



Case Study

Access to Justice for Disadvantaged Groups: The Case of Women in Iran

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Towards Inclusive Governance

Promoting participation of disadvantaged groups in Asia-Pacific

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Foreword

According to Article 20 of the constitution of the Islamic Republic of Iran, all members of the nation, both men and women, shall receive equal protection under the legal system and enjoy all human, political, economic, social and cultural rights, based on Islamic principles. Despite the fact that the constitution treats all individuals equally, the governing legal frameworks do not provide women with equality and justice.

This study aims to present the realities of women in Iran's legal system. The lived experiences of women involved in the penal system, including female judges, attorneys, offenders and claimants, have been given precedence in order to improve understanding of both the integration of Islamic law in the justice system and the challenges involved in accessing justice for women in Iran.

It is expected that this study will contribute to the formation of gender-sensitive legal frameworks that are responsive to the needs and interests of women in Iran and which will, in turn, increase the legitimate participation of the female population.

Introduction

All are equal before law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any such discrimination in violation of this declaration and against any incitement to such discrimination. (Declaration of Human Rights, Article 7).

Today, equal rights and equality before the law are among the basic principles articulated in both Iran's constitution and various international conventions on human rights. However, national laws often fail to capture these principles and instead apply an unequal and discriminatory system that not only threatens the development process, but also renders invalid many of the adopted standards. This is particularly the case in penal law. Penal law is concerned with the technical underpinnings of crime and punishment, and is applied without taking into account important factors that contribute to an individual's situation, such as gender, class, race or ability, among others.

Gender is a source of differentiation and inequality under the law. During the last few decades, international legal instruments, human rights activism, development programmes and women's movements have worked to influence penal law and to encourage equality between women and men. However, much work is still needed to reduce women's vulnerabilities and improve national responses to promote women's rights and protect women from all forms of violence, discrimination and injustice. This is particularly important for women in Iran, as their condition continues to become increasingly complex.

Women make up more than half of Iran's population today. They are active in various fields including the arts, sciences, sports and education. They have consistently sought to make the state and civil society accept their right to socio-economic and political participation. However, their increased integration in the public sphere has changed their situation and, ultimately, their needs. Women in Iran, being a disadvantaged group, are disproportionately affected by social, political, economic and legal inequalities. Although they are not a homogenous category by any means, their status as minoritized bodies has systematically curtailed their access to justice. Complex, inequitable and inaccessible legal systems and procedural ambiguity contribute to hindering women's access to justice. Caught in a system rooted in gender bias, women constantly face obstacles in accessing adequate justice in a transparent fashion.

Women in Iran must have, as an inherent right, the ability to exercise choice on the issues that most affect their lives. As the duty bearer, the state is responsible for ensuring that all social groups have adequate information and easy access to existing legal frameworks. This entails creating an environment that fosters proper legal literacy, information sharing, access to legal aid and, most importantly, a cooperative system that is not only aware of and responsive to the needs and interests of the most disadvantaged, but is willing and able to provide sound and effective remedies to their concerns. This will enable people to act as full participants in their society and to find remedies to their problems and grievances without hindrance.

The ultimate demand of Iranian women is

the establishment of fair conditions in society so that all human beings (men and women) can choose their own way of life according to their own will regardless of ethnicity, sex, and beliefs. (Ahmadi 2002: 52)

The constitution of Iran notes that women suffered double oppression during the pre-revolutionary era and, as a result, it now places much more value on the role and status of women. Article 21 of the constitution calls the Government to "provide for comprehensive rights of men and women and ... general equality before the law." This fundamental equality, however, is supposed to be achieved within the framework of Islamic precepts and is, therefore, conditional. Thus, the legal system may hinder the realization of the egalitarian orientation of the constitution.

The objectives of this study are as follows:

- 1) To examine gender discrimination in penal law and identify the intersections between the jurisprudential, legal and social reasons for the existing bias;
- 2) To present the ideas and experiences of women – female judges, attorneys, offenders and claimants – implicated in the judicial system;
- 3) To acquire information about the activities of NGOs working to protect women's legal rights;
- 4) Using a human rights based approach, to identify ways to effect positive change and develop concrete approaches to programming on inclusive governance.

In so doing, the study will seek answers to the following questions:

- 1) Do the existing legal frameworks and practices provide for equality and justice as far as women are concerned?
- 2) What modifications should be made to increase the legitimacy of Iran's judicial system as far as women are concerned?
- 3) How can women's fundamental rights be guaranteed when they seek justice?
- 4) Can a human rights based approach contribute to gender equality?

Methodology

Protecting the rights of women is part of promoting, respecting and protecting the rights of all human beings. As a methodology, a human rights based approach works not only to create an enabling framework in which people can exercise freedom of choice and expand their capabilities, but also works towards developing an empowering environment in which people are involved in the decision-making and development process. As a human rights based approach focuses on human development and recognizes the importance of taking the needs and interests of people into consideration, this case study aims to integrate the perspectives and experiences of women who are most affected (both negatively and positively) by the justice system. This study translates the experiences of women while acknowledging them as active participants and agents of positive change.

This study applied both qualitative and quantitative research methods to collect statistical data and to gather experiential information from surveys, individual interviews and focus group discussions. Desk and literature reviews were also conducted to gather data. Individual interviews and focus group discussions were held between experienced female researchers and selected female participants willing to share their experiences of working within the courts, of soliciting assistance from the formal and/or informal justice system, and of being persecuted. A total of 204 people were interviewed for the study - of whom 47 were female judges, 45 were female attorneys, 54 were female offenders and 56 were female claimants – as were 2 non-governmental organizations (NGOs) working on women's legal issues. 40 of the 50 female offenders who were in prison at the time of the study completed a questionnaire, as we were not permitted to conduct interviews on site.

