

A Comparative Review of Women's Rights Legislation in Pakistan and Iran in the Light of Islamic Teachings

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Abstract

In this review paper, a comparative doctrinal and socio-legal analysis of women's rights laws in the Islamic Republic of Pakistan and the Islamic Republic of Iran is provided with regard to these laws being compared to the normative standards set out in Islamic teachings. While both nations subjugate positive law to the Islamic criteria constitutionally, these nations come from a different jurisprudential basis wherein Pakistan relies on the Sunni Hanafi fiqh while Iran relies on the Twelver Ja'afari Shia fiqh. This paper will analyze its subject matter under the dichotomy provided in modern Islamic studies between sharia, which refers to the unchangeable Islamic divine law, and the humanly-made laws called fiqh. It traces Pakistan's oscillating legislative history from the reformist Muslim Family Laws Ordinance of 1961, through the regressive Hudood Ordinances of 1979, to the re-liberalising Protection of Women Act of 2006 and subsequent anti-honour-killing and anti-rape statutes. It focuses on the drastic turnaround from the progressive Family Protection Law of 1967 in Iran following the revolution, gender-based provisions of its Civil Code and Islamic Penal Code of 2013, compulsory veiling laws, and gradual reforms like that of the nationality law of 2019. Comparison of each of these issues related to marriage, divorce, inheritance, custody, violence against women, education, employment, and political participation shows that codification "in conformity with Islam" has not brought any gender equality in either country since both are placed at the bottom level of the World Economic Forum's Gender Gap Index. It is argued in the paper that it is not the teachings of Islam, rather patriarchal interpretation of it through legislation and lack of consistency between legislative reform and social reality that is the real problem.

Keywords: Women's rights; Islamic law; Pakistan; Iran; comparative legislation; maqasid al-shariah; family law; gender justice

1. Introduction

The status of women under Islamic law is a matter of considerable debate involving theology, law, constitutionalism, and the real-life application thereof. There may be no other topic in modern Islamic legal scholarship that causes more debate than the connection between the primary Islamic sources of law and the codified rights of women granted or denied by modern states basing their legitimacy on such sources [1]. The cases of Pakistan and Iran illustrate this problem most clearly. They are both modern self-proclaimed Islamic republics, they subject their laws to review in terms of their compliance with Islamic requirements, and they experienced spectacular Islamizations, resulting in major changes in the legal status of women. Nonetheless, they differ considerably in terms of their confession and political structure [2].

Such disparity makes this analysis more substantive than simply descriptive. Pakistan, for instance, is a predominantly Sunni polity where the personal laws have been shaped on the principles of Hanafi school and has had a history of legislation that oscillates between liberalism and conservatism and thus a complex statutory framework [3]. The second country, Iran, a Twelver Shia state, had undergone complete re-

Islamization of its legal system after 1979 revolution and abolished most of the reforms of the Pahlavi era and created a new family and penal laws based on Ja'fari jurisprudence [4]. These examples provide an opportunity to analyze different factors that influence the codification of women's rights.

What I want to argue here is that the criteria used in judging such laws should be provided by a standard within the tradition of Islam itself, rather than something externally derived only from human rights principles. A great deal of contemporary literature has made the distinction between the concept of sharia, which is an eternal and unalterable Divine law revealed in the Qur'an and Sunnah of the Prophet, and fiqh, which refers to the human effort and process of interpreting sharia and making legal rulings from it [5]. The significance of this distinction lies in the fact that much of what is called "Islamic law" is actually a human product and therefore open to reinterpretation without in any way challenging the eternal nature of God's law [6]. When paired with the theory of maqasid al-shariah, which encompasses the fundamental purposes of the law – religion, life, intellect, lineage, property, and more recently, justice, equality, and dignity – it provides a framework for critical analysis [7].

The paper will therefore seek to fulfill three objectives. First, it will endeavor to restate the basic Islamic doctrine on women's rights by analyzing the pertinent verses of the Qur'an and Hadith regarding women's equality spiritually, educationally, matrimonially, issues of marriage dissolution, succession, economic right, honor and justice. Secondly, it will undertake a thorough historical and doctrinal examination of the laws regulating women's rights in Pakistan and Iran. Thirdly, it will conduct a systematic comparative evaluation of these laws and identify their strengths and weaknesses, their consistency with basic tenets of Islam and the factors that influence their interpretation and implementation. The paper will adopt an objective and academic approach in the discussion of both systems of law [8].

