
Upholding Citizen Honor?

Rape in the Courts and Beyond

INTRODUCTION

Given the strong legal and social regulation of women's sexuality in Afghanistan, as well as how this issue has been tied up with social status and "honor," it is unsurprising that there has historically been a great reluctance to report cases of rape.¹ Women themselves would risk being ostracized by both family and society, and they could also be charged with *zina* or other moral crimes. To families, going to the authorities with a complaint of rape could signal weakness—an admission that the family was incapable of settling its own affairs. The successful regulation of female sexuality has been considered a key locus of family and kinship power, to be jealously guarded against outside involvement. Extramarital sexual relations have been highly shameful for a woman and her family, often irrespective of the consent of the woman. Not only would her status as a wife or prospective wife be ruined or significantly diminished, but the public knowledge of such a crime would also severely taint a family's reputation—it would be seen as unable to protect (or police) its women.

Yet over period of a few years, Afghanistan witnessed a number of high-profile rape cases in which public mobilization for government intervention led to assertive state action. Around 2008, a number of families went on national television with demands that the government punish their daughters' rapists. Harrowing television clips showed the young girls and their families wailing and weeping, crosscut with footage of male family members calling for justice. The cases attracted considerable attention and support, and later, human rights workers and activists cited them when they campaigned for the EVAW law to contain strong provisions on rape. In the years that followed, popular mobilization took place

around several other cases of rape, protesting government indifference and forcing a response from the authorities. Perhaps the most compelling example was in late 2014: in Paghman, a suburb of Kabul, a group of women had been forced out of their vehicle, separated from their menfolk at gunpoint, and subjected to multiple rapes. Once the event became publically known, growing outrage quickly led to the arrest of a group of suspects. In unusually speedy trials, five of the suspects were sentenced to death by three courts (the primary court and two rounds of appeals), and then executed by hanging, all within a time frame of less than two months.

At first glance, it would appear that these cases signified a dramatic redrawing of relations of gender and governance in Afghanistan, a redrawing brought upon a reluctant government by mobilization from below. Two sets of shifts seemed to be involved in this redrawing. First, the cases signaled that there was popular demand for state protection of women against (some forms of) sexual violence, and that rape was no longer solely considered a private, shameful matter but instead a criminal violation against women. The prospect of such a shift, which essentially positioned women as rights holders vis-à-vis the state, was underlined by the fact that some of the victims in these cases appeared in public and spoke about how they had been assaulted and how they wanted their perpetrators punished. In other words, in their public appearances, they appeared as citizens who had been subjected to a crime. Second, the public demands for state intervention seemingly entailed a shift in relations of governance in the sense that the government was being invited into a new domain, one that had previously been largely delegated to families—the regulation of sexuality. The potential long-term implication of this was the constitution of rape as site of state power, subject to the interventions of law and bureaucracy.

In this chapter, I discuss a handful of these high-profile cases in order to assess the extent and exact nature of these shifts. I ask whether the new “openness” surrounding rape in Afghanistan meant a changed position for women, wherein rape meant a violation of their bodily integrity as opposed to an affront to their male relatives’ honor. I further ask whether we can gauge from these cases the contours of a stronger Afghan state. My answer to both questions is a qualified no.

“THE PRESIDENT IS SELLING PEOPLE’S HONOR”

In the spring of 2008, Sayed Noorullah of Sarepul Province started a public campaign to get the Afghan government to punish his niece’s rapists. His teenage niece, Bashira, had been tricked into a house and raped by two young men, one of them the son of Haji Payenda, a powerful former commander and currently an MP in the province. When attempting to report and pursue the case in Sarepul, Noorullah had been beaten and intimidated by local government officials. However, he

was not one to give up easily. He appeared on national media, demanding that the government take action. The threats continued. Upon the intervention of local human rights workers, the case was eventually moved to Kabul, where Noorullah again spoke on national television, cursing President Karzai, Parliamentary Speaker Qanooni, and other officials for failing to address the case:

I am the father² of a thirteen-year-old girl who was kidnapped and then raped by the son of Haji Payenda, a member of Parliament. . . . Several times, through Aryana Television and other media, the issue has been made known to all the government officials and even President Karzai. . . . All the ministers, all the Parliament members are aware of the incident and know everything. . . .