The interviewees selected for the study were identified within institutions. Letters were written to a focal point within the courts, which were then distributed to judges and attorneys to encourage their participation in the study. The attorneys willing to participate in the study were met in their own offices and the judges were visited in the courts. The research team approached female claimants in the courts and the Legal Medical Clinic where claimants seek physicians to assess their physical condition. Female offenders were solicited in the Women's Prison through the authorities. Female offenders who had recently been released were approached in shelters developed for newly released prisoners who lacked housing. Non-governmental organizations (NGOs) working on women's legal issues also participated and provided information on their activities.

All interviews with female claimants, judges, and attorneys were conducted behind closed doors in the court. The research team knew key people in the courts and the familiarity of these people with the research team and with their previous work enabled the study to take place. Had we not known officials from the courts, the participation of judges and attorneys would not have been possible, given the sensitive nature of this study.

As mentioned above, female offenders were solicited through the Women's Prison. The authorities in *Yazd* were reluctant to allow interviews, but did permit female offenders to complete questionnaires developed by the research team. Although interviews and focus groups were preferred and would have provided greater consistency for the study,

the questionnaires did provide new insights into the condition of women in prisons and their experiences with the justice system.

The study aimed to ensure the participation of both claim-holders and duty-bearers. Although both groups provided meaningful insight, given the sensitive and political nature of the topic being addressed, various challenges did exist. Women in the prisons were disappointed by the fact that this was not the first research study being conducted where their lived experiences were surfacing on paper. Despite these studies, their fate had not changed nor had they ever been provided access to the final research findings. They questioned the nature of 'participatory research' and identified it as a process that ended once data was collected. In the light of this, the participants were assured that they would be given a copy of the final report so that they could see how they had contributed to the study and also take note of the recommendations made for future programming in the area of greater access to justice for women.

While the usefulness of this study was questioned, accessing the targeted participants for interviews also proved to be a challenge. Contesting a system - especially one that is institutionalized and politically supported - takes courage. The women who were addressing their concerns and sharing their experiences were engaging in a political act: one that was empowering but also, if dealt with unethically, could have invited harm.

Each participant had her own concerns with respect to engaging in the research. The attorneys had much at stake as they openly shared their views on Iran's governing laws, justice system and their own experiences as women working in a largely male-dominated domain. In the past, women who had expressed their concerns within the legal system had faced serious repercussions and in this instance, they worried that their jobs would be threatened. Ensuring confidentiality and anonymity was crucial in order to provide the necessary confidence to participate in such a study.

Using surveys, which respondents in the prisons completed at their own convenience reduced the level of fear since offenders were submitting their answers in total anonymity. We found that this 'neutral' medium created space for better and more detailed data-gathering, whereas the interview process was less structured and focused on being open-ended and sensitive to the condition of the respondents.

An honorarium was provided to the participants and contact information was given to participants in need of further legal assistance. Advice on the availability of support services, though minimal, was provided to women who revealed having experienced any form of violence.

The social and legal status of Iranian women

A historical overview

Historical evidence suggests that equality between women and men existed during the Achaemenian Empire. Under the rules of Cyrus the Great and Darius the Great, women and men shared equal rights, power and status. Historians believe that women's status under Darius's rule was unique and provided women with the opportunity to work outside the home, with maternal leave and subsidies for newborn babies, while also making part-time jobs available to women (Koch, 2003: 245). This era also offered the opportunity for women to become judges (Dorant, 1979: 532). After over 400 years of this rule, however, changes in both religious ideology and the rise of productivity altered the position of women. Furthermore, as Iran was increasingly under territorial attack, women were pushed further into the private sphere in order to keep them safe and away from harm.

The expansion of slavery also impacted on the role and status of women as they were subject to domination and an overt denial of their rights (Sattari, 1993: 19). When women from the higher echelons of society were excluded from productive work, they became objectified and were pushed into harems; these practices later spread to other classes. During the Sassanid era, Arabs invaded Iran and Islam threatened Zoroastrian religious ideology. Although the Iranians sought to hold on to Zoroastrian teachings, they were forced to acquiesce to Islam and a merging of the two schools of thought occurred. With the enforcement of this new religion, rights were overshadowed by *obligations* (Jafari-Tabar, 2005: 44; 65): the teachings of Islam determined one's existence and its principles governed society.

The arrival of the Islamic era significantly influenced the role, position and rights of women. Shariati, a renowned contemporary philosopher of Islam, points out that although Islam is against gender discrimination, it does not support notions of gender equality. In other words, Islam neither promotes gender inequality nor fully supports gender equality. Islam promotes and upholds the traditional discourse of 'nature over nurture'. Thus, unlike contemporary Western notions of gender equality, Islam teaches equality in the realm of biology and what are deemed to be 'natural' roles for men and women. Woman's nature is considered neither inferior to that of man, nor the same: the two are 'complementary' – and so Islam advocates 'natural rights' and not 'equal rights' for men and women (Sattari, 2005: 44).