2. Women's Rights Legislation in Pakistan

The laws of Pakistan concerning women's rights can be seen in terms of reform and counter-reform due to the interaction between the process of modernist state formation, religio-politics, and constitutionalism that recognizes both Islam and fundamental rights [2]. The Constitution guarantees equality before law and non-discrimination on the basis of gender (Article 25); directs the State to make sure the complete participation of women in national affairs (Article 34); and at the same time, mandates that the laws should be according to the injunctions of Islam [3].

2.1 The Muslim Family Laws Ordinance 1961

The Muslim Family Laws Ordinance (MFLO) of 1961, enacted based on the recommendations made by the Commission of 1955 on Marriage and Family Laws, is considered a fundamental law of Pakistan on the matter and, indeed, one of the few laws that has been progressive towards women in the legal history of the country [1]. The ordinance mandated compulsory registration of marriage; regulated polygamy in terms of prior permission from the Arbitration Council and the wife's consent (Section 6); and put a procedure in place for talaq (Section 7), including giving a written notice of repudiation to the chairman of the Union Council and a ninety days reconciliation period.

2.2 The Hudood Ordinances 1979

However, the most significant regression took place during the Islamization process under General Muhammad Zia-ul-Haq. The Ordinances of 1979 known as "Hudood" and particularly the Offence of Zina (Enforcement of Hudood) Ordinance made extramarital sexual activity (zina) a criminal offence, and more importantly, confused zina by mixing it with rape (zina-bil-jabr) in one legal provision [24]. As far as the hadd punishment is concerned, the required evidence consisted of four Muslim adult men of good reputation, which is an unrealistic condition in cases of sexual abuse [25]. The result was disastrous because a woman reporting rape and unable to prove her case according to the requirements would face the charge of zina due to her testimony [26]. It was recorded that there was a considerable increase in the number of detained women during the next ten years [27]. The Ordinance of 1979 and particularly the hadd punishments are often pointed out as the subject of harsh critique and prime examples of the negative impact of Islamization on women [3].

2.3 The Protection of Women Act 2006

After years of efforts, the Protection of Women (Criminal Laws Amendment) Act 2006 made significant changes to the Hudood Ordinances. This legislation took rape out of the domain of the Zina Ordinance and brought it back under the Pakistan Penal Code, making provision for regular rules of evidence and regular criminal courts, and distinguishing the crimes of fornication and rape. The bill was controversial, being condemned by the religious political parties as a challenge to hudud as mandated by God [24], and its adoption was therefore a compromise and not a total repeal [8]. The Act itself was

challenged in parts in the Federal Shariat Court, and some sections were declared unconstitutional in 2010 [3].

2.4 Anti-Honour-Killing and Anti-Rape Legislation

Complementary laws are those that prohibit harassment of women in the workplace through the Protection Against Harassment of Women at the Workplace Act of 2010 and the Acid Control and Acid Crime Prevention Act of 2011. The overall trend in the case of Pakistan is one of incremental but contentious progress where there have been attempts to make laws despite the problems associated with weak enforcement and judicial challenges [8].

3. Women's Rights Legislation in Iran

The legislative approach to women in Iran can be seen through the disruption of the 1979 revolution that altered the course of state-directed reforms and restructured family and criminal law based on Twelver Ja'fari principles [31]. It is important to take into account the reforms that have been overturned in order to understand the new regime.

3.1 The Pre-Revolutionary Family Protection Law

The Family Protection Law of 1967 was fiercely criticized by clerical critics like Ayatollah Khomeini as not complying with the shariah, and one of the first victims of the revolution [33].

3.2 The Post-1979 Constitution and Civil Code

In particular, the Constitution of the Islamic Republic adopted in 1979 subordinates all laws to the Islamic criteria (Article 4). Although it proclaims the equality of citizens and dignity of women, it states that they are entitled to rights "conformable to Islamic criteria" (Articles 20 and 21). Certain posts, such as the Presidency and the post of the Supreme Leader, appear to be restricted by these articles, being understood as excluding women [34]. The Civil Code of Iran, adopted during the 1930s and thoroughly re-Islamized following the revolution, establishes rules on marriage, divorce, custody and inheritance in accordance with the traditional Ja'fari school [35]. It confirms the husbands' privilege of unilateral divorce; it proclaims husbands' superiority as heads of households who have a right to maintenance in exchange of their wives' obedience; it allocates custody (*hizanat*) depending on the age and gender of children and retains fathers and paternal grandfathers' guardianship (*wilaya*) [36]. As to inheritance, the Code provides for the share system defined in the Qur'an. The distinctive institution of temporary marriage (*mut'ah* or *sigheh*) is also regulated by the Code, which does not exist in Sunni Pakistan [19].

