

Original Paper

Women and Iranian Criminal Justice System

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Abstract

To understand the predicament of women in Iran, it is necessary to look to both the religion and strong social and cultural forces, which shape their position in society. Islam is often held responsible for the inequitable and sometimes violent treatment of women in Iran. Considering the women situation before Islam, they have gained more rights after Islam. But, no doubt that the differences and strong social and cultural forces regarding women arise from Islam in the Iranian society. The justifications of these differences mainly is that before Islam the women had so little rights and even they were buried alive, but Islam has rescued them and given them some rights. While this view point in per se is completely un-right, but the point is that, it was 1400 years ago and in addition, why Islam has not completed the protection against all differences. The simple answer is that in that social situation it was impossible to convenience the men to accept the equality of men and women. Problems in attaining the full recognition and enjoyment of all human rights and fundamental freedoms for women in Iranian criminal justice system are the main theme of the present article.

Keywords

Iran, women, human rights, differences

1. Introduction

It is generally believed that criminal law is sexually discriminating, which is somehow true (<https://www.hsph.harvard.edu/organizations/healthnet.html>). “The principles of equality and non-discrimination represent the twin pillars or the cornerstone upon which the whole edifice of human rights law is established” (Heinze, n.d., p. 15). Discrimination is usually done on the basis of gender, religion and race. “Most contemporary Constitutions prohibit discrimination based on gender” (Rudolf & Eriksson, pp. 507-525). Iranian Constitution has also explicitly referred to the equality of all persons before the law. In Article 19 provides: “All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; colour, race, language, and the like, do not bestow any privilege”.

“The position and status of women has been a political issue across the globe and over the ages” (Jafar, n.d., p. 34) and “it is a truism that words are instruments rather than labels; the language we use reflects our image of reality. The terminology chosen here reflects this reality: women indeed do not enjoy the rights and freedoms to which they are entitled by the mere fact that they are human” (Tomaseyski, n.d., p. ix).

The United Nations Charter was first to affirm explicitly the equal rights of men and women in its preamble and to lay down a person’s sex among the prohibited grounds of discrimination, alongside race, language and religion (Tomaseyski, n.d., p. 98). According to the article 1 of the Convention on the Elimination of all Forms of Discrimination against Women, 18 December 1979 For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (Human Rights, Discrimination against Women, p. 7). And the principle of equal treatment between the genders is one of the most fundamental principles of the European Union (Docksey, n.d., p. 258).

The point is that despite of these regulations and conventions, there are still many differences against women in some legal systems. Certainly, some justifications are presented for these differences. The main factor of difference could be seen in Islamic countries that are bound to Islamic rules. But, in those Islamic countries that do not perform the original Islamic rules, either there are not any differences or the differences are very little. It seems that, in Islamic countries the main factor of difference could be considered in the religion. As, according to Islam there are some differences between men and women and they do not enjoy the equal rights. There are some justifications for these kinds of differences. In fact, it could be said that “religious communities are only interested in protecting the rights of religious communities” (Clayton, n.d., p. 37). The most important justification about difference regarding the Diya (Note 1) and impossibility of retaliation without paying the half of the Diya to the blood owners by the heir of the murdered woman is an economic justification and regarding the non-acceptance of testifying by women the justification is somehow complex. Since, according to some Fatwas (Note 2) the women and the men have some important psychological differences, as the women are sensible persons and decide more passionately than rationally. “Fatima Mernissi after her analysis of various philosophical and religious texts of the Islamic Middle Ages argues that in these texts women are presented as chaotic, irrational, unreliable and sexually active. In order to satisfy their strong sexual needs they ignore any moral or social laws and thus present a danger to the moral and social order. In the view of Muslim theologians, Islamic civilization is based on God’s will and reason, desire is viewed as chaos and as a threat to reason and civilization. This dangerous power is projected onto women and will be controlled by controlling women”. These ideas are put forward in many periods of western philosophy:

