



ACCESS TO JUSTICE IN IRAN

WOMEN, PERCEPTIONS, AND REALITY

SAHAR MARANLOU

CAMBRIDGE

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Access to Justice in Iran

Women, Perceptions, and Reality

This book offers a critical analysis of access to justice from international / Islamic perspectives to highlight various aspects of access to justice previously not discussed in the body of literature in the context of Iran. It provides a detailed picture of the workings of the Iranian legal system, together with a review of barriers that people face in their path to justice. This book explores legal empowerment and gender, and presents the findings of a survey study on the perceptions of Iranian women toward the justice system in their country. It is designed to focus on women's basic legal knowledge, their familiarity with legal procedure, their perceptions of cultural barriers, the issues that influence their preference for mechanisms of dispute solutions, and their level of satisfaction with their chosen courses of action. The book draws upon a broad range of primary and secondary data sources to offer pragmatic policy solutions.

Sahar (Zahra) Maranlou is an independent legal researcher who has written extensively in the fields of the Iranian legal system, women's rights, civil society, human rights, and Islamic law. She has consulted for a range of national and international organisations, including UNICEF and UNDP, and has provided Iranian organisations with her expert legal opinion in the areas of law and empowerment. She is a member of the steering committee for the Global Alliance of Justice Education. She is a visiting lecturer at the University of Brunel and has taught Islamic Law at the University of Warwick. Please visit her website, www.saharmaranlou.com, for additional information.

Acknowledgements

I turn to right and left, in all the earth
I see no signs of justice, sense or worth:
A man does evil deeds, and all his days
Are filled with luck and universal praise;
Another's good in all he does – he dies
A wretched, broken man whom all despise.

Ferdowsi

This journey I have undertaken has been long, fascinating, and sometimes arduous, with obstacles and limitations littering its path. Along the way, numerous individuals have helped me and supported this process. First and foremost, I would like to thank my mentor, Professor Shaheen Sardar Ali, for her inspiration, direction, and support throughout the study. Significant recognition must go to all those individuals who gave their time to share their experience and expertise with me. I thank all of the participants who supported this research by completing questionnaires and participating in interviews. Without that group of women, researchers, scholars, officers, judges, and law professors, this research could not have taken place. Because of the sensitive political atmosphere, many of these individuals are not explicitly identified, yet they have provided a significant background to the study.

Most important, I am deeply indebted to my family, for their support and love. Particularly, I would like to dedicate this book to my husband Sasan, in grateful appreciation for his support and continued enthusiasm throughout this project, and also to my beautiful little girl, my star Tara.

Abbreviations

| | |
|-------|---|
| ABA | American Bar Association |
| ADB | Asian Development Bank |
| ADR | Alternative Dispute Resolution |
| CCA | United Nations Common Country Assessment |
| CEDAW | United Nations Convention on the Elimination of All Forms of Discrimination against Women |
| CEU | Central European University |
| ECHR | European Convention on Human Rights |
| GEM | Gender Empowerment Measure |
| GLPLI | Global Law Programs Learning Initiative |
| GPD | Gross Domestic Product |
| HDI | Human Development Index |
| ICCPR | International Covenant on Civil and Political Rights |
| IRI | Islamic Republic of Iran |
| NGOs | Non Governmental Organisations |
| OEO | Office of Economic Opportunities |
| OSJI | Open Society Justice Initiative |
| PPP | Purchasing Power Parity |
| RBA | Rights-Based Approach |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| UNCAC | United Nations Convention against Corruption |
| UNDP | United Nations Development Program |

| | |
|--------|--|
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| UK | United Kingdom |
| WB | World Bank |

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Introduction

This book is concerned with exploring access to justice in the Islamic Republic of Iran, with particular reference to the perceptions of women. The use of the term “access to justice” is as diverse as the literature, encompassing “accessibility of court processes for resolving disputes over mutual rights and responsibilities, availability of adequate legal representation in criminal trials, access to more informal legal processes such as small claims courts and administrative tribunals, availability of legal advice, public legal education” (Parker, 1999: 30). In particular, this book has broadened its focus from the procedural aspects of access such as cost barriers and substantive justice, to legal empowerment in order to enable disadvantaged groups to seek “justice” and challenge the multidimensional barriers to “access.” This work is based around interviews with women in order to measure their perceptions of access to justice from a legal empowerment perspective in Iran.