I have just one question for Mr. Karzai: For the sake of God, if this had happened to your daughter, what would you have done? Then would you have felt my feelings? Only two days ago, you sacked the attorney general,³ and since then, all the offices that I approach reject me by saying that even your attorney general has been fired. Today in the public health office, even the prosecutor who is dealing with my case tells me to go away and that now that the attorney general is no more in office, “no one is going to listen to your stories anymore.” Was there justice only in the attorney general? By sacking him, did his office, his laws, and everything also vanish? Is there no system anymore? Should we just abandon our case and mind our own business? Once again I am repeating it: if this would have happened to your daughter, Mr. Karzai, Qanooni, Chief Justice, and Attorney General, would you have tolerated it? Would you have just watched?

If we are traitors, if our case is unfair, and if our accusations are false, Mr. Karzai, if you have any *gheirat* [honor, courage], then please kill us and drive over us. If you don't have any *gheirat*, then may God's curse be upon you and your whole clan, whoever you are.⁴

Meanwhile, another family from the same area also went on television, and in a disturbing television clip, recounted how their young daughter had been raped by five government officials. The cases were becoming a major embarrassment for the president, who swiftly fired senior police officials in the province and summoned Noorullah for an audience, during which he promised to personally follow up the case. Eventually Payenda's son was sentenced to twenty years in jail at the primary court in Kabul. The case, however, was not over. As it was coming up for appeal in the courts, Noorullah reported continuing intimidation and interference, and he continued his media campaign. Eventually, senior parliamentarians and confidantes of the president brokered a deal. The families of the victim and the perpetrator were to reconcile. Declaring himself exhausted by the threats, and for the sake of his family's safety, Noorullah agreed. In return, he would get a *baad*, a girl given in compensation, who would marry his son; a guarantee on his life signed by the elderly Sighbatullah Mujadiddi, a friend of Karzai and the former leader of the Upper House of Parliament;⁵ and, according to rumors, a substantial

amount of money. In return for this, the families would be declared reconciled, and Noorullah would stop pursuing the case. In the two following appeals—in the secondary court and at the Supreme Court—to the surprise of human rights advocates and supporters who had involved themselves in the case, Noorullah was no longer present in court. The punishments were said to be reduced, and there were rumors that the son of MP Payenda went in and out of prison at his convenience. In Sarepul, Sayed Noorullah described himself as having been defeated: “We were fighting against injustice, and we lost.”⁶

The case in Sarepul was known all over the country. For some, the way that the family had spoken about the rape on national television was nothing less than shocking. Making such a violation public and openly appealing to the authorities for justice was a humiliating admission of weakness. Not only had the family been unable to prevent such an act—but also, in order to redress it, they evidently had no recourse other than to make public what should have remained private and to ask the government to act on their behalf. Yet in the media and in the accounts of the many human rights organizations and politicians who supported Sayed Noorullah, Bashira’s uncle, the way the family had chosen to make the rape public was described as a momentous development: “The girl is thirteen years old and she has been raped, and yet by Afghan standards she is one of the luckier ones. Her family has recognized her trauma and is trying to get her some sort of justice; in many families, she might be viewed as an object of shame and thrown out. The fact that her family members have chosen to stand by her, and that they even spoke out on Afghan national television last month, is an important change in how Afghans view the abuse of women” (Kargar 2008).

However, closer attention to the language used by Sayed Noorullah shows that the case was not framed exclusively as an offense against Bashira, who had suffered the rape, but also—if, indeed, not primarily—as an offense against Noorullah himself. For instance, when later recounting to me how he had been offered money to withdraw his complaint, he indignantly said: “We are Afghans. And in our custom, taking money in such cases is like selling your *namus*” (honor, those things belonging to a man which should be inviolable). The government and the president were denounced as associates to usurpers of people’s honor. They had allied with warlords and oppressors and, as a result, they were selling the *namus* of ordinary people. Noorullah recounted, with some embarrassment, how he had in anger hurled a great insult at the president even when called in for a personal audience, a meeting that had taken place following his denunciation of the country’s leaders on national television. After this rather strongly worded speech on television (“Mr. Karzai, . . . if you don’t have *gheirat*, then may God’s curse be upon you and your whole clan, whoever you are”), the president’s office had demanded that Noorullah be immediately brought in to speak to Hamid Karzai. There, the uncle continued to use strong language. The Taliban government might have been

brutal and unpopular, he had said, but they were not *be-namus* (without honor). They had not been selling people's honor.⁷

Another indicator that Bashira's rape was acted upon mainly as infringement on family honor was the fact that Noorullah had agreed to receive a *baad* from the family of the rapist, a young girl whom he married to his son. This he did even though he was well aware of the consternation with which giving and receiving *baad* was viewed among his backers in human rights circles. The brokers of the reconciliation between Noorullah and Payenda's family were senior government officials and political leaders who also would have been conscious that *baad* was frowned upon in official circles. They had, according to Noorullah, suggested that there should be no mention of the *baad* in the document that stipulated the settlement between the families and made a host of leading politicians who had signed the document the guarantors of the uncle's life in return for his future silence about the rape. Instead, the document merely contained a vague statement to the effect that the families had agreed to strengthen their relations. The *baad* nonetheless took place, although, as will be shown later in the chapter, the identity of the girl who was given in *baad* meant that it fell short of expectations.