- Aristotle stated that women are incomplete men with less reason.
- Rousseau stated that women's desire is stronger than men's, women have to refrain from abstract thinking and moral judgement.
- Kant admired women's beautiful and pleasant intellect, and stressed that it is different from man's abstract reason.
- But it seems that the origins of the differences could be considered somehow in the society and culture. According to an old culture there were some differences between men and women in all societies and the societies were dominated by men rather the women. "The cultural factors in a male-dominated society prevail and unfortunately are supported by newly introduced misinterpretations of the religion, which are readily adopted by the frustrated, disillusioned masses" (Schirilla, n.d., p. 57).

Based on the equality of rights, there ought not to be any difference in the application of legal rules, nevertheless sex has had a role in the Iranian Criminal Law concerning women. This role has manifestation in two different aspects:

First, concerning the application of substantial criminal laws the legislator has shown difference regarding women, positioning them in a less favourable position in comparison to men. For instance, the Islamic Criminal Law (IPC) holds that should a man kill a woman, the Diya owners of the victim have to pay half of the Diya (diya) of a man to retaliate; in other word, it reduces the amount of a woman's Diya to half of that of a man. Noteworthy is also the case in which a man is legitimately given the right to kill his disloyal wife, if the latter is caught in the act of committing adultery with a stranger, while the wife is legally denied of such rights. There have been attempts by certain organizations and individuals likewise to eliminate such differences, and the United Nations' Commission for Human Rights has also called for these discriminatory disciplines to be eliminated by the Iranian government (<https://www.unhcr.ch/Huridocda/Huridoca.nsf>) nevertheless due to a consensus among religious scholars believing in the inequality of the sexes (Note 3), all such attempts have been as yet fruitless.

Second, there lies a difference in the criminal procedure. Needless to mention that criminal procedure refers both to criminal laws as well as all rulings determined by other laws, particularly the Islamic Penal Code (IPC), regarding criminal procedures. The favouritism emanates from the belief that women are basically incapable of stating the truth in its entirety.

2. Method of the Research

The research method is descriptive and analytical. This explains that by studying the historical record of the compensation of the defendant in the legal system of Iran and focusing on the criminal procedure code of the year 92, various aspects of the discussion have been considered and the points of weakness of the law have been investigated. So, data collection and data analysis represent the core of research. I have also addressed a range of different elements within the scope of the research.

The present article is presented in four parts, including: The background of Women's Human Rights in

Iran and Islam, differences in substantial laws, differences in criminal procedural laws, and deficiencies of criminal procedures regarding women.

3. The Background of Women's Human Rights in Iran and Islam

The 1979 Islamic revolution in Iran established a full-scale religious government in the country. The empowered Muslim revolutionaries intended to introduce a ruling system which, as they claimed was far superior to all other current systems in the world, and thereby turn it into an epitome of government for the whole world to follow. In-depth structural and fundamental changes were launched in governmental systems as the Islamic Republic was established. The judiciary and the legislative witnessed the strongest waves of the tidal changes. Some of the rules belonging to pre-revolutionary era were gradually replaced by Islamic ones during the first few years after the revolution. The changes were more considerably discerned in the criminal policy of the country: unlike the civil laws system being based on Shiite religious rules in the previous regime, the criminal policy, being considered unreligious, underwent a methodical modification in criminalization and punishment to comply with Shiite religious rules. And as for the judiciary, many an experienced judges were made redundant, only to be replaced with ideologically selected and appointed ones (Mostafa, n.d., pp. 233-265).