The issue of legal empowerment enhancing access to justice has been one of interest in several research studies across the world (see, for example, Golub and McQuay, 2000; Palacio, 2006), so this study has international relevance. However, legal empowerment was employed as a model to bring together the concepts

that focus on the subjective approaches in which I was interested, and exclude other top-down-oriented approaches such as the development of justice institutions' capacity, legitimisation, and policy formulation.

As this research focused on access to justice (claimed to be linked to the notion of the Western welfare state) in Iran (a Muslim country), this book draws from concepts of access to justice from both Western and Islamic perspectives. The comparative nature of the theoretical analysis discusses the gaps and similarities between Western and Islamic-related notions to inform the conceptual framework for this study. This enabled the concepts to be compared, thereby incorporating and reinforcing each other. As the conceptual framework grew, links between the meaning of justice and the setting of contexts in which justice needs to be realised became more apparent. These correlations led to a contextualised analysis of access to justice in Iran.

This study, therefore, focused on the concept and context of access to justice with particular reference to barriers in Iran. The research applied both qualitative and quantitative methods. The data gathering also was founded on triangulation methodology that included multiple data collection techniques. The research methodology mainly was derived from grounded theory, as it has been cited as the best methodology for feminist research (Bentzon et al., 1998).¹

In addition, a parallel quantitative study was added that surveyed women's perceptions of access to justice. This combination of qualitative and quantitative data collection methods was aimed at enhancing confidence in findings (Oakley, 2000). This research therefore relied on quantities, and qualitative and

¹ Accordingly, the analysis begins through the examination of data in the initial phases of data collection (Strauss and Corbin, 1994) and theory can be "discovered" from data which has been collected and examined during the research (Glaser and Strauss, 1967).

descriptive data. The qualitative research included a combination of a questionnaire, and semi-structured and in-depth interviews. The methodology and survey study are described in Chapters 5 and 6.

Brief Aside: How I Became Interested

To understand why this book is about access to justice and women's perceptions in Iran, the reader might be interested in knowing how I originally became involved with this theme. My interest in access to justice and legal empowerment was formed by quite a few years' work experience and research. I began working as a journalist, writing legal and political columns in Iranian reformist newspapers after earning a law degree. After years of related work mainly with NGOs on empowerment and governance, I completed a postgraduate study on human rights as Justice Initiative Fellow at the Central European University. When I graduated from the CEU, I began to implement a project promoting access to justice based on the approach of legal empowerment through education. I also developed a module for clinical legal education, and in 2006 I founded the first university-based legal clinic in Iran. Later, I had the chance to initiate and coordinate several national projects to support legal aid and clinical legal education within several law schools.

While working in this area, I realised that it is the formal obstacles to access to justice, which comprise direct obstructions (such as lack of affordable legal representation, lack of adequate laws and regulations, delays in the justice system, weak enforcement of laws, lack of remedies provided by law, and lack of de facto protection) that are the most "publicised" barriers to access to justice. However, limited knowledge of rights and discriminatory social norms and cultural constructions are the main barriers to access to justice for disadvantaged groups and, in particular, for women; hence the need for research to investigate access to justice from a user's perspective.

Important Questions to Ask

Despite the absence of statistical data, there exists an argument that the Iranian justice system faces various challenges, such as a lack of transparency and accountability; a lack of gender sensitisation; a lack of access to legal information; failure to protect poor and marginalised groups, in particular women and minorities; lengthy delays and bureaucratic processes; lack of a legal aid system; inadequate, long, and discriminatory remedies; the large number of undecided cases in the public courts and courts of appeal; and a limited number of female judges (*Common Country Assessment*, 2003).