According to Article 1041 of the Iranian Civil Code, the minimum marriage age is three years younger for females, which is thirteen lunar years, compared to that of males, which is fifteen years; however, marriages of individuals under this age will only be allowed on the basis of consent of their guardian and judicial permission [36]. This legislation has been highly criticized in Iran.

3.3 The Islamic Penal Code and Compulsory Veiling

The Islamic Penal Code, which was drafted in 1991 but was last updated in 2013, also includes several provisions that formally define gender discrimination. Women's testimony is normally valued at half the value of men's, while women's testimony on certain offences is completely unacceptable [37]. The payment of *diya* in case of the death or harm caused to a woman amounts to half the amount in case of a man; however, this provision has been somewhat softened—although not repealed—through the creation of an official fund to bridge the difference in murder cases [38]. The age of criminal liability in the country is lower for girls compared to boys because of the association of criminal maturity with puberty [37]. Finally, the Code also punishes women's non-compliance with dress code requirements, thus making the wearing of a veil a legally required duty [31].

Forced veiling is the most internationally salient feature of the Iranian state's rule over women. The death of Mahsa (Jina) Amini in September 2022, while in the custody of Iran's morality police after her arrest on charges of violating veiling codes, sparked nation-wide protests under the "Woman, Life, Freedom" banner [39]. An independent international investigative mission set up by the UN Human Rights Council found numerous violations in the crackdown on the protests, stating that some actions of the state constituted crimes against humanity, and providing credible estimates that several hundred protesters had been killed, among them women and children [39]. The regime introduced new laws tightening punishments for violations [40].

3.4 Incremental Reforms

While the overall approach of the post-revolutionary legal system can be characterized as conservative, Iran has taken some steps toward reform in certain areas. The revision of legislation regarding divorces has increased the rights of women concerning financial aspects after divorces, including provisions about

compensation for deferred dower and compensation for domestic work (*ujrat al-mithl*) [35]. In 2019, a major step in reforming national legislation allowed Iranian-born children whose mothers are Iranian citizens and whose fathers are non-Iranian citizens to gain Iranian nationality, thus solving a problem of statelessness for decades, even though still subjected to security checks and procedures that favor fathers [41]. These steps show that despite resistance to comprehensive changes in family and penal legislation, the legal system of Iran is not completely frozen [31].

4. Comparative Analysis of Legislation in Pakistan and Iran

Comparing systematically the main issues of women's rights legislation brings together common elements (based on similar Islamic laws) and differences, which can be attributed to various sects' law, constitutional arrangements, and reforms [1]. The analysis will follow below.

4.1 Marriage

They both base their laws regarding marriage on the concept of marriage as a contract. The dower and, in form, the consent of the bride are required. However, there is a difference in terms of procedural requirements and the minimum age of marriage. In Pakistan, registration is required, and in Sindh, the minimum age of marriage for both genders is eighteen years. The federal law of Pakistan, however, stipulates a lower age limit of marriage for females [2]. In Iran, according to its Civil Code, marriage is legal at age thirteen for girls with judicial exceptions at a younger age [36].

4.2 Divorce

Both systems uphold the husband's right to unilaterally dissolve his marriage, but Pakistan places a procedural framework—consisting of notice to the Union Council and a period of mandatory reconciliation pursuant to Section 7 of the MFLO—which tempers the immediacy of *talaq* [18]. Registration is needed under Iranian law, and the *Ja'fari* system demands witnesses, but the husband's right is upheld more firmly there [35]. In both nations, women can pursue divorce by means of *khul'* or judicial decree. Pakistani case law, post-acknowledgment of the woman's right to initiate *khul'* independent of her husband's will, has granted women some access to escape, although this is not always effective due to the difficulties associated with it [4].

4.3 Inheritance

The inheritance law of both countries closely follows the fixed shares of the *Qur'an*, such as the allocation of the half-share of the females relative to males in the same degree of kinship [42]. Neither has departed from the classical *fara'id* framework, and in both, women's guaranteed shares are frequently defeated in practice by customary pressure, non-registration of property, and the deprivation of female heirs—a practice Pakistan has criminalised, at least on paper, through anti-women-practices legislation [23].

