



New Edict on Elopement puts Vulnerable Afghan Women and Girls at Even Greater Risk

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The new edict on elopement issued by the General Administration Directorate of Supreme Court on 26th of October 2010 represents a major setback to the welfare of vulnerable women and girls in Afghanistan, according to *medica mondiale Afghanistan*, a leading Afghan women's organization.¹

Edict number 1497/1054 of Supreme Court states that women and girls who run away from own residence to a stranger's residence, rather than to relative's house, security or justice departments, regardless of the fact that they experience violence caused by a family member, will be condemned to committing the crime of adultery or prostitution.² Women who are declared guilty of this crime shall receive discretionary punishment according to article 130 of Afghan constitution.

medica mondiale Afghanistan considers this edict a double punishment for women who are victims of domestic violence in Afghanistan; not only are many Afghan women suffering horrific acts of domestic violence, but when they try to flee these intolerable situations they face punishment of the justice system.

The fled women usually receive little or no assistance from the next of kin as the relatives don't wish to risk their own social security. At the end of the day the fled woman is advised to return home and bear the violence. Besides, there is little support available from the police, particularly for women in remote areas. As a result, women are forced to seek refuge at the homes of non-family members. This edict means that these oppressed women will be punished if they seek help. *medica mondiale Afghanistan* believes that the edict leads to increased self-immolation and suicide among Afghan women and girls as 67 women have been admitted to the public hospital of Herat after setting themselves on fire this year.³

As an example, one of the very recent cases demonstrates the edict being unfair to vulnerable women and girls. Wahida escaped from Baghlan to Kabul on October 22nd in a severe physical and mental condition as a result of being harshly beaten up by the husband. There was no police station in the area. She was not helped by relatives either, as her in-laws were warlords and her relatives did

¹ *medica mondiale Afghanistan* (mmA), founded in year 2002, is an Afghan women's organization working towards the elimination of violence against women and empowering them through the provision of psychosocial support, legal aid and advocacy in Kabul, Herat and Mazar-e-Sharif.

² The letter with the number 1497/1054 sent by the Supreme Court to Judicial Research and Studies Department on 26/09/2010 in relation to elopement cases states: "*if someone as a result of being subjected to violence runs away from home to a stranger's house, instead of running away to a relative or to security and justice departments, however, the running was as a result of violence and torture used by one of the family members, since this act could cause crimes like adultery and prostitutions and as well it is against of the Sharia principles, therefore, her act of running away from home is considered prohibited and prosecutable based on discretionary punishment.*"

³ For more information please visit:

<http://www.google.com/hostednews/afp/article/ALeqM5jnfbb0HmBAwkh2YVMO6olV4faDA?docId=CNG.08c83b13d2be2980df3ec18ebf2dd1d5.51>

not want to put their own security at risk. She had to stay in the house of a non-relative who then brought her to Kabul. She was rescued this way but based on the new edict she should be punished although she had already received enough violence.

medica mondiale Afghanistan believes this edict has no legal justification in Afghanistan law since elopement is not a crime under Afghanistan's criminal law.⁴ The edict will merely serve to increase the vulnerability of women and girls at risk. *medica mondiale Afghanistan* calls on the Supreme Court to immediately withdraw this edict and on Ministry of Justice to send the 'Family Law' to parliament for approval since the implementation of family law will be a worthwhile step towards elimination of domestic violence in Afghanistan and eradication of such problems.

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⁴ The second article of the criminal law states that “*no act is considered a crime if it's not specified in the law*”.

Elopement is not a crime and has no legal basis - it hasn't been specified a crime in Afghanistan's criminal law and has no punishment to be enforced. The declaration therefore has no legal mandate and should not be implemented.

The Supreme Court further related the declaration to article 130 of the constitution which states: “*While processing the cases, the courts shall apply the edicts of this Constitution and other laws. When there is no edict in the Constitution or other laws regarding ruling on an issue, the courts' decisions shall be within the limits of this Constitution in accord with the Hanafi jurisprudence and in a way to serve justice in the best possible manner.*”

Two points are notable in this article. First, in Hanafi Jurisprudence there is no clear mandate about elopement. Only it says if a woman gets out of the house without asking for permission of the husband, is not provided alimony in the period of time she is not in the house. But if a woman escapes from the house with a stranger and commits a criminal act she is definitely considered a criminal in that case. The second issue is ensuring justice; justice cannot be ensured if the woman is punished because she has chosen elopement as the only way to escape violence.

When the courts are using the article 130 in their pronouncements, they should assert legal justification (such as verses or traditions) to clarify for which particular reasons they set punishment for the offender. While according to Sharia no one can force women to bear violence due to any obligation.