3.1 Changing the Laws

The notion that whatever rule which existed before the revolution was laid by an illegitimate non-Islamic government was the chief justification offered by the revolutionaries to introduce major changes to the system of rules which they believed had to lose their validity with the establishment of an Islamic government. Based on the same notion the one and only flawlessly divine source to lead man to salvation and bliss is Islam, which is indeed a godly grace bestowed upon mankind through a holy prophet to enlighten the straight path by means of a set of perfectly immaculate divine rules. Observing these rules brings forth social peace and order as well as bliss in the afterlife. This belief, in general, implied that manmade rules were practical to a limited extent, and where there exist divine rules, man ought not to lay any laws (Mohammad, n.d., pp. 199-312).

3.2 Two Kinds of Rules in Islam

Two types of rules make up the body of Islamic Law: endorsed and established rules. That is to say that, on the one hand, certain rules existed before Islam were endorsed by the new religion and retained their validity, and on the other hand other rules were originally introduced by Islam into the societies converting to the religion.

Rules established in post-revolutionary Iran are composed of both types of the above-mentioned rules, many of which are contradictory to modern human rights:

- Gender difference in the case of rules regarding Diya, testimony, guardianship, divorce, killing one's spouse, etc.
- Religious difference regarding Muslims and non-Muslims.

- Lack of complete law abiding procedures, for instance, accepting authorized religious sources and the verdicts (*fatwas*) of religious scholars thereon as a means of criminalization and punishment. As well as applying rules passed after the revolution to crimes committed before the revolution (Ex post facto laws), or holding courts based on certain regulations and without any law passed by the parliament. And going as far as trusting certain members of society with a legal procedure.
- Practicing corporal and capital punishment (kind of private justice).
- Lack of freedom in the choice of one's religion: establishing certain punishments for conversion of Muslims to other religions.

3.3 The Contradiction

A significant point often ignored is the fact that the existing contradictions between Islamic rules and modern Human Rights should not be attributed to the religion *per se*. This does not actually imply that the rules were not introduced by Islam, but instead they ought to be viewed according to the standards of the time they were divinely revealed to man. With the advent of Islam in Arabia, the mentality of the time perfectly approved of the rules introduced by the new religion and considered them quite logical, needless to say that the mentality of those days is incomparable to modern day mentality and common sense. The problem arises when rules are taken to be unwaveringly immutable, as unfortunately is the case in most Islamic countries including Iran. Basically, rules are to define human interactions and to help establish peace and order in society, and since human interactions and relationships are constantly changing, rules as well should be modified to comply with these changes. The rules governing a traditional tribal community do fail short of meeting the needs of a complex industrial modern or post-modern society. Historically, it is evident that rules, particularly criminal rules including crime and punishment regulations, have always been amended to keep their compatibility with changing societies. This is not meant to question religion. The so-called Islamic Law is mistakenly deemed to be an inherent part of the religion (Mohammad, n.d., pp. 181-192). Religion is a notion to be of service to all men at all times (Note 4), and thus its essence cannot be mingled with an ever-changing phenomenon, that is to say law and regulations. For Islam to be accepted by the people in its early days it had to be convincing in solving their legal problems, hence the prevailing common sense of the masses would determine the rules.

3.4 Tendency to Change

Though theoretically holding with the belief that Islamic law is unchangeable, the Iranian government has used its practical authority to either stop the application of certain Islamic rules or to modify them as to meet the interests of the state and the society. This has been mainly due to a mounting international legal and political pressure against Iran, as well as being affected by the changes discernable in post-revolutionary Iranian society. Among which one may mention the changes in women's and religious minorities' rights including the membership of women (Seid, n.d., pp. 98-129) though on a limited scale, in the judiciary system of the country, partial reintroduction of public

prosecution offices, stopping the stoning punishment being practiced, and raising the amount of Diya for members of the legally recognized religious minorities including Christians, Jews and Zoroastrians to be equal to that of a Muslim.

3.5 The Reasons of Contradiction

On the whole, the unfortunate fact that certain human rights are not observed by the Iranian legislative can be attributed to the following reasons. First, the government considers Islamic Laws to be constant and unchangeable notions, which is indeed a mistaken consideration, as was mentioned earlier. Second, the Iranian society is still grappling with tradition, and is not totally aware of modern thought and mentality in its entirety: few researches show that the Iranian society is still resisting against certain aspects of modern thought. Therefore, even if the government gives up its dogmatic view, the public is as yet socially and culturally unprepared to accept the changes.

