*, is brought before the crowd. He is blindfolded, and as he crouches on the ground, a rain of stones hits him. Eventually he collapses facedown on the ground, barely visible through the dust whipped into the air as the stones continue to strike him.

News about the stoning in Kunduz broke almost immediately and shocked much of the country. But Dasht-e Archi, along with other districts in Kunduz, had fallen to the Taliban, and beyond condemning the stoning, there was little the government could do. Like Nafisa and Fereshta, nineteen-year-old Siddiqā had faced a marriage against her will, although in her case, it had not yet been consummated. Siddiqā had appealed to Qayam, a married driver whom she knew through her brother, to escape with her. Together they eloped to relatives in Kunar Province. But their bliss proved short-lived. Hearing the news of their escape, a large number of men from Siddiqā’s family, an influential and rich tribe, surrounded Qayam’s family home, threatening to attack the house and kidnap its women, unless Siddiqā was returned to them. Qayam’s family consequently convinced the couple to return, and over the phone, the former *woleswal* (district governor) guaranteed their safety. Qayam’s relatives immediately set out to broker a deal that would settle the matter with Siddiqā’s family, who had been greatly affronted by the elopement. A settlement involving a substantial amount of money and another girl from Qayam’s family was agreed upon, and frantic efforts to collect the money ensued. Meanwhile, the couple found themselves turned over to the custody of the local Taliban. They confessed to adultery, perhaps thinking that their resolve would lead their community to accept the match, but instead they were sentenced to death by stoning by a committee of Taliban ulema. With Qayam’s family still scrambling for the last *afghanis* to settle the case, Siddiqā and Qayam were stoned and killed by a large group of villagers and the Taliban, with no protests from Siddiqā’s family. When the horrific images filmed by someone in the crowd emerged a few months later, it led to renewed calls for government action. However, the government never managed to fully reestablish control over Dasht-e Archi, and years later, no arrest had been made.

#### THE VIOLATIONS THAT MATTERED

The three sets of events in this chapter all became issues of governance. They involved attempts at dispute resolution, punishment, or redress through fora and

mechanisms outside of the immediate family, even if the institutions that dealt with the incidents were of a very different nature. Fereshta's family mobilized DOWA, AIHRC, the police, and the courts in their attempts to retrieve Fereshta. They claimed that she was a married woman, implying that the government therefore had an obligation to return her to them. Fereshta, on the other hand, retorted to state officials that her family had been wrong in forcing her to wed her cousin and that her marriage was invalid. The elopement of Nafisa and Amin became a state matter at the point when they were arrested by the police in Jalalabad, a routine government action on suspicion of elopement. But to Nafisa's family, the government did not appear as an ally, but rather as an irrelevant or alien institution, and perhaps out of reach. Once official bodies had detained their daughter, they made no attempt to contact her or follow her case in any way, and neither did Nafisa's in-laws. Instead, the central violation that preoccupied those in Nafisa's home area was the failure of her family to deliver their part of the engagement agreement between the two families when Nafisa ran away with Amin. However, the forum through which this conflict was settled was also public, even if informal and outside government scrutiny.

The stoning in Kunduz did not involve the Afghan state in any significant way. Instead, a group of Taliban insurgents who had recently taken over the district were the main governing force intervening in the case. From a distance, the stoning looked like a brutal, top-down imposition of Taliban justice on a community that was already in the process of sorting out the dispute in a more conciliatory way. Qayam and Siddiqah had been stoned for *zina* following the intervention of the Taliban, who had insisted on applying sharia justice despite the fact that negotiations over a settlement between Qayam's and Siddiqah's families were still ongoing. As such, the episode could be understood as a classic example of contestations over legitimate authority, not unlike a case from the 1980s described by Edwards (2002), in which a Safi woman was stoned to death for adultery by mujahedin commanders contrary to the wishes and sentiments of her tribe.<sup>20</sup> But, as I will show below, it quickly became evident that the conflict dynamic in Kunduz was more ambiguous than a matter of mullahs and their brutally rigid religious dogma imposing themselves over tribal authority, which is how Edwards reports that the local community perceived the Safi stoning. Notably, in Kunduz, the family of Siddiqah voiced no protests over the execution of their daughter.

