

Special Rapporteur on violence against women, its causes and consequences E/CN.4/2006/61/Add.3 para.73.g

Full recommendation:

In order to enhance women's access to justice through a transparent legal and judiciary reform it is recommended that the Government:

Ensure that punishments do not discriminate against women, that they are proportionate to the offence, and that they are determined by a court of law in accordance with the principles of equality and non-discrimination.

Assessment using Impact Iran human rights indicators¹

Article 3 of the Islamic Republic of Iran's Constitution obliges the government to ensure the universal rights of individuals, including men and women, justice for all, and equal protection of the public in law. In addition, Article 20 of the Constitution emphasizes that all people of the nation, both men and women, are equally protected by law, and enjoy all human, political, economic, social and cultural rights, in accordance with "Islamic standards." Article 21 of the Constitution similarly obliges the government to guarantee the rights of women in all respects, in accordance with "Islamic standards."

Although these principles are ostensibly designed to prevent all forms of discrimination, including discrimination on the basis of gender, the inclusion of the term in the "Framework of Islamic Standards" in practice enables gender discrimination in law and influences the manner in which it is enforced. Article 4 of the Constitution entrusts the authority to determine and define the "Framework of Islamic Standards" to the Guardian Council, which consists of 12 non-elected members, six of whom are *mujtahid* clerics (appointed directly by the Supreme Leader) who are responsible for this mandate.² The views, actions and opinions of the Shiite clerics who are members of this council are such that according to the rules of Islam, men and women are not considered equal in many issues and this is why, when the principles of the constitution are bound by the "framework of Islamic norms", in practice, discrimination on the basis of gender is implicit.³

Laws in Iran discriminate on the basis of gender, including discrimination in type and severity of punishment. Despite the fact that the constitution⁴ emphasizes the prohibition of discrimination

¹ CCPR.2.1.S.1; CCPR.3.1.S.1; CCPR.14.1.S.1; CCPR.2.1.P.1; CCPR.14.1.O.3

² The part of the Guardian Council's mandate that is on determination of Islamic Standard is exclusively responsible for these six cleric members and other six non-cleric members can not be effective in the decision process.

³ Gender inequalities, such as inequality in the age of criminal responsibility (articles 140, 146 and 147 of the IPC), inequality in the share of inheritance (articles 861 to 948 of the Civil Code), inequality in the age of marriage (article 1041 of the Civil Code), inequality in the rights of husband and wife in marriage (articles 1102 to 1119 and 1133 to 1142 of the Civil Code), inequality in the custody of children (articles 1169 to 1173 of the Civil Code), inequality in the right to work (article 1117 of the Civil Code), inequality in the validity of testimony in court (articles 174 to 200 of the IPC), inequality in blood money (articles 549 to 575 of the IPC), and inequality in the share of employment, are among the inequalities that are based on gender in Iranian law.

⁴ Articles 19 and 21 of the Constitution: <https://www.iranchamber.com/government/laws/constitution.php>

based on gender, race and ethnicity, there are at least three levels of gender-based differences in Iran's penal code, particularly Islamic Penal Code. 1) The difference in the type and level of punishments. 2) Differences in impunity. 3) Differences in the enforcement of punishment.

Regarding differences in type and severity of punishments in offenses like adultery^{5,6} and apostasy the punishments are different depending on the gender of the individual, in some cases the male punishments are heavier and, in some cases, the female punishments. For example, in some cases, the punishment for "adultery" is stoning for a woman and execution for a man. Or in another case, in an "adultery" case, the punishment for a man is flogging, but the punishment for a woman is stoning or execution.⁷

Regarding differences in impunity, these are mostly in favor of male individuals (fathers and husbands) and against females.⁸ For example, if a husband sees his wife committing adultery, he is exempt from punishment if he kills her. Or if a father kills his child, he is exempt from Qisas punishment.

On differences in enforcement, in cases where the punishment has to be applied to a woman, most punishments can get delayed if the individual in question is pregnant or has a newborn child.⁹

Despite the revision of the Islamic Penal Code, no specific action has been taken by the Islamic Republic to eliminate gender inequalities in its legislation.

Recommendation status:

This recommendation has **NOT** been implemented

⁵ Articles 221 to 232 of the IPC.

⁶ Articles 233 to 241 of the IPC.

⁷ Articles 224 to 231 of Islamic Penal Code: <https://shenasname.ir/subjects/salamat/1571-mojazat92>

⁸ Article 302 of the IPC.

⁹ Articles 437, or 443 of the IPC.