4. Differences in Substantial Criminal Laws

The right of women in the IPC is a controversial issue clearly inconsistent with international laws. That is to say, according to Islamic laws, in general, and according to Islamic criminal laws, in particular, the woman is entitled to fewer rights than the man. It is interesting to note that this has not been considered by clerics to be contradictory to the law of equality, or to have undermined the human dignity of women (Note 5). But in the light of international laws concerning human rights, the different stance of the IPC regarding women shows certain discrepancies with international laws. These discrepancies are elaborated on in three parts as follows:

4.1 Inequality of Retaliation

Article 290 of the IPC states that “in the event of the murder of a Muslim, the murderer is punished by retaliation”. But this does not necessarily imply that all murders entail retaliation: if the murdered is a non-Muslim, there is no retaliation. And in the case of a murdered female Muslim, article 382 of the same law declares: “in the event of a murder of a Muslim woman by a Muslim man, the latter is punished by retaliation if only half the amount of the Diya of the murderer is paid beforehand”.

Thus, considering details of the IPC implies that:

- a) Murder of a non-Muslim (man/woman) by a Muslim (man/woman) does not entail retaliation.
- b) If a Muslim woman is murdered by a Muslim man, the woman’s Diya owners can have the retaliation if only they have already paid half the amount of the due Diya of the murderer.
- c) If a non-Muslim (man/woman) murders a Muslim woman, the murderer is punished by retaliation.
- d) According to article 382 of the IPC if a non-Muslim Man murders a non-Muslim woman, the Diya owners of the woman can have the retaliation by paying half the amount of the Diya.
- e) If a non-Muslim woman is murdered by another non-Muslim woman, the Diya owners of the murdered can ask for retaliation.

It is evident that the treatment of women (Muslim/non-Muslim) in comparison to the treatment of men (Muslim/non-Muslim) in the IPC is quite different (Zahra, n.d., pp. 31-90), and in the particular case of

non-Muslim women the situation is exacerbated. This is undoubtedly contradictory to the equality of rights and to an unbiased treatment of cases regardless of religion—both of which are stated in international human rights.

The question is that what is the origin of this rule in the law? How different is the rule in Iran from the rules used in other Islamic countries and why? To what degree does this rule fit within the larger legal framework in Iran? How do different segments of the Iranian society (e.g., the public, the media, politicians, religious leaders, women's groups) view this rule and what are the reasons for disagreement/agreement?

4.2 Inequality in Diya

The existing discrepancies between the IPC and international human rights are by no means limited to the question of retaliation, but are also extended to laws regarding Diya: article 550 of the IPC determines the Diya of a woman regardless of her religion half as much as that of a man.

In the case of Diya for injuries men and women are treated equally. But if the amount of Diya of injuries regarding a woman reaches more than one third of the full amount of the Diya, they are treated as half of the full Diya for a man. For instance, the compensatory money for the loss of all ten fingers of the hands is the full amount; for three fingers of a woman it is more than one third of the amount; but for four fingers the woman will be receiving half of the amount.

Regarding the reduction to half of the amount of Diya in the cases of women, economical considerations have been stated as a justifying reason: according to Islamic rules the woman is not obliged to have a job, and she is to be supported by her father prior to marriage, and by her husband after marriage, therefore it is the husband who is the breadwinner of the family not the wife, thus economically speaking the man is to be treated with a higher value in comparison to a woman. Such is also the case with inheritance rules: the daughter inherits half as much as the son from the deceased father or mother.