Despite the three cases being subject to interventions from different kinds of institutions, all of them featured the loss or infringement of family sovereignty over female sexuality as a central offense. In Fereshta's case, her family, led by her grandmother, went to government agencies asking them to return her to them. Fereshta's departure was framed as an illegitimate act of escape in which the government had an obligation to restore the runaway. The subsequent dynamics leading to Fereshta's arrest and return to Parwan was difficult to pin down, given the



tragic outcome. Widely considered an unjust killing, it was not surprising that the various people involved tried to dissociate themselves from the events preceding it—and certainly from the act of sending Fereshta back to her family. In particular, the head of DOWA, a woman in her late twenties, who had later brokered the guarantee with the maternal uncle with whom Fereshta was to live, was extremely reluctant to talk about the case. She repeatedly cancelled our meetings, usually saying she had to go to a workshop at the last minute. This is also what she had said one day when I showed up at her office to speak to her assistant and found her at her desk. She then unenthusiastically agreed to an interview, in which she claimed to remember nothing about the case.

Nevertheless, it seems that the first port of call for the family following Fereshta's escape had been DOWA, who then evidently equipped Fereshta's grandmother with the letter that asked for the authorities' cooperation in retrieving her grandchild. The family, having discovered Fereshta's whereabouts due to the intervention of AIHRC, then got the police in Parwan to send a request to the police commander of the Kabul central zone to find her and bring her back to Parwan. Up to this point, the government had recognized the family's claims on Fereshta by acting on their demand to bring her back to Parwan, but the events that followed showed that the state was an ambiguous guarantor of family claims over women. In the last phase of her life, government institutions sided with Fereshta. She was released from prison, and the court did not recognize the family's absolute power over her. Finally, when she was killed, the court sentenced her granduncle to sixteen years in prison for her murder.

In the other two cases—Siddiq's stoning in Kunduz and Nafisa's elopement—there were no calls on the government to assist the families in maintaining authority over female relatives. There were several reasons for this. The district of Dasht-e Archi in Kunduz was outside government control, as illustrated by the government's inability to arrest anyone later on, despite the outrage that the stoning had produced. Nafisa's family, by contrast, was living in an area with greater government presence, but they were poor and probably unable to call on the government to retrieve Nafisa and return her to them in the way the much-better-connected family of Fereshta had done. Nevertheless, the offense against kinship prerogatives over female sexuality figured as the central violation in these two episodes too.

The case in Kunduz appeared, at first, to be framed as a different kind of violation: Abdul Qayam and Siddiq were punished for the offense of *zina*, a crime against God. (The act of stoning, in turn, was what was considered as the main violation in Afghan and international media). But upon closer examination of the events surrounding the stoning, a more ambiguous picture emerges, a picture in which the family's sovereign rights over their daughter also played a part. Once it was clear that Siddiq had eloped with Qayam, two hundred men of her Turkmen tribe surrounded his house, threatening to enter it and take away the women



inside unless Siddiqā was returned. In their view, by eloping with Siddiqā, Abdul Qayam had stolen a woman from her family and tribe, thereby launching a direct attack on their standing in the community.

And a lot was at stake. Siddiqā's grandfather had been Mulla Quli, the name-sake of the village itself. For such an important family to be seen as unable to keep their women under their protection and control, to appear vulnerable to unauthorized access, might have been nothing less than intolerable. Later on, when Taliban started to investigate the case, it was articulated in a different way, as the crime of *zina*, a crime against God, rather than an offence against Siddiqā's family. But the latter's agenda proved not entirely different from that of the Taliban.<sup>21</sup> When Qayam and Siddiqā arrived back to Dasht-e Archi in Kunduz—begged to do so by Qayam's family, who were under siege by Siddiqā's tribesmen—Siddiqā's family refused to let her stay under the protection of the former *woleswal* (district governor), who had given the couple a guarantee that they would be safe if they returned. The former *woleswal* was from the same tribe as Qayam and was therefore not considered trustworthy by Siddiqā's father, who insisted that she and Qayam stay with a village mullah while negotiations between the families took place. It was this mullah, considered a Taliban sympathizer, who opened the door for the Taliban to start investigating the case. Nothing suggests, however, that Siddiqā's father opposed the intervention by the Taliban. A member of Qayam's family later claimed that Siddiqā's father had said, "I shall hand over my daughter to the Taliban and will ask them to do what religion orders," doubtlessly knowing that her execution might be the outcome.<sup>22</sup> The local researcher who carried out the data collection in Kunduz (I could not travel there, since the area was under Taliban control) opined that to Siddiqā's father, the preferable outcome was the couple's death: "I believe that in our culture, this [an elopement] is a very big shame. It is about the honor of the tribe. Even if ten girls had been offered as reparation, I believe he would do the same [not accept a reconciliation agreement with Qayam's family]."<sup>23</sup>