REPORTING RAPE WITH UNCERTAIN AGENDAS

The rapes in Sarepul that took place around 2008 were among the first in a series of sexual violations that generated intense public attention in Afghanistan. One thing that all these cases had in common was that, although they featured victims who appeared in public, these appearances were under circumstances arranged—and sometimes even manipulated—by others. In general, instances in which women reported rape on their own initiative were extremely rare. One exception could be when women discovered that they were pregnant as a result of the rape, and the impossibility of life as the mother of a child of unknown paternity took precedence over the risks entailed in approaching the authorities with a rape charge. Lawyers also reported that they were able to gain acquittals for women arrested for *zina* or “attempted *zina*” when they were able to prove that the women had been raped or kidnapped (Boggio-Cosadia 2014). In these instances, the women were typically far away from their home areas when arrested, and authorities there made little attempt to indict anyone for the rape.

In most cases when a rape was reported or prosecuted, the families were strongly behind going the authorities. Yet sometimes the reasons for this support were very different from how it first appeared, as many of the cases in the specialized prosecution unit in Kabul (see chapter 3) suggested. Families might use rape charges as leverage to get the standard bride-price or a *baad* and then withdraw the complaint once such a settlement had been achieved. In some scenarios, women had eloped or engaged in sexual relations out of free will, but without family

sanction. Their relatives pressed rape charges in order to retrieve them, to obtain adequate compensation, or to repair their reputation.

Some cases showed with particular clarity how the intensity through which families or their supporters pursued rape claims did not center on the needs of the victims themselves. The public appearances of the women who had been raped could be unsettling, suggesting that they were pawns in other people's agendas. I received an early indication of this myself when I was researching the Sarepul rape cases in 2010. Having set up a meeting with the judge who had presided over one of the cases from the province, I received an unusually warm welcome. Some time into the conversation it became clear why. In came a young girl, looking around twelve, who was introduced to me as the judge's niece. The judge told me that his niece had been raped, but that the government had failed to arrest the perpetrators. Now, he wanted to help the girl by broadcasting her story on television. A television crew was expected at any moment. He suggested that I, as an "international expert on rape," should take part in the broadcast and offer some general comments on rape as a phenomenon. While waiting for the cameras to be set up, he said that I should interview the niece and "feel free to ask her any of [my] questions." Somewhat perplexed, I asked the girl if she wanted to sit with me in another room. I hesitantly asked her about what had happened to her, and she started to tell me a story of how she had been kidnapped from her home province in central Afghanistan and brought to Helmand, where a married man had kept her locked in a room and raped her several times. Soon she started to cry, and I decided to end the interview, feeling unsure about the setting and the girl's real ability to consent to being interviewed. As I prepared to leave, extracting myself from appearing on television, the girl was being placed before the television cameras.

I lost track of what happened to the girl or her legal case. When I called the judge again later, he was reluctant to speak, probably disappointed by my failure to involve myself in the case. But my memory of the girl lingered—the image of her in the room, unaccompanied but for the judge who claimed to be her uncle, being made to speak on camera to the group of male reporters and office staff, blinking as the sharp television lights hit her face. It seemed a strong hint that the new "openness" around rape in Afghanistan did not necessarily take into account the needs of the victims themselves.

The case of Lal Bibi, referred to in the introduction of this book, suggested likewise. Lal Bibi, an eighteen-year-old nomad woman from the province of Kunduz, came forward in Afghan and international media recounting how, in May 2012, she had been seized by armed men as revenge for her cousin's elopement with a woman of one of the kidnappers' family. Five days later, after suffering multiple sexual assaults, she was returned to her family. A large group of people from her extended family subsequently went to the provincial government to complain. The incident was quickly picked up by the media. Lal Bibi was shown crying and

anxious, with her family declaring to journalists that unless justice was done, they would have no option but to kill her. Women activists in Kabul threw their support behind the woman and her family, and a few months later, an open trial in the capital sentenced four men to sixteen years in prison for the kidnapping and abuse of Lal Bibi.