The purported economic justification seems to be unsubstantiated in the case of the Diya of injury, regarding the loss of a bodily member, being reduced to half in the case of women; because it is not consistent in other cases: the primary rule referring to full amount and then reducing it to half if only the items liable to receiving the money is more than one third of the whole. If such a rule had been grounded on economic considerations, then the primary rule would have determined the Diya as half in the first place.

Then again the economic justification can be rejected in the light of the fact that laws should be regarding solely the humanity of a person, and not to be affected by either sex or religion. But it seems that the IPC regards sex and religion composite parts of the humanity of individuals.

4.3 Inequality of Rules Regarding Sexual Disloyalty

In the Iranian Criminal Law any extramarital sexual relationship, even if it is committed with the full consent of the parties, is considered a crime. And in the case of adultery, considering certain conditions, the crime is punished by death.

Under certain circumstances the legislator has provided the husband with the right of killing his wife and the adulterer, if they are caught during the act and the husband is certain about the consent of his wife to the act of adultery. In the view of the legislator, it is the husband who is to prove the consent of his wife to the act.

Since this legalised right to kill the partners in the act of adultery grants the husband the opportunity to take the law into his own hands, it is indeed disrupting to public order. Furthermore determining the consent of the wife during the act is by no means an easy task for the husband, and he may misjudge the truth. If we supposedly regard the two above mentioned shortcomings as being justifiable, a third fault of the law could be the fact that it does not provide the wife with the same right as to kill her husband who has engaged in the act of adultery (Quarterly of Book, pp. 15 -35).

A possible reason for this apparent difference could be the legally identified right of a man on having up to four wives and an unlimited number of temporary partners. Based on this, if the wife had been given the right to kill her husband, how could she be certain of the relationship of the female party engaged in the act of sexual intercourse? She might have been a wife to the husband. Thus the act of killing on the part of the possibly erring wife would be considered as murder.

All in all, international human rights consider this as a violation of women's rights while Islamic laws take it to be perfectly justifiable.

5. Difference in Procedural Criminal Laws

There is no direct reference in the Iranian Criminal Procedure Code to differences between men and women, but these differences are discernable in the existing regulations. Some are sexually discriminating while others are influenced by the religion of the women in question. In present article these aspects of procedural criminal laws are considered as follows:

5.1 Rejection of the Testimony of Women without the Accompanying Testimony of Men

Article 199 of the Islamic Penal Code (IPC) holds that "The standard [of proof] for testimony in all offenses shall be two male witnesses; unless in *zina*, *livat*, *tafkiz*, and *musaheqeh* which shall be proved by four male witnesses. In order to prove a *zina* punishable by the *hadd* punishment of flogging, shaving [of head] and/or banishment, testimony of two just men and four just women shall be sufficient. If the punishment provided is other than the above, testimony of at least three men and two women shall be required. In such cases, if two just men and four just women testify for the offense, only the *hadd* punishment of flogging shall be given. Bodily offenses punishable by *diya* shall also be proved by one male witness and two female witnesses". So, the testimony of women is valid if only it is accompanied by the testimony of at least two just men. Thus, women accompanied by one man cannot bear witness to adultery. That is to say that even if ten or more women have witnessed the act of adultery their testimony is not recognized as valid by the law. It is important to note that the testimony of four women accompanied by two men are accepted only in the cases where the punishment is set as whipping and not death: that is because for the act of adultery to be punished by death, the law requires

the testimony of men or alternatively the testimony of three men accompanied by those of two women. No reason for this discriminatory preference has been stated, but it could be assumed that the rule emanates from the belief—as was the case in retaliation and Diya—that legally speaking a woman is considered half as valid as a man. It could be said that the Islamic legislator presumably intended to prevent adultery cases from being proved, and thus has made the legal process of bearing testimony as hard as possible. If this is the case then why is it that the legislator has not raised the number of valid witnesses to four in all cases so as to make the conditions as hard as possible?