The status of women in Iran has a history that suggests that women's rights, like legal regulations, have been congruent with social expectations of what it means to be 'woman'. Even if new laws had been instituted which provided women with room to escape social norms, existing Iranian cultural prescriptions did not offer much space to demarcate the boundaries created for the female population. Iran's contemporary history is marked by four critical events that have impacted on the condition of women and the concept of gender equality.

Women began their collective struggle against gender discrimination with the constitutional movement of the early 20th century. Women's rights advocates stepped into political arenas and sought to enhance the awareness of other women. Many women believed that education would provide both individual growth for women and

national growth and therefore developed schools in which girls and women could develop socially and intellectually. However, conservative thinkers believed that education would encourage women to step outside of their prescribed roles and create a world that lacked propriety and order - that women's liberation would weaken the dominant (traditional) order and Shiite culture. The advocates of women's rights, by contrast, argued that all social evils and flaws - such as poverty, divorce, corruption and sexual abuse - were a result of ignorance and miseducation. In order to gain support, they attempted to persuade others that an educated woman is more loyal to traditional values and norms and can contribute better to the improvement of the nation as a whole (Afari, 1999: 65).

The Pahlavi era (1920-1979) believed in modernization but upheld a very superficial view of modernity – one that did not work to improve standards from the foundations. Cultural taboos still existed, access to education for women and girls was not increased to modern standards, literacy did not rise and women's productivity in the public sphere did not change dramatically. In an effort to maintain the superficial image of modernity, women were forced to remove their veils.

However, one significant contribution of this era was the advent of women's suffrage in the spring of 1963. The issue of women's right to vote had always been one of heightened contestation in Iran. Gaining the right to vote was a significant step forward for the female population as it strengthened their representation and status in political, social and cultural frameworks. With women's suffrage came a collective understanding that women are human and should have a say in the direction of their country's system of governance.

Resistance to the Pahlavi regime began in 1979, marking the beginning of the Islamic Revolution. There were two main ideologies behind the Islamic revolution: one which upheld traditional views and wanted a society rooted in theocracy, and another which desired to be freed from the rule of the monarchy and to live in a democratic nation. Many were discontented with the modernization and "Westoxification"¹ that they felt had taken hold of their country and aspired to establish a non-secular state. Both women and men marched the streets for change and their resistance movement marked a new era in the history of Iran. In 1979, the Islamic regime replaced the Shah.

The history of Iran demonstrates that it is not a unified society ideologically, culturally or socially and improvements in the condition of women in Iran have altered and faced opposition as a result of these inconsistencies.

¹ Jala Al-Ahmad established this term to indicate the Western influence over Iran; those who had bought into the prototype were labeled as 'Westoxified'.

Women's social and Legal Challenges in Iran

There are three specific challenges facing women today. Firstly, Iran is experiencing a transition from tradition to modernity and from lawlessness to legalism. Religion, however, has always played a role in the condition of Iran and been inextricable from its social norms. Women's legal inequality originates not only from shortcomings in rules and regulations, but also from unwritten rules originating in social customs and traditions that often make the enforcement of laws difficult or virtually impossible. In practical terms, however, it is nevertheless necessary to modify the regulations that impose unequal conditions on women. This is not only necessary for protecting women, it is also necessary for a viable social order. At the same time, it should be noted that small legal changes will lead nowhere if they are not accompanied by changes in the socio-cultural context. Laws need to be formulated in accordance with the social realities or they will have no practical meaning.

Secondly, although the rights of all individuals need to be protected and promoted regardless of religion, culture, language, race, nationality or gender, the discourse of human rights is not one that is universally understood and taught in Iran. Promoting human rights should be a universal practice, especially where people of varying ethnic backgrounds are at different stages of social development within Iran. It is through the acceptance of human rights that a common understanding can be shaped and difficulties within the legal frameworks can be evaded.

Finally, during the last three decades and under the rule of various religious groups (traditional, moderate, reformist) the cultural, social, economic and political conditions of various social groups have changed. As a result, women have witnessed various changes and inconsistencies in their socio-cultural and legal situation. Although legal inequality and its consequences have always been discussed, a great number of women live their everyday lives without being aware of the current inequalities and little is being done to counter this situation. Instead, women have been further marginalized and polygamy, women's domesticity and obligatory veiling have become increasingly institutionalized. This is not to say that the condition of women in Iran has not been publicized and openly debated. Women's exposure to higher education, the active engagement of civil society and increased international discussion on the issues at hand have all contributed to an increased awareness of the needs and concerns of the female population.

Groups Represented in the Study

Female offenders

Women all over the world – and Iran is no exception – commit fewer crimes than men. Despite an increase in the number of women who have been arrested, they make up only 3.41 percent of all prisoners. The rate of female arrests is only higher than that of male arrests where women are prosecuted for prostitution and/or fleeing from home (in the case of adolescents). Many of the crimes in which women are involved include spouse killing, infanticide, abortion, and theft. Gender plays a role in the types of crimes in which women are involved, as their experiences of violence and their exposure to extreme poverty influence the paths they take. Gender also impacts on the ways in which the judiciary system deals with the offence. Female offenders are treated differently in the criminal justice system because they are women. This difference has not only resulted in decreasing the age of those imprisoned, but has also contributed to an increase in the number of women convicted for petty crimes.

The majority of the female offenders represented in this study live below the poverty line. Prostitution and drug-related offences are the predominant offences committed by the participants, although five of the women were charged with murder, one with battery, one with bankruptcy and another with pick-pocketing. Of the women studied, 23 had no prior convictions while 31 were in prison for the second time. The majority of the participants were aged between 14 and 19. The education levels of the female offenders varied: 25 had primary level education only, 10 had been educated until high school, five were illiterate, three had college training and two had undergraduate degrees; nine offenders did not respond to the question.