Like the Sarepul cases discussed above, the fact that Lal Bibi and her family came forward to report the case and spoke publically about the crime was regarded as a sign of progress. Yet the way the young girl was shown on television, obviously distressed, raised questions about whether such openness about the discussion of rape represented a wholly positive development for the women involved. In the trial, Lal Bibi was subjected to further trauma, as one of the accused attempted to use her appearance as an argument for his innocence: “Unveil her and see her face and tell me if she deserves to get married with anyone,” he stated in court (Sukhanyar and Rubin 2012). The case was also made part of the political campaign to end government support for informal militias, with the episode quickly presented as yet another case of abuse visited upon the Afghan people by the controversial Afghan Local Police (ALP). Established by the U.S. military, the ALP program involved establishing local police units, trained by U.S. Special Forces, who would serve as a first line of defense against Taliban insurgents. The program had been under heavy criticism since its inception, with opponents arguing that it was a short-term measure adding to the country’s problems with armed, semiformal groups. A few days after the kidnapping became known, President Karzai, who had been ambiguous about his support of the ALP all along—if not outright opposed to them—personally intervened in the controversy by announcing that the entire ALP unit of the accused rapist would be disarmed.

STRONGER STATES OR CAPTURED STATES?

In Lal Bibi’s case, and many others, it was activist and popular mobilization, rather than the regular workings of the justice system, that ensured that the perpetrators were punished. Analyzing how “weak” states deal with cases of rape, Roychowdhury (2016) suggests that they can be momentarily captured by both feminist and nonfeminist groups. She contrasts “strong” states such as the United States, where feminist movements against sexual violence might be co-opted by state officials using legal regulations as a mechanism for social control, with “weak” states (for example, India), which can be overwhelmed by popular groups—but in ways that may or may not entail progress from a feminist point of view. Roychowdhury’s notion of the law being occasionally overpowered by popular politics in weak states is an accurate description of the dynamics played out in high-profile rape cases in Afghanistan. These moments of popular politics might have espoused a concern for gender justice to one degree or another, but what they had in common was that

they did not represent the strengthening of the institutional power of the state. Rather, they were moments when the routine operation of law and legal institutions were set aside and were replaced by emergency measures or were taken over by local groups.

Perhaps the most spectacular example of this was the aftermath of the rapes in Paghman, a suburb of Kabul, referred to in the introduction of this chapter. In this case, relatives did not initiate any public calls for justice—indeed, they did not even report that the crimes had taken place. Instead, rumors began to circulate in social media and in the capital of a heinous incident in Paghman. I was in Kabul at the time, and I remember first hearing that six women had been taken from their car at gunpoint when an Afghan colleague told me about it as we were driving home from the city center. To both of us, the idea that something like this could take place only a half-hour drive from where we were defied belief. It brought to mind chilling stories of the civil war, when the capital collapsed into lawlessness.

By the time the rumors reached us, the incident was already a week old. On August 23, 2014, a group of family members had been stopped on their way back from a wedding party by armed men dressed as police officers, who had tied up the men and taken the women to a nearby orchard, where they had been stripped of their jewelry and raped repeatedly. The incident became known only when rumors spread from hospital where the women had been treated for their serious injuries. Growing public outrage that such an organized assault could take place on the highway right outside Kabul quickly led to the arrest of seven suspects. One week later, on the day of an announced demonstration in front of the Supreme Court—which activists said was guilty of arbitrarily releasing convicted rapists in the past—a two-hour trial took place. Five of the seven accused were sentenced to death, and the others to life imprisonment. The appeals proceeded at unusual speed. The five death sentences were confirmed both in the appeal court and in the Supreme Court and were signed by president Karzai on his last day in office, on September 24. The death sentences were carried out by hanging on October 8, during the first days of Ashraf Ghani's presidency.

The most vocal parts of civil society and the women's movement applauded the executions, seeing it as a sign that the government was taking a more resolute stand against rapists. But the diplomatic community in Kabul, as well as some local human rights advocates, protested that the trials had been far too swift. In addition, the government had been reluctant to disclose the details of the case, and in private, some people argued that this was because the assaults were part of personal vendetta between two feuding groups whose commanders had close ties to the government.⁸

The execution of rapists was unprecedented for post-2001 Afghanistan and was based on unclear legal foundations. Indeed, execution itself was relatively rare. Only thirty people had been executed during the thirteen years of Karzai's

presidency. The death sentences in the Paghman case were not based on the 1976 Penal Code, but on an obscure provision of Afghanistan's communist-era 1987 Law on Crimes against Internal and External Security, which makes banditry punishable by death (HRW 2014).

