

## 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).<sup>1</sup>

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

<sup>1</sup> 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).

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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,

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government reformers, and law and society scholars (Parker, 1999). As we discuss later, “access to justice orthodoxy”<sup>2</sup> 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).

<sup>2</sup> 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.

Another key term that needs clarification here is legal empowerment. The concept of legal empowerment is still evolving and ill-defined. However, legal empowerment could be defined as encompassing the various processes by which disadvantaged groups become able to use the law and legal institutions to enforce their existing rights or demand new legal rights. These processes and approaches vary widely across contexts, yet share some common ideas to reform legislative, judicial, and dispute resolution bodies and public education about law and legal systems that empower disadvantaged populations.

### Structure of This Book

The book is organised into two parts. Part I includes four chapters that present the conceptual framework and a contextualised analysis of the Iranian justice system. Chapter 1 provides the theoretical framework and analyses the existing hypothesis of access to justice in order to underline the gap between the contextual frameworks of Western- and Islamic-related discourses. This chapter, therefore, deals with the main objective of the study; that is, to assess whether internationally related models can be effective in providing access to justice in Iran. Chapter 2 moves from international and Islamic-related debates to the Iranian setting and provides a contextual analysis of access to justice. It provides a historical review of the justice system and examines some of the key dimensions of access to justice in Iran. Chapter 3 presents an analysis of the barriers from the users of justice's perspective in Iran. Chapter 4 discusses access of women to justice in Iran with particular reference to legal empowerment.

Part II includes two chapters, which look at measuring women's perceptions of access to justice in Iran. Chapter 5 discusses the methodology and reviews access to justice measurement models, and suggests an appropriate model to assess Iranian women's

access to justice. Chapter 6 provides the findings from the survey study in order to assess women’s perceptions of access to justice and analyse the data from the empirical research. The conclusion summarises the lessons that may be drawn from the research and offers some thoughts for future research in the area.



## PART I

Access to justice is a complex phenomenon with various meanings across different legal systems and sociocultural settings. Access to justice is also associated with people's everyday lives, as their common problems such as employment, debt, housing, divorce, and so on, must be equally protected by law and effectively resolved through the legal system. The complex nature of access to justice underlines the importance of contextualising related concepts in a particular legal setting such as Iran. However, in order to examine access to justice in Iran, it is essential to first have a thorough understanding of the notion of justice from both international and Islamic perspectives as well as an understanding of the meaning and scope of access.

Part I focuses on the concept and contextual analysis of access to justice: its definition, its realisation, its barriers, and its enhancement by legal empowerment. Thus, each of the chapters examines one of these dimensions. Chapter 1 provides the basis for initiating a discussion about the definition of access to justice from a non-essentialist perspective. It attempts to expose some of the key components of the access to justice debate from Western and Islamic perspectives. The comparative nature of the theoretical framework, by following Western and Islamic literatures, seeks to highlight a significant difference: Western conceptions of access to justice are mainly based on the explanation of "access" and how the state needs

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to provide access for its citizens, whereas the Islamic-related conceptions are often based on a definition of “justice” and how it can be realised for individuals.

Chapter 2 draws up a contextualised framework of access to justice in Iran by reviewing constitutional and legislative provisions and the performance of the justice sector with particular reference to access to justice. The discussion of the development of the Iranian justice system attempts to understand how the concept of “access to judicial protection” has been formed in Iran. There are many reasons why the disadvantaged population and, in particular, women are often unable to use the law and the legal system to protect the rights and interests to which they are entitled. It may be because of discriminatory laws, an expensive legal process, or the deficiency of judicial proceedings. Chapter 3 provides a review of the barriers that Iranians who need access to justice may face, such as lengthy delays, the lack of a legal aid system, and insufficient adequate remedies. Adopting a qualitative analysis, the chapter outlines the examination of a contextual barrier from a user’s perspective.

Chapter 4 seeks to engage in a discussion on women’s access to justice and legal empowerment in Iran, where sociolegal norms coexist and play an essential part in women’s lives. It thus examines gender-specific barriers to access to justice and also provides a conceptual analysis of empowerment. It especially claims that in the presence of diverse sociolegal barriers and multiple costs of justice, it is equally important to recognise the impact of the sociocultural dimensions of inaccessibility that women face in their path to justice.