Our study revealed that there is an ingrained institutional bias in the justice system which means that female offenders are treated differently based on their sex and gender identity. They are often judged based on the ways in which they carry themselves, their age, their manner and their appearance. Of the 54 women interviewed, 35 believed that double standards do exist and women are charged with greater severity than their male counterparts. 14 disagreed with this statement and five chose not to respond. In addition to biased treatment, women have a limited knowledge of their legal rights. Of the 54 interviewees, 48 asserted that they were not informed of their right to remain silent nor supplied with information on accessing legal aid. 46 women did not even have formal legal representation. As a result, the majority of offenders were unable to defend themselves within the legal system.

In addition, the prisons themselves pose a threat to women, especially those regarded as lacking propriety or being licentious. The prisons can be spaces where arrested women are sexually abused or tortured. Of the 54 participants, 10 affirmed that prisons are unsafe and 25 felt that the prison environment encouraged women to be promiscuous and eventually become sex-workers.

It is important to emphasize that respecting the rights of women who have experienced violence is critical to their rehabilitation process as well as the prevention of further acts of violence against their bodies and minds. The reality is that women are not taken

seriously in the legal and justice system and when women seek legal aid or assistance from the police, they are often ignored and sent back to those places where they are most vulnerable.

Unfortunately, our governing system does not provide female offenders with adequate access to their rights. Not only does the justice system work against many female offenders, but the social and cultural stigma attached to female prisoners pushes them further into the margins. In addition, minimal support systems exist for offenders to re-enter social and economic spaces. For these reasons, it is not uncommon to see female offenders take illegal jobs or commit further offences as a means of survival.

Female claimants

Although the crime rate in Iran is lower among women than among men, the percentage of women who are victimized is much higher. This is manifested in situations of gender-based violence where women are victims of sexual assault and battery (among other acts of violence). The data, of course, does not include unreported crimes against women. Under Iran's legal system, punishment is envisaged for the offending male member of the family but no protection or shelter is made available for women whose lives have been and continue to be in danger. The police, judicial and administrative authorities often disregard the needs and human rights of women who have been victims of violence and ultimately reinforce further exposure to danger.

The group of 56 claimants represented in this study were predominantly aged between 25 and 35 years of age and had varying education levels: 8 were illiterate, 15 had elementary school training, 18 had high school diplomas, 3 had finished college, 8 had Bachelor degrees and 1 had a Masters degree. This indicates that violence against women is widespread and pervasive, spreading across all social and economic echelons and backgrounds. Of the 56 women, 47 were married, three single and six were divorced and/or lived with their partners. 38 of the participants had experienced violence committed by their spouse and the remainder had experienced violence from a family member and/or friend. Only 12 women did not have children; the remainder of the group had between one and six children.

In the interviews, it became increasingly evident that very few of the women were aware of their legal rights. The interviews also revealed that violence against women continues to be seen as an issue of the private domain, emphasizing the continued need for the matter to be brought to the attention of the public. In one instance, a university graduate indicated that:

I didn't consult anybody, and I told no one, and in order to maintain my dignity and keep face I was forced to conceal the problem. Also, impoverished women cannot afford to see a lawyer and the number of NGOs providing services to victims are extremely low.

Furthermore, in some cases of sexual assault the assault itself might not be regarded as a crime, especially in situations when the perpetrator is not a stranger (Rayegian Asli, 2005: 19-20).

Criminal legislation in Iran does not espouse a differentiated penal policy in the case of crimes committed against women. In addition, female victims are not adequately supported by the legal sphere (Zeinali, 2004:197). Of the 56 respondents, 47 believed that the law fails to support them adequately and 29 believed that they did not receive sufficient support from the system because they were women. In response to a question about whether the court discriminated between men and women, one participant stated:

“Of course, because I am a woman, my words went unheard. They did not even call me to court, and went so far as to dismiss my case because my husband had married another by that point.”

In other words, her case went unacknowledged. Many women also indicated that they were treated extremely badly by the officers in the prisons, while others chose not to respond to the question. With respect to the judges (who in this case were women), 19 individuals declared that the reaction of the judges was positive, whereas 13 stated that it was quite awful; others did not respond. One interviewee said: “The judge’s reaction and follow-up to my case was very good. They followed-up on my case very quickly.” Another indicated that

they didn’t treat me well and kept wanting further justification for allowing my divorce whereas my main reason should have sufficed. My husband was a drug trafficker and wanted to sell my children and myself for his business. He beat me and my children often.

Another woman stated that:

support is not enough, but my husband did not give me money, now the courts have forced him to pay me a monthly salary. I think that the judge made a good decision and supported my case.²

All human beings deserve the promotion and protection of their human rights. When women are not regarded as human beings or are treated as less than human, their humanity is often ignored in law-making and law enforcement. This has led to various kinds of discrimination, violence, suppression, inequality and injustice for girls and women all around the world (Molaverdi, 2000: 35). The effectiveness of legislation and the success of civil and governmental institutions in protecting victimized women depend on appropriate cultural transformations, as well as awareness-raising for women about their rights and the encouragement of women to take a more proactive role as social actors. Since there is a deep correspondence between penal law and our cultural ideologies, any legal changes also require transformation at the level of culture.