There were several other unusual features of these trials. The victims appeared to identify the suspects from a line-up consisting of no men other than the seven suspects, and this event was broadcast on national television, with the faces of the women clearly visible. However transformative or taboo breaking this might seem, critics argued that the government had staged the event only to repair its tarnished image, with little regard for the consequences to the women themselves (Samandary 2014). Likewise, some of the other features of the trials were also irregular and appeared to be designed to placate the protesters rather than to closely follow the law. The rape charges in the primary court had been based on the Penal Code and were formulated as *zina*. When activists protested that the prosecution and the courts should have been using the ERAW law, which included rape as a distinct offense, the prosecutor in the appeal court simply replaced the indictments so that they were based on the ERAW law, and the defendants were subsequently sentenced on this basis. But to introduce a new charge at the appeal level like this was contrary to Afghan law.⁹ In any case, President Karzai had given little impression of judicial independence and due process. Instead, he signaled to the women activists that he was ready to see to it that their demands would be accommodated. On the evening of the first trial, he held a televised meeting with the activists and declared his wish to see the perpetrators executed: "I request the honorable chief justice to give them the death sentence" (HRW 2014).

All in all, the novel publicity of rape cases in this period appeared to involve few radical challenges to predominant gender ideologies. The kind of cases that entered the public domain and generated popular demands for government intervention were all articulated within "stable categories of gender" (Kapur 2014). The assaulted women were beyond questioning in terms of their virtue. They were either young teenagers or had been kidnapped at gunpoint in front of witnesses. In some cases, the crimes were articulated as matters of male honor and status rather than as violations primarily against the women themselves. Nonetheless, within these limited parameters, the publicity generated by the cases produced results—with perpetrators in some of them receiving lengthy prison sentences or even the death sentence. Yet it would be difficult to argue that these individual cases indicated a strengthening of the institutional ability of the state to protect women from rape. Rather, government intervention in these cases was the result of popular politics overpowering legal institutions in the way that Roychowdhury (2016) points out. It was ad hoc and contingent on public pressure and sometimes involved the circumvention of legal procedures.

Moreover, the force of popular mobilization could also be made to serve more directly political agendas. The fact that sexual transgressions were understood as matters that infringed on male status and authority potentially made them factors in ongoing political contests. This was particularly pronounced in the Sarepul case, in which the rape of Bashira became embroiled in a power struggle between competing factions in the province. It took me some time to detect these dynamics. When starting to gather material on the case, I was constantly mindful of the need to proceed with caution, and only after many months did I actually travel to Sarepul. Human rights activists who were familiar with the Sarepul case had told me it was extremely complicated, with the government trying to pull all kinds of strings to protect MP Payenda, father of one of the men who had raped Bashira, from being compromised. As I consulted with various people along the way, I gained the impression that Bashira's family, having been intimidated into silence by local power holders and the government, could be at great risk if they talked to outsiders about it. The unrelated case of the unexplained murder of Dilawar, the husband of Sarah, who had been raped by a government-allied commander in another northern province (see introduction), was still less than a year old. I did not want to arrive in Sarepul and, by meeting Bashira's family—or even just by asking around about the case—attract the attention of the local authorities and put the family in danger. It seemed that the only responsible thing to do was not to go to Sarepul until I could be sure that the family was prepared to meet and discuss the case, and even then, to travel discreetly and not stay too long.

Thus, after a series of reassuring introductions, I went, making the three-and-a-half-hour journey from Mazar-e Sharif in a local taxi with my then-research assistant, Jawad, and without contacting many people in the provincial capital beforehand. I was somewhat surprised that when we met Bashira's uncle, Sayed Noorullah, he appeared upbeat and even delighted by the opportunity to talk about the case, even though (upon his suggestion) we were meeting in the provincial council's office for all to see. We sat together for many hours in one of the rooms as he told us about the events that had followed the rape of his niece. He spoke about the constant threats and harassment by government officials that he had experienced following his decision to make a complaint about the rape. Not only was he targeted, but so were his relatives. In the end, it was fear of losing family members, Noorullah explained, that made him decide to give up pursuing the rape charge through government courts and instead agree to a reconciliation with the rapist's family. As part of this settlement, in addition to the *baad*, Noorullah received a guarantee that his life would be safe on the condition that he would never talk about the case again. However, Noorullah contended that despite the promise, he had wanted to talk to me. I was a researcher, and he felt that it was important that what had happened to his family should be documented. His fight

against injustice and oppression should be recorded “so that future generations could learn from history.”