5.2 Absolute Invalidity of the Testimony of Women

Regarding buggery Article 199 of the Iranian Civil Law declares that “the testimony of women alone or with the accompanying testimony of a man do not bear enough legal weight to prove the act of buggery”. Trying to justify this one may quote Article 233 of the IPC where it states that “buggery is a male crime” and since it is often committed in the presence of men, or because of the moral indiscretion of the act, women have been ruled out of the legal scene. If this is true, why in the case of lesbianism which is deemed a female crime, the conditions are not the same for the testimony of men? And the testimony of men is regarded as valid and Article 199 of the IPC sets the legal process of proving the act of lesbianism “the same as that of buggery. That is to say that the testimony of women those not bear legal weight in the case of lesbianism which being a female crime is often committed in the presence of women” (Nooshin, n.d., pp. 45-54). The case is the same regarding sexual mediation, while the mediator could be either a man or a woman. Also regarding certain crimes such as accusing someone of adultery, buggery or wine-drinking the testimony of women are not accepted.

6. Deficiencies of Criminal Procedural Laws Regarding Women

In this part existing deficiencies of the criminal procedural laws as regards women are enumerated. In recent years there have been attempts on the part of law enforcement forces beyond the determined frame of the law to eliminate certain legal shortcomings. Therefore, since these attempts are beyond the law (but not necessarily against it) and that they are by no means widespread (only in larger cities such as Tehran there are enough possibilities to put certain plans into action), it is more necessary to modify the existing laws to eliminate such deficiencies and shortcomings. To elaborate on these deficiencies they are presented as follows:

6.1 Arrest

Being arrested by the police is a basic step at which personal rights of people face the right to interfere with them. Without a doubt in order to keep law and order in society and to stop the breach of law by criminals it is necessary to interfere with the personal rights of certain individuals to keep legal procedures running. Nevertheless there ought to an attempt to observe the rights of individuals under detention as much as possible.

In order to defend the personal rights of female criminals a basic step would be to make it a legal obligation to have the females frisked by a female officer. In certain countries the law clearly refers to

such a thing. For instance, according to procedural criminal laws of India a female criminal may be arrested by a policeman, but she should be searched and frisked only by a policewoman. Article 47 of the abovementioned law states that if an apartment owned by a woman who refrains from appearing in public is to be searched by the police, they ought to ask her to leave the place during the search; this is to ensure the right to privacy of the female. Male officers are also required not to touch a female criminal, and the police is not allowed to arrest a female before dawn or after dusk. In case she should be arrested during this time, the policeman in charge has to obtain an official permit from a higher ranking officer, and if obtaining such a permit is not possible, the policeman may arrest the female criminal and later submit a report explaining the situation, as well as reporting to the magistrate court. These measures are to ensure utmost protection of the rights of female criminals and were stated in the criminal code of 1994. In a report on rape and related crimes, the legal commission suggested to add the above mentioned items as an amendment to Article 46 (1) as follows: "If a woman is to be arrested, and there is no female officer to take charge, the male officer should not touch the criminal" (<https://www.hsph.harvard.edu/organizations/healthnet.html>).

6.2 Body Search and Examination

The Iranian Criminal Law does not clearly refer to the search of female criminals by female officers. Certain conditions necessitate body search. For instance when a woman is accused of carrying illegal stuff, it is necessary to search her body, regardless of the fact that she might not have placed the illegal items in her cavities. Hiding illegal drugs in the vagina, a common trick employed by female criminals, calls for a thorough search of the body or to determine the details of an act of rape or other suchlike physical violations, it is necessary to examine the outer and inner parts of the female genital organs, which should be also done by a female expert.

Article 128 of the Iranian Criminal Procedure Code allows a judge to ask a trusted forensic expert to carry out examination of dead bodies, injuries or mental harms and if the forensic expert fails to be present for the examination or there is no such person to be found, the judge may ask another trusted expert to accomplish the task. Whenever the task is beyond the expertise of the forensic expert, another expert is required to take charge.