The events in Kunduz bring to the foreground how gender relations are forged out of contingent struggles and alliances. In terms of the end result, there appeared to be a convergence in how Siddiqā's father and the Taliban sought to solve the case. This concurrence between family assertions over women and the regulation of sexuality by public authorities is not unusual. Historically, Islamic (and other) legal traditions have often incorporated ideologies that place great emphasis on controlling female sexuality and protecting paternity. Yet, as previous chapters have shown, this is not a given, since the arrangements sanctioned in Islamic legal practice have varied over time and in different places, including how official bodies defined and enforced punishments for the crime of *zina*. Mir-Hosseini and Hamzić argue that in the early twentieth century, as Muslim countries modernized their legal systems, the application of classical Islamic law generally became

confined to family law. *Hadd* punishments, including stoning and lashing for *zina*, while rarely explicitly abolished, became legally obsolete (Mir-Hosseini and Hamzić 2010: 21). However, with the resurgence of Islamist political movements toward the end of twentieth century, many countries saw attempts to “re-Islamize” criminal law, particularly as new leaders, who often had come to power through military coups, sought to derive political legitimacy from a declared project to restore the Islamic credentials of society. In this manner, a return to classical *fiqh* in penal law was presented as a purification of society, returning it to a stage of “pure Islam,” prior to Western contamination.

For instance, in Pakistan, Zia ul-Haq promulgated the infamous Hudood Ordinances in 1979 after seizing power through a coup d'état. One of these, the Zina Ordinance, criminalized extramarital sex and instituted *hadd* punishments for those offenses under certain conditions (Lau 2007). It thus formed an important part of General Zia's declared purpose of taking power: the need to cleanse Pakistani society and make it more Islamic. But the divinely ordained regulation of sexuality, in turn, provided a vehicle for those who wanted to reinforce sovereign rights over daughters and wives. Khan finds that, in practice, the Zina laws in Pakistan became an instrument family members used against women who had married without their permission or otherwise defied the family's claim over their bodies (S. Khan, 2006). More generally, Mir-Hosseini and Hamzić suggest that the criminalization of women's sexuality enabled through the revival of *zina* laws “provided contemporary patriarchs with an efficient and novel means to further assert their control” (2009: 12).

By and large, a similar pattern can be identified in Afghanistan. As the legal system became codified and modernized, starting with the *nizam-namas* of Amanullah in the 1920s (see chapter 1), *hadd* punishments were assigned a largely symbolic place in criminal law. Although literature on this question is scarce, it seems it was rare for government courts to use stoning and lashing as punishments for *zina* in the twentieth century. Only with the emergence of the mujahedin and then the Taliban came the call for the revival of such “Islamic” punishments. Again, there is little data on the degree to which *hadd* was actually implemented during the Islamist governments of the 1990s, and there is certainly little knowledge about the extent to which families concurred with physical punishments for adultery when these were ordered by government officials with explicit reference to sharia. The stoning in Kunduz, however, illustrates a similar dynamic to the cases found in Pakistan: the congruence between familial and Islamic injunctions against female sexual autonomy, through an alliance in which patriarchal claims and an aspiring sovereign power—the Taliban insurgents—found common ground. Because even if Siddiq's family approved of it, there could be no doubt that the stoning was not just about the transgression of Qayam and Siddiq—it was also a strong political message that the Taliban was in charge in the area and that they were uncompromising in implementing Islamic tenets.