As we discuss later, the Iranian constitution quarantines access to justice within fair trial provisions similar to major international human rights conventions, yet it seems that the constitutional basis for equal justice has been broadly violated. Throughout this book we will see that existing legislative frameworks are not sufficient in many respects. The domestic laws do not explicitly enumerate the principles of equal access to justice. Moreover, despite the presence of constitutional provisions, ground realities reveal that the implementation of such laws and providing greater access to justice for disadvantaged groups needs to incorporate components of socioeconomic and political interventions. Also, as this book concludes, any reform of public policy will be more successful if based upon the understanding of barriers to access to justice, and theoretical and empirical methodologies. However, the knowledge of the Iranian legal community with regard to the area under discussion is rather poor. There are only a few small-scale empirical research studies about the accessibility of justice and also very few published articles on the subject. As a result, legal institutions are not familiar with the concept and scope of access to justice as such.

On the contrary, during the course of past decades, the international access to justice debate has grown into a collection of multinational, reform-oriented associations of legal workers,

government reformers, and law and society scholars (Parker, 1999). As we discuss later, “access to justice orthodoxy”² focuses excessively on the state’s legal institutions rather than people and, in particular, disadvantaged groups. However, it is uncertain whether the state-centred approach to reforming justice institutions pursued by most international organisations can share adequate benefits with disadvantaged groups in developing countries.

Therefore, this study endeavours to respond to the following questions: (1) What does access to justice mean both from international and so-called Islamic discourses? (2) How is access to justice defined in Iranian law, legal system, and practice? (3) What are the main barriers to justice from Iranian users’ perspective? (4) How do Iranian women perceive access to justice? and (5) Do Iranian women have knowledge of their rights, the legal system, and the role and procedures of legal institutions?

Key Concepts

This book employs several frequently used terms that need to be defined and understood from the beginning. The meanings of key words and concepts such as “access to justice” and “legal empowerment” will be discussed throughout this study but need a brief explanation here. The term “access to justice” requires clarification, because it is used in different ways within the related literature. It has been used in sociolegal research in a variety of contexts, often without explicit explanation of its meaning. Also it has been noted that in the context of pluralistic societies, there is no singular meaning of access to justice (Cappelletti and Garth, 1978; Morris and White, 1973).

² The term “orthodoxy” has been used to describe a state-centred approach to access to justice. For a detailed discussion on the rule of law orthodoxy model, see Upham (2002) and Golub (2003).

It is interesting to note that the scholarly tensions regarding the definitional framework of access to justice are growing because of differences between those who advocate minimal rights to ensure some level of access and those who claim equality should be absolute (Moorhead and Pleasence, 2003). However, related studies demonstrate that there are two key factors in determining whether people have access to justice: the first is access to financial resources; the second refers to the ability of people to understand and use the justice system (Cappelletti and Garth, 1978). The definitional scope of access to justice, thus far, has covered different aspects such as legal assistance to disadvantaged groups, alternative dispute resolution mechanisms, and enhancement of public legal awareness to understand the legal system and legal empowerment.

This book uses a broad definition of access to justice, which examines the perspective of the justice user as its point of departure and studies the barriers the justice user faces in order to solve a legal problem. From a user perspective, women's access to justice refers to access to a fair and efficient legal process, either through judicial process, administration, alternative dispute resolution, or other informal mechanisms, and resulting in a just outcome. It must be noted that there are formal and informal barriers to women's access to justice. Formal obstacles include direct obstructions such as a lack of affordable legal representation, abuse of authority, lack of adequate laws and regulations, delays in the justice system, weak enforcement of laws, lack of remedies provided by law particularly in cases of violence against women, lack of de facto protection, and also the lack of legal aid. Discriminatory social norms and cultural constructions constitute informal barriers to women's access to justice. In other words, traditional gender biases preclude the ability of women to take legal actions. Cultural obstacles also have an effect on women's confidence in seeking justice, and the legal system, under the control of gender biases, fails to equally support women's rights.