Female judges

History shows that whenever women find an opportunity, they try to claim their rights. In the years prior to the Islamic Revolution, women who had studied law could apply and,

² Based on the civil code in Iran, women, when married, must submit to their husband both physically and intellectually. In return, a husband is responsible for providing the necessary financial support so that the wife can maintain her domestic life. Should a husband refuse to comply, the courts can and will force the husband to fulfill this responsibility.

eventually, write the entrance exam to become judges. In 1969, five women officially became judges and many others followed suit.

After the Islamic Revolution and prior to the ratification of the new constitution, women were forbidden to practice as judges. Religious authorities and the new political powers strongly supported this change through the issuance of *fatwas* (Kar, 1999: 58). It was argued that Islamic law prohibits women from becoming judges. In order to comply with Article 162 of the constitution, according to which *Shari* rulings should be considered in the appointment of the judges, “judgeship has become an exclusionary right of man: the first condition for qualification for this position is being male” (Mehrpour, 1995: 230-31). This was supported by the Act of 1982: “Judges are only appointed among qualified men” (Act, 1982). In 1995, the Act was modified so that women could acquire similar judicial rankings to men in the position of Advisor in administrative justice in specific civil courts, in legal departments and other similar areas. At the present time, judicial careers for women are limited to issuing advice and acting as Chairs of the courts (Mehrpour, 1996: 37). Women are not permitted to make final decisions on any case – only men have this authority. Given the current situation, it appears that women occupy an administrative role and do not in fact carry out the role of a judge in its entirety. Yet if enlightened jurisprudents took all aspects of the issue into account, and paid due attention to social changes, they would need to revise their traditional *fatwas* on a woman’s right to be appointed as a judge.

To acquire a better sense of the experience of female judges working within the legal system, 45 participants were asked to reflect on their experiences prior to entering the courts, as well as to describe the current possibilities and limitations that exist for them as active participants in the courts.

Of the 45 interviewees, 30 stated that they had overcome considerable difficulties in order to claim their space in the courts. Almost all participants felt that men were heavily advantaged in the process. While 29 interviewees were satisfied with their work environment, 14 were not fulfilled; others did not respond. 30 felt that they were marginalized and that their capacities were not properly utilized. The participants were very aware of the hierarchical system that existed between men and women and although the majority of the participants were treated courteously, the unequal power relations between the sexes were potent and disruptive. For example, on numerous occasions, men in positions of power had forced female employees to make official decisions against their own judgment and ethics - they were forced comply for fear of losing their jobs.

Questions were raised about the prevalence of sexual harassment in their work environment. Of the group, 4 responded that they had encountered sexual harassment in the workplace and had decided not to do anything to stop the harassment for fear of losing their jobs. It was evident that power relations between men and women, supervisor and supervisee, had affected the roles and levels of decision-making power and autonomy of the women in the system. These power relations were obviously influenced by the institutional, systemic, cultural and religious ideologies that have played a large role in transmitting gendered stereotypes and notions of power between men and women. These beliefs have also been translated on to the public’s perception of female judges and their level of competence. 10 women responded that they perceived the public to have less confidence in female judges. Finally, female judges were asked to describe how they felt that this process had developed and/or changed

over the last 30 years. 36 felt that positive changes, though gradual, had taken place, while the remainder felt that no changes had occurred.

Female attorneys

The modern judicial system in Iran was established in the early 1920s, when practicing law became institutionalized and women did not face obstacles to practicing as lawyers. During the final years prior to the Islamic Revolution of 1979, an increasing number of women chose to become social workers, counselors and attorneys and worked within criminal courts (Kar, 1994: 174). Although there were no legal obstacles for women who desired to become lawyers, the qualifying age (a minimum of 25) was a practical barrier. Many law graduates were between the ages of 21-22 and preferred to start their careers right away, and therefore joined private institutions as legal experts. This resulted in a decrease in the number of female attorneys within the court system itself. The qualification age was removed after the Revolution and the number of female attorneys increased substantially. As a result, women entered the Board of Directors Association in 2001.

In 2002, 9 percent of the members of the Board of Directors Association in Tehran were women (365 out of 3093). The latest data shows that the proportion of women members has increased to 40 percent. This indicates a substantial rise in the number of women who practice law in Iran. Ardebil, a northern province in Iran, has seen similar growth in the representation of female attorneys, despite its deep conservatism.

For the group of attorneys being interviewed in Tehran, the interview sessions served to obtain a better understanding of the legal system and the provision of rights to women. The 47 respondents, whose work experience ranged from 2-31 years, were asked to provide their impressions of the various laws that govern the Iranian populace. For example, Article 630 of the Islamic penal code of Iran states that where a husband witnesses his wife committing adultery, he will not be reprimanded if he kills the parties as long as four individuals can verify his claim. Forty-five of the 47 attorneys interviewed responded to the article in terms similar to the following: The justice system needs to make decisions in such situations, as opposed to permitting individual people to take the law into their own hands and be unburdened by acts of revenge. Should the roles be reversed, the same laws do not apply for the woman whose husband has committed adultery. These laws are not rational and merely continue to breed further violence and aggression. Another argument presented was based on the fact that the foundation of marriage is premised on a contract – one that can be broken at any point in time without necessitating acts of violence. Only two female attorneys within the group supported Article 630.

There are articles that claim to support women. For example, if a woman is sentenced to stoning, the process will be delayed if she is breast-feeding or pregnant. The participants were asked to indicate whether they felt that this was really in favor of women's rights. 37 disagreed, claiming that this article is actually in favor of the right of the fetus; once the baby is born and has been breastfed for two years, the woman charged will still be stoned - it is therefore not an article that protects the rights of the woman. 13 participants felt that it did support the rights of women, while two chose not to respond.