But there were certain cracks in this narrative, and as time passed, they were becoming increasingly difficult to ignore. I wondered why, if the case was as sensitive as Noorullah claimed, and his position in the province so precarious, he had suggested to meet us at a government office, where his contact with a foreigner would no doubt be detected and raise suspicions that he was breaking his vow not to pursue the case. Noorullah's acceptance of the *baad* from Payenda's family also sat uneasily with his story of fighting injustice. Even if he felt too threatened to continue pursuing the case in government courts and wished to have a guarantee of his safety, what was the need for accepting the *baad*, something that discredited him among his liberal supporters in Kabul?¹⁰ Could he not have settled for just the guarantee?

When I returned to Kabul, other fractures appeared. The judge who had presided over the rape case in the primary court in Kabul contradicted Noorullah's assertion that the sentence of Payenda's son had been decreased after an appeal. On the contrary, the twenty-year prison sentences for Payenda's son, his bodyguard, and their female abettor had been confirmed in the appeal court and again in the Supreme Court. Details of this had been published in an edition of the *Mizan Gazette*, a Supreme Court newsletter, of which I obtained a copy. If the government courts had applied the full force of the law, the local reconciliation and the *baad* made even less sense, as the justice Noorullah was calling for already appeared to have been served.

Eventually, through a series of conversations, an alternative version of the events following the rape of Bashira emerged. On important points, this version diverged from the way the case had become known to me through the media and the accounts of Noorullah and his backers. First, Bashira's family background was not quite as powerless and poor as had been implied. They hailed from a lineage claiming holy descent. Moreover, members of Bashira's family held important government positions in the province. It was partly through these positions that the family was able to gain access to the media and, doubtlessly, to mobilize some of their support among politicians and officials. Another dimension of the story, which had not featured in the national media coverage, in the calls for justice by human rights officials and activists, or in Noorullah's account was the ethnicized politics that quickly became part of the aftermath of the case.

In order to understand how Bashira's rape became enmeshed in Sarepul politics, it is necessary to relate some of the local history. Sarepul, like most parts of Afghanistan, has a recent history of frequently changing and contested control over territory, state institutions, and resources. Pashtun migrants had begun arriving in Sarepul in the late nineteenth century as part of a larger, government-supported Pashtun migration into northern Afghanistan. Backed by the central

state, the mainly nomadic Pashtuns seized land and lucrative government posts, establishing themselves as a dominant minority group in much of the province, where groups of Hazaras, Uzbeks, Aymaqs, and Arabs were also living (Tapper 1991).

The advent of war altered the ethnic balance in the area. As armed resistance formed against the communist government that seized power in Kabul in 1978, mujahedin and pro-government militia groups emerged, and in the north, these often proved a vehicle for non-Pashtun groups to assert themselves. Arabs, who were previously a marginal group of pastoralists claiming descent from the Arab tribes that had been part of the original Islamic conquest, gained a new position in the province through this route. Four brothers, among them Haji Payenda, rose to prominence as members of a local self-defense unit mobilized by the Najibullah government. The brothers served under Abdul Rashid Dostum, the Uzbek military strongman who was to emerge as a key regional power broker in the decades that followed. With Dostum, the Uzbeks in the northern region also strengthened their position. Dostum initially worked with Najibullah but increasingly acted in defiance to the Pashtun-dominated central government as he established a regional network consisting of both pro-government militias and mujahedin commanders and finally spectacularly defected from the government in 1992 (Giustozzi 2009). In the mountainous south of Sarepul, mainly Hazara groups formed armed resistance factions against the communists, and in yet other districts, Tajik-dominated mujahedin emerged. These groups generally aligned with national-level mujahedin parties. In a pattern seen elsewhere in Afghanistan, local rivalries were fed by support from national party formations, which, in turn, led to a fragmentation of the local political landscape alongside party and ethnic lines. The importance of these fault lines lessened under the Taliban government, although many areas in Sarepul remained completely controlled by the mujahedin. With the overthrow of the Taliban government in 2001, the factions rooted in the mujahedin and militia groups of the pre-Taliban period again became dominant actors in Sarepul politics. Dostum's network became the Junbesh party, an important political actor in Sarepul and in Afghanistan as a whole. In sum, the upheavals of the decades of conflict had created a fluid situation where previously enduring political and ethnic hierarchies were constantly up for renegotiation. The post-2001 period saw the new elites of the jihad era—and their broader, mostly ethnically defined constituencies—vying for control over government posts, land, and influence.