It goes without saying that no reference is made in the law to the examination of the female body by a female expert. In most Iranian cities there is only one forensic expert in charge, and that is mostly a man who carries out all examinations.

Based on the article 136 all examinations are carried out by the forensic expert unless:

- the forensic expert fails to be present,
- a forensic expert cannot be found,
- the medical task is beyond the expertise of the forensic expert.

And in either of these cases the judge may ask another trusted expert to accomplish the task, provided that:

- there is another trusted expert to be found,

-the invited expert is a qualified one.

If such an expert is a female, the judge may ask her to carry out the examination; otherwise a male expert will take charge (Note 6).

Insisting on having female bodies examined by female experts is to ensure that no violation is made to the female body by a male and this necessitates that the consent of the female criminal or victim be gained prior to physical examination by a male. "Indian law, for instance, requires that a female medical expert carries out the physical examination of a woman under arrest. The national commission of women proposed that the examination of the female body necessarily carried out by a female expert be added as an amendment to Article 54 of the Criminal Law, but apparently the government has rejected this suggestion, nevertheless the Legal Commission is still lobbying to have the amendment added to the law. The amendment may be questionable in cases where there is no female forensic expert to be found" (<https://www.hsph.harvard.edu/organizations/healthnet.html>).

The Iranian Draft of the right to privacy called for all examination of female bodily cavities to be carried out by a female expert, and the proponents of the bill were of the opinion that the right to privacy and physical integrity of individuals ought to be observed, but unfortunately this draft had been withdrawn by the former State and the latter state has done nothing in this regard.

7. Result

Iranian criminal laws are male-oriented and are mainly based on the social status of men, resulting in a different stance toward women as is discernable in the civil laws.

Instances of the dominance of men over women can be traced in history (Note 7), and is not solely limited to Iran or Islamic countries. Islamic regulations have not originated this difference, but the difference was ever present in history, not being shaken off in present world Iran and other Islamic countries. Even some believe that "in reality, the role of culture, not religion, has been the prominent perpetuator of the oppression of women. Islam, clearly, referring to the Qura'an and not the shari'a, gives men and women equal rights" (Muneera Al-Khalifa & Noora Al-Khalifa, n.d., p. 233).

Sexual difference is evident in substantial laws concerning retaliation, Diya and sexual disloyalty. Certain discriminatory cases such as the invalidity of the testimony of a female, or its lack of legal weight without accompanying male testimony originates from either the belief held by men that females are members of the weaker sex, or the idea that since women are emotional creatures they are incapable of discerning the truth in its entirety. If, supposedly, these assumptions are taken to be true, the reason thereof could be the fact that women have always been banned from appearing in social interactions. The ever-significant-growing role of women in the Iranian society, and other Islamic countries as well, helps reject the fallacious nature of such assumptions. And regarding the emotional temperament of women, well it is the judge who is to consider the validity of testimony in order to discover the truth, and he may set forth to explore it meticulously. To sum up there seems to be no legitimate justification for the existing sexual difference, despite the fact that Islamic law provides

certain rationalizations to support a difference which is strongly rejected by international human rights in the modern world and “is contrary to articles 1, 2 and 7 of the Universal Declaration of Human Rights” (Mohsen, n.d., p 55):

Article 1: “All human beings are born free and equal in dignity and rights”.

Article 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Article 3: “Everyone has the right to life, liberty and security of person”.

Article 7: “All are equal before the law and are entitled without any discrimination to equal protection of the law”.

Article 3 of the International Covenant on Civil and Political Rights, ratified by the Iranian Parliament in 1974, requires that “all governments in the treaty to observe equal rights of men and women regarding their civil and political rights as mentioned in the covenant”.

Article 1 of the 1975 United Nations Declaration on The Elimination of Discrimination against Women states that “sexual discriminations denying or limiting equal rights to men and women are against justice and are considered as a violation of the dignity of human beings”.