Women attorneys also experience harassment and unfair treatment at work. Many female lawyers in this study described working in a male-dominated field where the majority of their male colleagues held discriminatory beliefs and publicly questioned the competence of their female colleagues solely on the basis that they were women. Many men believed that investing in female workers was futile since women often leave to bear children.

Many employers also perceived working women as a “problem” and doubted their “commitment” to their work. Most women in Iran, regardless of their position, are subject to harassment and pressures of various kinds because of their gender identity. They suffer from inappropriate working conditions, ill treatment, verbal abuse, bullying, discrimination and inequality in the workplace, in addition to career immobility and static working conditions, while often shouldering multiple responsibilities both at work and at home. In light of international legal instruments, cases of “psychological harassment” should be taken into account in Iran's law. The effective, efficient protection of victimized women requires that harassment by authority figures be regarded as a crime.

It is important to acknowledge that while the women representing the institutions of justice hold various beliefs, there is also a rooted resistance to normative thinking and to the laws that subjugate women. Many of the impediments women face in trying to gain acceptance within the judicial system are a result of dominating gender stereotypes that reinforce negative attitudes and behavior toward women. Female lawyers and judges have worked very hard to resist these stereotypes and barriers, and to create a reputation within the justice system as capable, trustworthy and attentive.

The presence of women in legal professions therefore contributes to a new understanding of women's capabilities and demonstrates an open resistance to normative stereotypes. It can even help to further women's rights, as their participation in the justice system (for the large part) is an empowering process.

Non-governmental organizations

There are few non-governmental organizations (NGOs) in Iran working in the area of women's legal rights. NGOs working to assist women with their legal processes exist, but there are not enough of them to provide assistance of the scope and on the scale currently required. Charitable organizations do exist to assist families of prisoners, while other organizations assist homeless girls and women. Organizations working to support prisoners, particularly with their reintegration process, are very limited and lack the financial stability to create long-term and results-based initiatives. The two NGOs that contributed to our study made us very aware of the limitations that they face, both institutionally and financially. Speaking with them reaffirmed the acute need for civil society to have an increased and proactive role in working with and assisting women in need. NGOs not only require stronger political support, but also the space and financial means to make a difference.

Women and Penal Codes

Inequality and the law

Article 2 of the Islamic Penal Law (IPL) states that “penal codes are applied to all people committing crimes within the Islamic Republic of Iran's air, sea, and land”. Within penal justice, however, there are evident inequalities with regard to women which are as follows:

1. Age of criminal liability: Women are liable at a much earlier age. Article 49 of the IPL stipulates that

In cases where juveniles commit a crime, they are exempt from criminal liability and their guardians under the supervision of the court or, juvenile reform and education centers are charged with the responsibility of educating them.

The definition of ‘juvenile’ - the age of legal maturity - differs for girl and boys. The age of legal maturity is 9 for girls and 15 for boys (Article 1210 of civil law). Thus, in cases where a young female child of 9 years and above commits a crime, she is treated as an adult.

2. Testimonies: The IPL does not place equal value on the testimonies of men and women. In cases involving lesbianism, alcohol consumption, larceny and murder, the testimonies of two men suffice to achieve criminal proof. In such instances, neither a woman’s sole testimony, nor one accompanied by a man is believed to be legitimate.

3. Punishment: Article 14 of the IPL stipulates that “Punishment is a penalty for the sentenced criminal and should be equal to the felony”. Article 209 stipulates:

When a Muslim man deliberately murders a Muslim woman, he is punished, but the female victim’s guardian is required to pay for half of the man's blood money in order to punish the murderer.

4. Blood Money (*diyeh*): Based on the felony, blood money is a form of property and its value is determined by a legislator (Article 15 IPL). According to Article 300 of the IPL, the “blood money of a Muslim woman is half of the blood money for a Muslim man”. In cases where a woman is charged for aborting a fetus, Article 487 of the IPL indicates that: “The blood money of an unborn male child, is in its entirety, for a girl, half. In cases of uncertainty of the fetus’s sex, it is three-fourths of the complete blood money”. Article 300 of the IPL has made many men feel that they can escape from punishment by paying a paltry sum to their victims’ families, most of whom are suffering from economic problems (Boulaghi, 1384).

5. Punishment for Female and Male Offenders:

(Articles 137 and 138): Women who have engaged in acts of prostitution will receive 75 lashes and men who have sold their services will be imprisoned from three months to one year while also receiving 75 lashes.

(Article 110): Homosexuality will lead to the death penalty whereas lesbianism will only result in receiving two lashes on each side of the body.

(Article 619): "Anyone who disturbs or annoys children or women on the street and in public places and insults them through words and/or actions which are demeaning and disrespectful will be sentenced from 2 to 6 months imprisonment and 74 lashes".

As indicated above, there are many laws that differentiate between men and women, often unreasonably and unjustifiably. . It is obvious that changes need to be made so that laws are humane and work to achieve a common cause: justice. Many biases of the biases we saw are rooted in a biological understanding of women and men, one that is saturated in the nature/nurture ideology. We need to move forward, create alternative ways of thinking and establish gender-sensitive and gender-responsive legal frameworks that are much more equitable and just.

