

Women's rights
A Human Rights Lawyer in Iran

One of the most significant human rights challenges in Iran is with regards to women's human rights. In effect, women's rights in Iran are influenced by both tradition and religion. These factors imply that improving laws regarding women's rights are either impossible or difficult and gradual. For instance, many laws regarding divorce¹, dowry,² alimony,³ inheritance⁴ and testimony⁵ among others are drawn from Islamic sources⁶ (The Koran, tradition or Sunna, consensus and logic). Given this, any change in these laws would be met with resistance among religious elements, in particular as the Iranian government is a religious system, which further complicates matters. Any criticism or resistance under current laws will be met with a serious response on the part of the state and may result in trumped up charge of apostasy.

Another issue that merits attention is that most Sharia laws are custom-based, meaning that they were in effect prior to the inception of Islam and have been adopted as Islamic laws either in their exact form or with minimal amendments.⁷ In reality, the customary nature of these laws indicates that they stem from the local community and show the pattern of development over time and place. In other words, culture, religion, civilization, economy, politics and other issues are perpetually impacted by time and space occupied by men, and the laws set in motion were instituted to address their needs. If this logic is to be accepted, the issue of the divine nature of these laws is also open to questioning and therefore changes and improvements in relation to time and space could be considered.

In order to improve women's rights and change discriminatory laws or laws that result in violence against women, two elements in society and state play integral roles. Human society naturally stands against changes to traditions and when a tradition assumes a religious context, this stance becomes more challenging. However, the factor of time must not be ignored as the advance in mentality among the younger generation is easily felt. It may be that the two forces of society and state can impact each other, but what merits attention is that according to international laws, the promotion of human rights is a duty on the part of governments.⁸ In effect, governments as representatives of public powers, including the three branches of power, namely those of executive, legislative and judicial, can and must play a befitting role in the promotion and protection of human rights. Certainly this is achievable in a democratic state that is committed to the principles of good governance⁹. When a democratic state is in place, those elected to public office as executors, legislators or judiciary can create a system in which human rights and in particular women's rights advance. In this manner society is influenced by the state. In Iran we witness the opposite.

Unfortunately, in Iran the religious state which is in place of a democratic system, either prevents or delays such processes. Certainly the passage of time and changes taking place in neighbouring countries influence Iranian society result in many changes. However, if the Iranian government was not a theocracy, such changes would have happened in a more conducive and speedy manner. In current circumstances changes and reforms must be carried out in a cautious, conservative manner, so that it can carry the approval of the religious faction and leadership, and at the very least maintain a religious facade. For instance, with regards to the issue of equal blood money payments for women and men, the revised Islamic Penal Code¹⁰ has set the amount for women as that of half of the blood money for men (appearing respectful towards religious law) however, the difference is covered by payments from the Fund for Compensation of Bodily Harm. Therefore, in this case, the legislator appears to have respected religious laws, but through another means discrimination against women in blood money laws are eliminated.

It seems necessity, which is the most effective cause of change in laws, evolves in relation to space and time resulting in improvements in laws. Despite resistance on the part of some states, change is inevitable.

¹ Verses 1 and 2 of the Surah on Divorce and verse 231 of the Surah of Cow from the Quran.

² Verse 4 of Surah of Women, the Quran

³ Verse 34 of Surah of Women and verse 7 of Surah of Divorce, the Quran

⁴ Verse 11 of Surah of Women, the Quran

⁵ Verse 106 of Surah of Food, the Quran

⁶ Abolhassan Mehdi, *Foundations of Inference in Islamic Laws*, Tehran, Tehran University Press, 1381, 15th edition, p. 145

⁷ Mostafa Mohaghegh Damad, *Legal Rules 1*, Tehran, Centre for Islamic Science Publications, 1383, 35th edition, p.6

⁸ The United Nations Charter, Universal Declaration of Human Rights, International Convention on Economic, Social and Cultural Rights, International Convention on Civil and Political Rights

⁹ Principles of good governance include: Participation, rule of law, transparency, responsiveness, consensus formation, justice, effectiveness, efficiency and accountability, World Bank report, 1989

¹⁰ Article 550 of the Islamic Penal Code states that "The Diya for murdering a woman is half that of a man". A note to article 545 of the Code states: "In all cases of homicide where the victim is not a man, the difference between the diya and the diya of a man shall be paid from the Fund for Compensation of Bodily Harms. It is important to note that Article 300 of the Penal Code approved in 2001 placed the diya for the intentional or unintentional murder of a Muslim woman as half of that for a man. This was repealed with the adoption of the new Code.

Resistant states impede and challenge this process, whereas democratic states expedite and facilitate change.