But this alliance of kinship with public power—through a public execution of an adulterous couple—had a fragile hold. The stoning horrified many Afghans. There were certainly several elements to this reaction. The fact that the stoning could take place, and the subsequent inability of the government to punish or even prosecute anyone for the act, had political implications. It showed the impotence of the Afghan state and the international coalition supporting it, and it starkly raised the specter of the reemergence of a Taliban-controlled Afghanistan. But there was also a strong reaction to what appeared, at least at a distance, as a brutal, impersonal imposition by a body outside the family, the village, and the local community. The killing of an adulterous daughter or wife (or one alleged to be so) by her family or husband was a fairly common occurrence in Afghanistan, but a public execution for adultery by a government body—in this case, rebels aspiring to state power—was not.

Yet paradoxically, even if the stoning in Kunduz generated strong reactions, few (if any) Afghans would publically denounce the *principle* of stoning adulterers. The protests against the Kunduz stoning were on procedural grounds. The investigations had been too quick, the stones thrown at Siddiq and Qayam had been too big, and the punishment had been carried out outside legal channels and by unauthorized actors. The reluctance to take a public stance against stoning *per se* testifies to the hegemonic position of classical *fiqh* in post-2001 Afghanistan. There was little political space to explicitly challenge the notion that the laws of Islam were immutable and that Afghanistan, as a Muslim country, had to uphold them. But even if it appeared politically impossible to repudiate stoning in principle, there were no significant calls for the government to stage public stonings or lashings of adulterers.<sup>24</sup>

Thus the Afghan government formally recognized state-implemented Islamic punishments for sexual transgressions, but in practice, it relegated to families much of the power to police sexuality in general and female sexuality in particular. A remarkable feature of government policy was how the moral regulation of women was subcontracted to families, given that women could commit a crime simply by inhabiting spaces outside familial supervision. In post-2001 Afghanistan, the mere sighting of a woman traveling without her family could, according to the Supreme Court directive, serve as a legal basis for arrest. In a sense, the Afghan government acted in a way that upheld a system in which no women could be “at large,” outside of family supervision, without valid reasons. As such, government complicity in facilitating family control over women was potentially even more significant than in Zina Ordinance-era Pakistan. In the latter, family members had to make an accusation of actual *zina* in order to have government institutions do their bidding (S. Khan, 2003).

At the same time, the government was far from coherent when it came to reinforcing family authority over women. Rather than a singular government policy,

what emerges from the three cases is an extremely fluid and contested field. In the case of Fereshta, the government paid only partial heed to the family. Against their wishes, the court refused to find Fereshta guilty of any offense, and it did not agree to send her back to her family, at least not directly. Instead, it was broader societal constraints that made Fereshta go to live with her family—the standard assumption by certain shelters and government officials was that women should be returned to live with their families if at all possible. And when Fereshta was murdered for having refused to submit to her family's wishes, the government promptly intervened to punish what was largely seen in her province of Parwan as a case of a family having overstepped their prerogatives and conducting an illegitimate killing. Although many felt that the sentencing of only one family member for the deed was insufficient, since the murder appeared to have been a collective undertaking, the court verdict at least signaled that family claims over their women were far from absolute. Allegations that Fereshta had an immoral nature resurfaced in the trial, presumably to make her murder seem more justified. But the judge rejected this line of argument and sentenced the designated murderer to sixteen years in prison, which must be considered a clear statement that the killing of Fereshta had been a serious offence.