Recommendations and Conclusion

It is hoped that despite the various resisting factors, whether institutional, systemic or cultural, the movement toward ensuring the rights of the disadvantaged will continue to evolve. While many Iranians are working to enable meaningful change, we nevertheless have a way to go. Based on the research findings above, the following recommendations are provided with the intention of creating ways to increase access to justice for women in Iran.

- Iran needs to be a signatory to CEDAW.
- The law needs to be altered to protect the Iranian population from discrimination and injustice; all individuals need to be held equally accountable.
- Article 630 of Islamic Penal Law needs to be eliminated.
- Adequate legal support and guidance need to be provided to claimants and female offenders. Women should have better support with regard to their court cases.
- The mass media needs to be used as a vehicle for distributing information and enhancing awareness about people's legal rights.
- Training is needed for doctors, nurses and social workers, as well as for judicial and prison authorities, to improve understanding and acknowledgement of cases of sexual assault and to encourage reporting.
- Counseling should be provided to both offenders and victims to help them cope and reintegrate into society with greater ease.
- NGOs working in the areas of women's rights and access to justice need to be better supported both financially and institutionally.
- Crime prevention initiatives need to be established. Opportunities need to exist so that impoverished women do not have to resort to theft, working in the sex-trade and/or drug-trafficking.
- The age of criminal liability needs to be increased for women.
- Prison facilities need to provide women with the opportunity to learn new labor-oriented skills that can be utilized upon leaving the prison as a means of earning income.
- There should be alternatives to prison, such as community-based services.
- Educational opportunities should be developed for offenders both during their stay in prison and upon leaving.
- NGOs working in the area of penal justice for disadvantaged groups need to become more visible and to work with judicial institutions to develop legal aid initiatives, hotline services and training sessions to inform the public about legal alternatives and rights.
- More "safe homes" need to be created to support and protect victims of violence. The sole organization working in this area is still unknown to many women and lacks the institutional and financial support to sustain itself.
- Human rights education needs to be provided at a very early age. Schools should integrate human rights into the curriculum and create a more solid understanding of what it means to uphold these rights.
- All members of judicial institutions need to have a solid understanding of human rights principles and their application in the legal domain.
- Equal opportunities need to be created for both women and men. Men and women should be provided with opportunities to participate in policy-making processes in the penal justice system.

- All judicial staff should receive gender awareness training, become better-informed and accountable regarding gender issues and increase their understanding of gender dimensions.

The Islamic Republic of Iran's constitution stipulates that

Pleading for justice is the indisputable right of all. Anyone can refer to competent courts to plead for justice. All the members of the nation have the right to access courts. No one can be prevented from referring to the court, which according to the law has the obligation and right to demand justice.

This case study has revealed that the current legal frameworks and practices do not suffice and do not provide opportunities for women to achieve equality and justice. Modifications are required in all areas in order to enhance women's access to justice. Not only do representatives within the courts need a strong understanding of human rights, but women working within the judicial system need to continue to carve a stable and empowering space for their presence and work. Women need to have confidence in the justice system and to feel safe and empowered when soliciting institutional support. A human rights based approach offers the possibility for disadvantaged groups to become better informed, to understand their rights, to have the ability to make positive differences in their lives and to be confident that the justice system is working for their benefit. Civil society organizations also need the space and support to enhance women's legal rights, develop networks, assist offenders and provide legal support to those who are most in need and often marginalized. The support is needed of development agencies, UN bodies, the government and, most importantly, Iranian actors who recognize the importance and value of paving the way for meaningful change.

Appendix 1: Research Questions and Quantitative Findings (45 female judges interviewed)

Age: 16 of the judges were aged between 25 and 30; 13 between 30-35; eight between 35-40; five between 40-45; and three were aged over 50.

Place of Birth: *Tehran, Iran*

Place of residency: *Tehran, Iran*

Education: 32 held Bachelor Degrees and 11 had Masters Degrees

Marital Status: 41 Married; and four were single

Children: 40 participants had between one and three children

1. The criminal justice system has been a masculine domain for a long time, and women have faced many barriers to entering this field of work. What was the process of entering the system like for you?

The answers varied, but a majority responded that it had been extremely hard

- A. Difficult
- B. Easy
- C. Took several months
- D. Extremely hard

2. Do you think that you have had the same employment opportunities as men?

Over 75 percent said no

- A. No
- B. Yes

3. What is the value you place on being a judge? Is it an important job?

All of the answers ranged from 'important' to 'very important'

- A. Important
- B. Very important
- C. Not significant

4. Are you satisfied with your job?

29 women confirmed that they were satisfied, 14 felt unsatisfied

- A. Yes
- B. No

5. Do you have the same employment opportunities and privileges as men in your field of work?

All women responded negatively

- A. Yes
- B. No

6. How would you judge the importance of your position?")

37 women felt that their position was marginal

- A. An important position
- B. Marginal

7. Are you independent and free in your work?

25 women said 'yes', 20 women said 'no'

- A. Yes
- B. No

8. Do you think you have been given the space to use your capacity and skills adequately?

30 women disagreed and felt their skills were underutilized

- A. Yes
- B. No

9. How do you assess the attitude of your male colleagues towards you?

Answers varied from A-C, with a majority answering C

- A. Extremely domineering
- B. Indifferent
- C. Strictly as supervisor/supervisee relationship
- D. Normal

10. Have male judges ever made unreasonable demands of you?

75 percent leaned toward B, 20 agreed to A

- A. Unethical sexual demands
- B. Unethical decision-making demands

11. How do you assess the ways in which male clients of the criminal justice system regard female judges?

4a; 6b; 15c; 20d;

- A. With more trust
- B. With respect
- C. With distrust
- D. Neutral
- E. With fear

12. How do you assess the situation of women in the past three decades?

25 percent indicated no change, 75 percent felt temporary changes had been made

- A. No change
- B. Some temporary changes in favor of women
- C. Neutral

13. Please describe how you would change the situation of women in different parts of the criminal justice and legal protection system.