4.4 Custody

Both systems allocate custody (*hizanat*) by reference to the age and welfare of the child while reserving ultimate guardianship (*wilaya*) to the father. The custodial change of custody in Iranian laws is determined with regard to age in an inflexible manner, while the Pakistani courts, taking into consideration the welfare of the minor, have greater latitude and, in certain cases, it has worked in favor of the mother [1].

4.5 Violence Against Women

While Pakistan has enacted a more comprehensive statute law on issues of gender-related violence such as laws on honour killings, rape, harassment, and acid crimes, there are no equivalent statutes in Iran's penal law and the issue of discrimination is even perpetuated in its system of compensation and testimony requirements [37]. The difference here can be tempered by the reality that implementation of the statutes in Pakistan remains an issue [8].

5. Evaluation in the Light of Islamic Teachings

In terms of comparison with the basic principles established in Section 2, the laws of the two countries reflect a mixed model of conformity and divergence. The following analysis of the laws will apply the criteria for *maqasid*-based justice, dignity, and maintenance of the family, as well as the concept of *sharia-fiqh* distinction, to determine their Islamic nature [7].

5.1 Points of Alignment

Various aspects of both legal systems comply with Islamic tenets. The provision for the right of inheritance shares for women, the acceptance of the dower as an exclusive property of the wife, the assertion of the economic individuality of women and the need for the wife's consent to the marriage all point out to actual Islamic commitments embodied in the positive law [1]. The Pakistani prohibition on the deprivation of the female's right to inheritance as well as the Iranian state's considerable efforts directed towards educating girls can both be regarded as promoting legitimate objectives of the *sharia*—property protection

and intellectual protection, respectively [11]. The procedure regulation of talaq and polygamy by means of the MFLO is consistent with a maqasid approach to the sources as well [3].

5.2 Points of Deviation

However, there are serious departures from these alignments. The combination of zina with rape in Pakistan's Hudood laws, thereby making victims of sexual assault liable for prosecution, is hard to justify within the framework of the justice and protection obligations of the Qur'anic law, and the reformists and even conservative scholars viewed this as a misapplication of the hudud law that the ordinance purported to implement [25]. In Iran, the legislation of the differential between diya and testimony, the extremely low minimum marriageable age, and the criminalization of not wearing the veil appear questionable when judged by the criteria of honor and justice [37]. Modern scholarship argues that some of these rules represent historically conditioned fiqh but not sharia that does not change, and their adoption in the form of statutory regulations denies the interpretive flexibility that was characteristic of the classical tradition [6]. The disqualification of women from assuming high positions in Iran, and the existence in both countries of a unilateral divorce by men without corresponding provisions for women, do not easily fit into the Qur'anic paradigm of reciprocity in marriage [10].

5.3 The Interpretive Crux

One may sum up the main point of the above analysis in saying that it is the patriarchal interpretation of the Islamic doctrine, rather than the Islamic doctrine itself, which is responsible for the contradictions arising in the context under discussion [22]. When one studies the sources of Islam from the standpoint of the maqasid and ethics of revelation, one finds enough resources for an egalitarian legal system; when the sources are rigidified in their traditional form, and endowed with the coercive power of the modern state, the result is, generally speaking, the reverse to that envisioned by the Qur'an [20]. This does not mean, however, that the reformist interpretation should be accepted without criticism: the interpretation in question is still controversial, and conservative scholars raise important objections based on the authority of consensus [15]. It means only that both states have made interpretive decisions, and the decisions should be evaluated as opposed to the religion itself [6]. One should take into consideration the factors that affected the decisions in question: the politics of Islamization, revolutionary ideology, sectarian jurisprudence, and patriarchal tradition [33].

6. Challenges and Implementation Gaps

In cases when the legislation itself seems to be protective, there are usually some structural obstacles that prevent its implementation [8].

First of all, the obstacle is a difference between the statute's wording and its enforcement. Despite the relatively progressive legislation in the field in Pakistan, several times this protection foundered on a poor level of investigation, the lack of convictions, procedural tricks and the existence of other forms of dispute resolution out of the formal law, which can be seen in the phenomenon of honor killings; in Iran, this difference takes a different form, and is shown in the compulsory application of veiling which is a clear demonstration of the ability of the state to enforce the restrictions and not to protect [40].