It was this factional competition, some of my informants argued, that had been the driving force in the dynamics of the aftermath of Bashira's rape. In a bid to weaken Haji Payenda and, by extension, Arab domination, two key groups involved themselves in the case and threw their support behind Bashira's family. One of these groups was the local Uzbek power holders belonging to the Junbesh party. Sometime earlier, Payenda had dropped his allegiance with Junbesh, the

Uzbek-dominated party headed by Dostum, who, in turn, was supporting President Karzai. Instead, Payenda and a number of other Arabs had established their own political group, which eventually supported the opposition candidate, Dr. Abdullah, in the 2009 presidential election. The case against Payenda's son was also supported by Shia Hazara groups that wanted to strengthen their position in the province. Bashira was Hazara, and according to one of my informants, the case became a way of unifying them: "When the case first came to the media, the Shia people got angry, and they united on how their honor had been insulted. They made it a big and very complicated case, in order to unite the Shias, make them one power."¹¹

In these accounts, Bashira's young uncle, Noorullah, appeared less a self-driven campaigner for justice and more a figurehead for these discontented groups, having been handpicked as a suitable front-person when Bashira's father, who was in ill health, could not play that role. The pressure for Payenda to give a *baad* was not imposed from above as an attempt by powerful actors to make the case go away. Instead, the giving of *baad* had formed an integral demand of Noorullah's campaign all along, a demand that, if successful, would have placed Payenda on par with his adversaries. Giving a daughter in these circumstances would have signaled that Payenda was not above other groups in the province, that he was a social equal to Bashira's family; a daughter taken had to be compensated with a daughter given. On this matter, there was only a partial victory for Noorullah. The demand had been that Payenda give his own daughter, but he successfully refused this. Instead, a daughter of a poor man from Payenda's tribe, reportedly paid by Payenda, was given as a *baad* to Bashira's family. In the opinion of one of my informants, this showed how Payenda remained able to defy the obvious attempts to weaken him.¹²

Nonetheless, in versions that emphasize how the aftermath of Bashira's rape became a vehicle for local politics, it was Haji Payenda who appeared as the compromised party. Despite spending a considerable amount of money to influence the courts, he had been unable to prevent his son from feeling the full force of the law. Having been exposed as less than all-powerful in the province, he lost his parliamentary seat in the next election, in 2010, although this could also have been due to his alliance with the Jamiat party, which had a weak position in the province (Embassy of the United States Kabul 2009c). In the subsequent chapters of Sarepul politics, the groups that had supported Bashira's family came to dominate the local government. And in a further reversal of positions, episodes of rape and the kidnapping of women were now being used by factions linked to Haji Payenda and his brothers to mobilize public opinion against the Hazara-dominated provincial administration (Ruttig 2012). It seemed that public protestations against sexual infractions had become a standard part of the political repertoire in Sarepul. In a sense, protests were directed against the impunity afforded by government

connections, impunity that was facilitated by access to government office and, in the next round of local politics, became the privilege of the new power holders.

If the unusual persistence of Bashira's family in pursuing the rape case in public could be explained, partly or fully, by the interest of local groups in using the case to challenge the political position of Payenda and his allies, this, in turn, serves as a reminder that "the state," as many scholars have reminded us, is a claim, a construct, not a thing or a fact. Bashira's uncle might have called for government action in a sense that suggested that there existed a unitary, independent Afghan state capable of autonomous action in one direction or the other. Likewise, other actors invoked similar images when calling for the state's responsibility to protect women against family abuses or, alternatively, to uphold kinship control over them. But these contending notions of state responsibility and justice are disputes over internal boundaries and personhood, the outcome of which has consequences for authority over domains and persons. They should not lead us to believe that there is such thing as a unitary, coherent state—"a person writ large" (T. Mitchell 1991: 83), a judge-like character insulated from society as a whole. As Mitchell argues, the appearance of the state as a discreet and relatively autonomous social institution is itself a reification that is constituted through everyday social practices. In reality, claims to statehood—as well as the gradual emergence of government apparatuses, armies, and bureaucracies—are always intertwined with struggles over resources and power.

This means that demands and counterdemands for state action, and claims to act on behalf of the state, must be situated in the local political economy—in other words, in conflicts between groups and classes over resources and influence. As the history of Sarepul clearly illustrates, access to government positions—and the associated ability to call upon bureaucratic and military enforcement mechanisms—have served as a tool for appropriation and accumulation. The primary fault line, then, is not necessarily between kinship (or families) and the government (i.e., between society and the state); it can also be between competing factions, whose success in controlling and accessing state power has waxed and waned.