Appendix 2: Research Questions and Quantitative Findings (47 female attorneys interviewed)

Age: 25 between the ages of 25-30; 7 between 30-35; 3 between 35-40; 6 between 40-45; 6 over 50.

Place of Birth: *Tehran, Iran*

Place of residency: *Tehran, Iran*

Education: 33 *Bachelor Degree*; 11 *Masters Degree*; 3 *PhD*

Marital Status: 23 *Married*; 24 *Single*

Children: 20 *participants had between 1 and 3 children*

1. What are your thoughts on Article 630 of Islamic Penal Law referring to men who witness their wives commit adultery?
2. Do you feel that the temporary exception made for pregnant women when charged with the death penalty or stoning of Articles 90 and 92 is a means of protection for the women charged?
3. Have you ever experienced any form of verbal or physical abuse from judges, employees of the judicial system or its officers?
4. Have any of your cases ever been discounted because of your gender?
5. In criminal cases, has the system failed to provide verdicts because of your gender?
6. Have you ever encountered unwanted or discriminatory treatment because of your appearance or your way of observing the *hejab*?
7. How do male attorneys feel about your presence in the courts?
8. How do you think people outside the courts perceive you?
9. How do claimants (men or women) behave towards you as their attorney?

Appendix 4: Research Questions and Quantitative Findings (54 female offenders)

Age: 25 were aged between 14 and 19; three between 19-24; eight between 24-29; five between 29-34; six between 34-39; four between 39-44; and three were over 44 years old..

Place of Birth: *Tehran, Iran*

Place of residency: *Tehran, Iran*

Education: *Five were illiterate; 25 had primary education; then had High School Diplomas; three had College Degrees; two had Bachelor Degrees; and nine gave no response*

Marital Status: *17 were Married; six were single; five were separated; 26 gave no response*

1. What is your family history?

30 raised in a broken home, 8 nuclear family, 16 no response

2. What is your economic status?

6 a; 8 b; 20 c; 20d

A. Satisfactory B. Good C. Average D. Impoverished

3. What was your offence?

5 a; 3 b; 29 c; 17 d

A. Murder B. Stealing C. Drugs D. Prostitution

4. Did you have a prior history of offence?

20 a; 34 b

A. Prior history B. No prior history

5. Were you aware of your legal rights when you were found guilty?

44 a; 5 b; 5 did not respond

A. No B. Yes

6. How did you feel when you faced law enforcers such as the police, and institutions such as the courts and prisons?

40 felt fear; 10 were indifferent; 4 did not respond

A. Fear B. Indifference

7. Did any law officials inform you of your rights?

5 a; 42 b; 7 did not respond

A. Yes B. No

8. Did you receive help from an attorney?

5 a; 43 b; 6 did not respond

A. Yes B. No

9. Have you experienced difficulty in making your claim?

35 a; 12 b; 7 did not respond

A. Yes B. No

10. Do you think that in your case, the verdict was fair?

15 a; 20 b; 19 did not respond

A. Fair B. Unfair

11. If there was no criminal justice system, who do you think would resolve the matter?

15 a; 15 b; 7 c; 23 did not respond

A. Family members B. Patriarch C. Elder of the community?

12. What is the prison environment like?

25 a; 10 b; 19 did not respond

A. Unsafe B. Secure

13. Have you ever been violated by a warden?

30 a; 20 b; 4 did not respond

A. Yes B. No

14. Have you ever been violated (i.e. physically or sexually) by another prisoner?

22 a; 20 b; 12 did not respond

A. Yes B. No

15. Do you have access to feminine hygiene or other sanitary products in the prison?

20 a; 22 b; 12 did not respond

A. Yes B. No

16. Who or what contributed to your offence?

18 a; 7 b; 6 c; 3 d; 20 did not respond

A. Family B. Myself C. Community D. It was an isolated event

17. Is it possible for you to earn income in the prisons?

7 a; 20 b; 27 did not respond

A. Yes B. No

18. Do you have any children? What has happened to them since your arrival to the prison?

Appendix 5: Research Questions for Non-governmental Organizations

Services provided:

Year founded:

1. The function of the institution:

- A. Educational B. Research-based C. Assists during the criminal process
D. Assists in the post-criminal process E. Financial assistance

2. Form of assistance during legal process:

- A. Attorney presence B. Consultation support sessions

3. Form of assistance to female offenders:

- A. Medical B. Psychological C. Financial D. Legal

4. Form of assistance to female prisoners after their release from prison:

- A. Financial aid B. Enabling C. Support for finding lodging and job

5. Form of assistance for duration of sentence to offender's family

- A. Financial aid B. Protection of the offender's children

6. Does your organization provide financial support in order to pay the blood money for persons who are financially unable to do so?

7. Does your organization provide services to assist runaways, street workers, drug addicts and AIDS patients?

8. Does your organization provide occupational facilities or opportunities for disadvantaged groups to enhance their source of income?

9. Does your organization provide support groups for prisoners or information sessions for those working with prisoners?

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