If the murder of women at the hands of their families was, in most instances, a clear transgression, forced marriage was not treated as a clear offense. Instead, legal practice and public discourse tended to treat it as a regrettable tradition. The EVAW law had made forced marriage, whether of an adult woman or underage girl a crime punishable by up to two years in prison. Before that, the 1976 Penal Code also stated that marrying an adult woman against her will was to be punished with a short-term prison sentence. But forced marriage appeared only marginally as a violation in the three cases discussed here. All of them contained instances, sometimes several, of marital unions that were coerced, yet there were no attempts to prosecute or punish anyone for this. If anything, forced marriage appeared as an unhealthy tradition, not as a punishable transgression. This was even the case regarding Fereshta, who was from Parwan, the most liberal of the three provinces. In Parwan, the fate of Fereshta was widely reported as a warning of the risks of forcing a daughter to marry someone against her will. Fereshta's family was cast as ignorant of the principles of Islam, which prohibits forced marriage (*estevaj-e ikhbari*).<sup>25</sup> Talking about the case on radio, the chief prosecutor in the province reasoned that it was this ignorance and the failure to adhere to the rules of Islam that was to blame for the family arranging the marriage against Fereshta's will, which, in turn, led to the dispute and eventually to Fereshta's death. Similarly, Afghan legal experts speaking in the media about the case blamed the lack of legal awareness and called for workshops, especially in remote districts, to facilitate understanding that could prevent other women from becoming victims in the same way.<sup>26</sup> Local mullahs also referred to the case as an example of how forced marriage was reprehensible.

Thus, even if the EVAW law was in force by the time of Fereshta's marriage, there was no suggestion of prosecuting Fereshta's family for forced marriage. Nor was this a possibility in the other two cases. This fitted an overall pattern in Afghanistan—any conflict that occurred because of a forced marriage was typically pursued, if at all, through the family courts, where requests for a divorce or an invalidation of the marriage were heard. Forced marriage was generally treated as an issue of civil law, not one involving a criminal act. The only case of criminal prosecution for forced marriage that I encountered in this period was from Herat Province—a father was accused of “selling” his four underage daughters to finance his drug addiction. AIHRC staff in Herat told me that they had come across this case and alerted the authorities, who had arrested the father and started to prosecute the case. The head of the commission's Herat office, echoing conservative MPs in Parliament, stated that the marriage of these four girls had been contrary to Islam: “So according to Islam, when a daughter has not reached the age of majority [puberty], there are two requirements if her father is to arrange her marriage. There must be no objective of making money, and the father has to exercise kindness. He has the right to give away his daughter, but only if it is with kindness. In this case, the father did not show kindness. And he was a drug addict, so he was selling his daughters.”<sup>27</sup>

The question of financial motivation marked a fault line in the discourse on forced marriage. Marrying daughters off for overt financial profit amounted to a greater offence than simply marrying them off against their will. The latter was sometimes considered within the rightful prerogatives of fathers, who were purported to decide in the best interest of the girl. Indeed, during the debates over the EVAW law in Parliament, it was argued that fathers should have the right to marry off underage girls, even if the girls did not agree to the marriage. As described in chapter 2, in the revision of the law agreed upon by the parliamentary Joint Commission, fathers were exempted from punishment for forced marriage. Marrying off a daughter purely for pecuniary gain, on the other hand, was denounced as a crude and self-interested act. The distinction carried an obvious class dimension, underlining the link between “honor” and status. Selling a daughter without any pretense was an act reserved for the destitute, something that those better positioned could afford to avoid.<sup>28</sup>

In the aftermath of both Nafisa's and Siddiq'a's elopements, *baad* (or the prospect of *baad*) featured as a means of reparation, even though it was widely acknowledged that *baad* was not consonant with state law or Islamic law. In fact, since the time of Amir Abdul Rahman Khan, central governments had tried to eradicate the practice by explicitly outlawing it. Even the Taliban government had, in a short decree on women's rights, made it an offense.<sup>29</sup> Both the Penal Code of 1976 and the EVAW law made *baad* a separate crime with stricter punishments than those for simple forced marriage. Yet while *baad* was not publically

condoned, it nevertheless surfaced as a standard “solution” to cases where women had been illegitimately appropriated. In the cases of Siddiqā’s and Nafisa’s elopements, *baad* was used as the immediate restitution of the rights of those who were deemed to have been wronged: the family who had lost a bride. This illustrates the way in which marriage practices, to a large extent, were understood as transactions between families. And in turn, this understanding of marriage shaped the ways in which gender violence was defined.