From this perspective, it looks as if the Sarepul case—instead of being one man's thwarted campaign to secure a government reaction to the abuses visited upon his family—was locally understood, or at least seized upon, as an infraction against a larger collective by a rival group. The reaction to this violation had to assert the position of Payenda's rivals; it had to be a reaction that showed that Payenda and his group were not above, but of equal standing to, other groups, and that simultaneously could undermine his grip on power. The "state" here features as a vehicle for intergroup competition, a competition where authority over women serves as a marker of position and status. In other words, the renegotiation of power hierarchies in Sarepul—in which official positions constituted an important resource and which in the last decades had become increasingly open-ended as war offered

novel ways for previously marginal groups to assert themselves—took place, in part, through public contestations over claims over women. Government courts and the media provided new arenas for such claims, which should be understood as assertions of position and status, expressed through the idiom of honor. But in these new arenas, the claims were framed somewhat differently. When Bashira's uncle appeared on national television, he did not ask President Karzai to arrange a *baad* from Payenda's family (such a demand could not have been expressed or granted openly), but he asked for the government to see to it that the rapists would feel the full force of the law. The rape was still spoken of as a violation of family honor, but demands of government action were framed in the language of justice and punishment.

It was this kind of language that led many outsiders and national actors to believe that something novel was happening—that people were now bravely speaking out against the violations visited upon their daughters by government allies, breaking a taboo in a desperate bid for some kind of reparation. Admittedly, the Bashira case and other episodes from Sarepul *were* novel in the way the victims' families were willing to openly mobilize national public opinion for their case. Still, the exceptional intensity with which public redress was sought must be understood as an extension of factional political conflict, played out, in part, in the public arenas of the media and the courts, rather than as an attempt by families to rearticulate government obligations to its (male) citizens.

CONCLUSIONS

The last decade has seen a significant amount of popular mobilization around rape cases in Afghanistan, and specifically around the state's obligation to hold perpetrators accountable. In this chapter, I have explored the broader significance of these developments, asking whether they have entailed transformations in gender relations or in governance in Afghanistan. Did they signal a new status for women in which violations of their bodily integrity were considered a public matter, and did this, in turn, suggest an extension of the domains of state power? Feminist literature offers plenty of warnings for those tempted to equate strong state action or public reactions on rape with gender justice, showing how sanctions against sexual violence can be integral to or appropriated by a host of other projects (Miller 2004; Halley et al. 2006; Bumiller 2008). Much of this literature has focused on so-called strong states, where legal interventions might be used as mechanisms of social control of marginalized groups or of women's private lives. In Afghanistan, where—as in other weak states—legal interventions are less institutionalized, assertive state action is typically the result of the mobilization of social groups around specific incidents. As a result, state interventions can be less predictable and may or may not support feminist agendas (Roychowdhury 2016).

As the cases in this chapter showed, intensified state regulation of gender violence and relations in Afghanistan did not necessarily lead to a more equal status for women. On the contrary, government regulation affirmed predominant gender ideologies by limiting itself to women well within the category of the unquestionably virtuous. Moreover, public discourse often validated family control over female bodies and specifically notions of honor, whereby male family members could claim a stake in women's sexuality.¹³ Likewise, public discourse did not necessarily indicate a permanent increase in the government's interest or ability in regulating and policing matters of sexuality (i.e., as a stronger state expanding its domain and control of kinship power). The case from Sarepul shows that what could appear as a question of government obligations to uphold citizen's honor was perhaps better understood as a struggle for power between local groups. Appreciating this requires a shift in our perspective on the state itself; the government was not acted upon as a coherent structure, but as a vehicle of factional struggle. Through this lens, gender violence as a governance issue (i.e., a site of government action and intervention) was but one chapter in an ongoing struggle over power and resources.

I believe that the Sarepul case also illustrates the pitfalls of regarding the language of honor as somehow integral to a non-state logic of "kinship" society. According to the evolutionary perspectives often applied to Afghanistan (see introduction), honor (*namus*) is a "tribal" value, consonant with a pre-state social system based on kinship, egalitarianism, autonomy, and the strict seclusion of women. If such idioms make an appearance in state arenas, they are typically considered spillovers from the tribal system, where they properly belong, and it is assumed that they eventually will be eradicated by the modernizing touch of the state. The Sarepul case unsettles such binaries particularly well. It shows that honor, as a vocabulary of power and boundary marking, as a way of articulating violations and entitlements, can equally be employed in struggles *over* state power as employed in struggles *against* it. It is often those with a degree of influence and access to the state who can utilize official positions and public arenas to pursue gender violations—whether as a standalone issue or as a component of larger political projects—as was the case in Sarepul.