And finally the 1979 Convention on the Elimination of All Forms of Discrimination against Women defines discrimination against women as “... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”. The final point is that the dialogue between Islam and culture is ongoing. Iranian women are caught in the midst of this dilemma. Iranian women should promote a more egalitarian society, where gender is no barrier to any human rights.

References

- Afshan, J. (2005). Women, Islam, and the state in Pakistan. In *Gender Issues* (p. 34).
- Al-Khalifa, M., & Al-Khalifa, N. (2007). HUMAN RIGHTS IN THE MIDDLE-EAST: THE RIGHTS OF WOMEN AND CHILDREN. *Quarterly*, 26(4), 233. <https://doi.org/10.1093/rsq/hdi0284>
- Clayton, J. (2004). Universal Human Rights and traditional religious values. In *Society* (p. 37). <https://doi.org/10.1007/BF02712703>
- Docksey, C. (1991). The Principle of Equality between Women and Men as a Fundamental Right under Community Law. *Industrial Law Journal*, 20, 258. <https://doi.org/10.1093/ilj/20.4.258>
- Heinze, E. (2003). The Logic of Equality: A Formal Analysis of Non-Discrimination. Aldershot: Ashgate. In *Human Rights: Discrimination against Women: The Convention and the Committee, Fact Sheet* (No. 22, p. 7). United Nations. Retrieved from <http://www.ohchr.org/Documents/Publications/FactSheet22en.pdf>

- Kadivar, M. (2003). Human Rights and Religious Intellectualism. *Aftab Magazine*, 27, 55.
- Malekian, M. (2002). *A way to Freedom* (pp. 233-265). Negahe Moaser Publications.
- Mojtahed, S. M. (2002). *A Critique to formal Reading of Religion* (2nd ed.). Tarhe No Publication.
- Nooshin, A. K. (2002). *Women under the shade of step-fathers* (4th ed.). Toseeh Publications.
- Rudolf, B., & Eriksson, A. (2007). Women's rights under international human rights treaties: Issues of rape, domestic slavery, abortion, and domestic violence. *Oxford Journals*, 5(3), 507-525. <https://doi.org/10.1093/icon/mom022>
- Saeidzadeh, S. M. (1998). *The women's share in the civil society* (pp. 98-129). Qatreh Publications.
- Schirilla, N. (1998). *Women and Reason in Arab-Islamic and European Philosophy* (p. 57). Kluwer Academic Publishers.
- Tashakkori, Z. (2002). *The Woment from the Intellectuals View* (pp. 31-90). Taha Publications.
- Tomaseyski, K. (1993). Women and Human Rights. In *Zed Books LTD* (p. 98). London & New Jersey.

Notes

Note 1. Blood money.

Note 2. Fatwa is the religious opinion of a high clergyman.

Note 3. The daily "Jomhuri-e-Eslami" October 4, 1997 quoted Mr Fazel Lankarani (an Islamic Scholar) as saying: "Who says that there is no difference between men and women? I don't want to say that compared with men, women are lower in understanding, knowledge and philosophical thought. But God has privileged men over women in certain aspects" (<https://www.womenaction.org/globalmcwdi.htm>).

Note 4. This means that the Islamic religion has some fixed and unchangeable foundations and rules. But, the law aspects of the Islam could be interpreted in accordance with new circumstances of the society. This is not a claim, but it seems to be one of the main features of all religions.

Note 5. The argument is that the men work out of the house and earn the money and have to give the costs of the life and the women have not to work out of the house and earn the money, as the man has a legal duty to earn the money and spend it on his wife or other members of the family. So from economic point of view the men overweigh the women and therefore in case of retaliation or Diya a woman weighs half of a man.

Note 6. Perhaps the Iranian Criminal Law does not differentiate between a male medical expert and a female one anymore.

Note 7. To trace these historical discriminations ref: Ancient Civilisations by Fostel Dukulanje.