## CONCLUSIONS

The trajectories of the cases discussed in this chapter suggest that as cases of gender violence became public matters, they were predominantly articulated as violations of family and male “honor.” The gender relations that the Afghan government and other public institutions were called upon to sanction were often of a kind where kinship has recognized authority over women and, in particular, female sexuality. At the same time, public acknowledgment of these claims was by no means guaranteed, and individual cases often took the form of a tug of war, with highly unpredictable outcomes. The government might routinely arrest runaway women at the behest of their families, but it did not necessarily pay heed to family claims over women in court. What these micro-struggles over the definitions of gender violence and over the right (or obligation) to adjudicate and avenge these incidents tell us is that legal regimes are highly context specific. Although such regimes are cloaked in assertions of indisputable and unambiguous truth, they emerge out of temporal alliances and accommodations and are embedded in political relations. For instance, the case in Kunduz reminds us of the importance of Dina Siddiqi’s warning against “timeless, decontextualized Islam” that “does not bring into view the complex and historically specific ways in which national and international vectors of Islamization articulate with politically economy and rural structures of power” (Siddiqi 2011: 82). As the events surrounding the stoning suggested, local patriarchs might find an ally in military actors contending for territorial control, whereas to the latter, the spectacular and brutal public display of “Islamic justice” was part of an active project to demonstrate power. At the same time, religion could be invoked very differently, to limit the power of families and husbands over women by appealing to the need to eradicate harmful traditions contrary to Islam. Objections to forced marriages like Fereshta’s were also framed in this way. In other words, even if gender violence was often defined in ways that subordinated women to male guardians, this must be considered an active accomplishment that needed maintenance and reinforcement through the forging of new articulations and the upholding of old ones. As the discussion in previous chapters shows, the idea that the state should be obligated to reinforce families’ authority over women by apprehending runaway women as criminals

was contested and tenuous, having surfaced as part of the political projects of the Taliban and the mujahedin.

On the other hand, even if women were not returned to their families by the direct order of courts, legal and social practices nonetheless often combined to produce this effect anyway. As the case of Fereshta showed, there was a stigma linked to women traveling and living independently. This made it possible for authorities to arrest Fereshta at her family's request and later to broker an agreement to send her to live with her family. The problematization of female autonomy through both state and non-state mechanisms worked against these three women from the outset. To Nafisa and Siddiqa, the most obvious—and perhaps the only—option they could see was to escape with another man. They both lived in conservative, insecure provinces where it would have been difficult for them to travel unnoticed on their own. Siddiqa and Nafisa might both have been truly in love with the men they escaped with, but it is easy to imagine that, in general, when the only option to escape abuse is to elope with a man, women are extremely vulnerable to exploitation. Yet regardless of the women's situations, many authorities were unforgiving about the fact that the women had run away or committed *zina*. Neither in these nor in other cases did the authorities or the courts see their circumstances as mitigating factors.<sup>30</sup> As the local representative of AIHRC said about Siddiqa: "This girl was the granddaughter of Mulla Quli, yet she did not respect her grandfather's honor? Even if the Taliban was not right, she should have been punished in some way, by the courts."<sup>31</sup> Nafisa also met widespread condemnation, although one young justice official was more sympathetic: "I asked her if she had sexual intercourse with her fiancé, and she said 'Yes, one or two times. And two or three times with Amin.' Then she started to cry, and I realized she was just a child, and it was because of her age that she made those mistakes."<sup>32</sup> Through a combination of luck and strategy, Fereshta was able to stay clear of such pitfalls. Having gone straight to a shelter, admitting to no physical relations with her boyfriend, and being fortunate enough to have a committed lawyer and to encounter a sympathetic judge, she was released from prison.

The stories of these three women also provide an important additional indicator as to why the EVAW law was so sketchily implemented and why so many cases that should have led to criminal convictions (according to the law) instead resulted in mediated solutions or withdrawal. The social and official landscape was stacked against female autonomy, reinforcing the idea that only under exceptional circumstances could women be permitted to live outside of family settings, and if so, they were mostly confined to shelters. A woman living on her own remained generally unheard-of in Afghanistan and normally invited rumors of her being of "questionable character" to the extent that her safety could be at risk.<sup>33</sup> This left women with little bargaining power in cases of abuse, and it certainly discouraged them from pursuing claims against their families.