Secondly, there is an institutional problem in Pakistan: the coexistence of the ordinary parliament and the Council of Islamic Ideology and Federal Shariat Court brings about a tension between reform legislation in the parliament and possible religious objection to it. In Iran, the Guardian Council does the same thing, as it reviews legislation and candidates against the set of criteria [31].

The third challenge pertains to socio-cultural factors, which in both countries hamper the enforcement of statutory rights due to deeply entrenched patriarchal values, custom, economic dependence, and lack of legal education among women [33]. Denial of inheritance rights, continuation of child marriage and forced marriages, and social costs that women pay for seeking a divorce or complaining about violence indicate the power of custom in overcoming legal change [23]. Fourth, the international aspect poses another challenge, with Pakistan being a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women on the basis of a general reservation favoring the supremacy of its constitution, and Iran not having ratified the convention at all [47]. Finally, both countries face the challenge of the tension between Islamic authenticity, as defined by significant religious groups, and contemporary views of equality of gender [8].

7. Recommendations for Reform

The analysis supports a set of reform recommendations that are simultaneously grounded in the Islamic tradition and attentive to the practical realities of implementation [3].

First, legislative reform should be pursued through maqasid-oriented ijihad rather than the wholesale importation of external frameworks or the rigid preservation of pre-modern fiqh. Reframing contested rules by reference to the higher objectives of justice, dignity, and family preservation offers a route to reform that can command legitimacy within the tradition, as the MFLO's inheritance reform historically demonstrated [16]. Engaging contemporary Islamic scholarship on gender—both the reformist current and constructive traditionalist interlocutors—can furnish the jurisprudential resources for such reform [2].

Second, procedural safeguards should be strengthened to close the gap between text and enforcement. Mandatory registration of marriages and divorces, effective penalties for coercive customary practices, specialised courts and investigators for gender-based violence, and the removal of loopholes such as the honour-motive requirement in Pakistan's anti-honour-killing law would enhance the practical efficacy of existing protections [11].

Third, accountability within the institution must be enhanced. The harmonization of the relation between the elected legislature and the religious-review body, the constitutionalization of reformist statutes, and open deliberations based on evidence will lower legal ambiguity which currently hinders the process of reform in both states [31].

Fourth, the reform of certain provisions deserves special consideration. This includes equalization of blood money and testimonies in Iran, raising and enforcing a uniform minimum age of marriage in both states, revising enforcement of penal veil, and offering symmetrical channels of divorce to women [42]. These are reforms that can be justified under the maqasid approach.

Fifth, non-legal actions are essential. Increasing education and legal literacy among women, improving their economic independence, and consulting religious authorities and community leaders in matters of gender justice are critical additions to legal reform because, by itself, it is not enough to overcome long-established customs [33]. Sixth, cooperation with international human rights institutions through reconsideration of reservations and non-accession to international treaties would enhance external accountability while permitting each country to express its commitment in constitutional terms [47].

8. Conclusion

This comparative analysis has analyzed the legislation for women's rights in both Pakistan and Iran in terms of the normative framework of Islamic teachings with the help of the concept of divine sharia versus human fiqh and the standard of maqasid al-shariah. Both nations have the same constitution in terms of the Islamic religion; however, the two countries come from separate sects of the Islamic legal theory and have gone on different paths of reforms in terms of reforms and adjustments [3].

In the first place, there is no perfect correlation between formal legal structure and social result: the more restrictive laws on family and penalties in Iran exist together with a high level of education among women, whereas Pakistan, whose protective laws are more liberal, faces persistent illiteracy and violence against women and occupies the same lowest level of gender parity index rankings [46]. In the second place, the conflict between the formal legal structure and egalitarianism that could potentially be derived from Islamic sources of law emerges not from the nature of the sources but rather from patriarchal interpretation of them [22]. In the third place, the gap between formal legislative changes and the social reality emerging out of their poor enforcement is as significant as the content of the legislation [8].

The path to achieving greater equality between men and women in law in both of these countries, this article has contended, does not lie in distancing themselves from Islamic tradition but in reengaging with it—a process of interpretation that seeks to understand the sources with respect to their underlying goals and principles, restores the diversity of interpretation from the classical tradition, and critically reassesses the man-made rules of fiqh in light of the values of justice and dignity that are articulated in the tradition itself [20]. This is a task that can be pursued through proper academic means and through legislation, and which stands the best chance of harmonizing Islamic authenticity and the quest for gender justice in both societies [7]. Comparative studies, taking the analysis into other Muslim-majority countries and into implementation, would be extremely useful in this regard [33].

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