

The restricted legal status of women

An inconvenience for Christian women or a vulnerability for the church?

Olivia Jackson¹

Abstract

In many countries, minority religious women face double persecution. First, they face laws that are discriminatory against women. Second, laws discriminate against religious minorities. This is so in both the public and private realms. The article explores the intersectionality that minority religious women face, particularly in Middle Eastern societies.

Keywords Intersectionality, discrimination against women, direct discrimination, indirect discrimination.

1. Introduction

The intersection between discrimination against women with religious persecution creates an effective, and sometimes legally sanctioned, means of indirectly attacking minority religions, even where religious freedom exists under law. International bodies such as the United Nations have cautioned that “laws and public policies developed to protect culture and religion that threaten the universally established standards on the rights of women” increase the vulnerability of women who do not conform to the mainstream to “discrimination, violence and criminalization” (Human Rights Council 2015:7).

Scarce concrete evidence exists concerning the intentional use of gender-restrictive laws to target Christians for persecution; most verifiable records of discrimination or violence against women do not disaggregate along religious lines. Where there is no recourse to justice, establishing intersectionality is usually impossible. Given the lack of statistical information and verifiable reports, plus the understandable silence of women themselves, this paper highlights how restrictive legal frameworks can doubly discriminate against Christians, intentionally or not, and the impact this has on the persecuted Church.

¹ Olivia Jackson (LLM, University of London) has worked as a human rights consultant specializing in the strategic use of violence against women, including religious persecution. This article is based on the paper she presented at the Women Under Pressure for Their Faith conference, Leuven, Belgium, 2017. The article uses British spelling. Article received: 31 July 2020; accepted: 10 September 2020. E-mail: olivajackson@mac.com.

2. Ways in which laws fail women

Laws discriminate in two primary ways: directly and indirectly. Direct discrimination is a clear disadvantaging of one group in relation to another. Indirect discrimination appears to affect everyone equally but has a disproportionate impact on one group; for example, the 2016 ban on religiously affiliated or full-body beachwear in parts of France appears to affect everyone, but actually affects only Muslim women. Likewise, Myanmar's Health Care for Population Control Act (2015), allowing authorities to 'organise' birth spacing, applies to all groups but is most likely to target women from marginalized religious groups.

Legal frameworks also fail vulnerable groups through inadequate or outright lack of legal provision or protection – for example, if no law exists against domestic violence. Where protective laws do exist, state actors may fail to enforce them or show bias in the administration of justice, such as when police discourage women from reporting assaults or refuse to take reports (there is anecdotal evidence of this pattern in Pakistan, with Christian families allegedly being told that complaints will incite inter-communal violence); the differential treatment of women or Christians by judges; or the failure to ensure universal access to the law, which often hits the poor and minorities hardest.

3. The public–private dichotomy

3.1 The public sphere

Many nations discriminate against women to different degrees in different areas of society. Mayer (1984) wrote that women in Middle Eastern societies have sometimes had public rights pre-dating those of women in the West, such as the right to stand for office (consider such public figures as Benazir Bhutto of Pakistan and Sheikh Hasina Wajed of Bangladesh), but their private-sphere rights are more restrictive. Despite this observation, limitations of public-sphere rights clearly exist.

UNICEF (2011) listed 14 Middle East and North African countries² where a woman's testimony in certain court cases was worth half that of a man.³ Blasphemy laws thus offer an easy way to attack the Church, as Christian women have little defence against a male accuser. Although most accusations of blasphemy in Pa-

² Bahrain (in Sharia courts); Egypt (in family courts); Iran (in most cases); Iraq (in some cases); Jordan (in Sharia courts); Kuwait (in family courts); Libya (in some cases); Morocco (in family cases); Palestine (in cases related to marriage, divorce and child custody); Qatar (in family law matters); Saudi Arabia; Syria (in Sharia courts); United Arab Emirates (in some civil matters); Yemen (not allowed to testify at all in cases of adultery and retribution).

³ Pakistan's Law of Evidence (1984) also considers the evidence of a woman as worth half that of a man and the evidence of a non-Muslim worth half that of a Muslim in certain cases, leaving non-Muslim women effectively without defence.

kistan, for instance, are levelled at Sunnis, a disproportionately high number are aimed at minorities. The National Commission on Justice and Peace has recorded instances of Christian women converting to Islam to escape punishment for ‘blasphemy’ (Haider 2011:113–15).

In Iran, the age of criminal responsibility is 15 for boys but 9 for girls. Article 102 of the Penal Code states, “For the purpose of stoning, the man shall be buried into a pit up to his waist and the woman up to her breast” to reduce any chance of escape.

Restrictions on women’s employment cause impoverished Christian families to lose vital income. Richards and Haglund (2015) correlated women’s increased economic empowerment with government enforcement of laws condemning violence against women. Other evidence (e.g. UNICEF 2004:19) shows that the rate of maternal and infant mortality rises when women are denied education.

Even when discrimination affects all women, the effect is greater on pressured groups: Christian Solidarity Worldwide (n.d.) has reported lower levels of education amongst Christian and Hindu Pakistani women than amongst the general population, and most of those not in school are girls (Human Rights Watch 2018).

3.2 The private sphere

Women in these societies face more severe restrictions in the private sphere. These limitations spring from beliefs about gender roles, lack of agency, women’s honour affecting the entire family, the dangers of female sexuality and the perception of women as the property of male family members. Quraishi (1997:298–99) wrote, “This attitude lends itself easily to manipulation and the development of a tribal attitude where women’s bodies become tools for revenge by men against men.” Countries such as Afghanistan⁴ that give women equal rights under their constitution devolve private-sphere law to parallel justice systems, including tribal and Sharia courts.

Saudi Arabia and Iran are amongst the countries that place restrictions on women’s everyday life in the name of protecting them. These strictures are not overtly violent, but subjection to daily indignities severely impairs both women’s ability to participate in society and their quality of life. The requirement to have a male chaperone, for instance, constrains women’s freedom to leave an abusive situation or be admitted to a hospital without a husband’s permission. As a minority group,

⁴ Article 22 of the Constitution of Afghanistan states, “Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law.” However, the Shia Personal Status Law of 2009, Article 133, declares as follows: “(1) The household’s supervision is the right of the husband, unless based on the husband’s mental deficiency, and by order of the court, it is given to the wife. (2) A wife can leave the house for legal purposes to the extent that local custom allows.”

Christian women can thus become more isolated and less visible to the general population, entrenching their ‘otherness.’

Indirect discrimination is apparent when countries make no provision for differential healthcare for men and women, or when they under-prioritize services used only by women, such as ignoring women’s reproductive health needs. Substantive equality does sometimes require the law to acknowledge differences.

The ways in which domestic life legally discriminates against women read like a catalogue of oppression across a range of countries:

- Lower age of marriage for girls than for boys
- Dowry entitlement
- Right to manage property
- Children’s citizenship can be inherited only from the father
- The husband is the legal head of the household and his wife must obey him
- Male polygamy and temporary marriage
- Prescribed number of children, and/or the spacing between them
- Difference between the two genders in the ability to divorce or grounds for divorce
- Post-divorce child custody and property settlement
- Inequalities in succession and inheritance rights
- Barriers to employment, such as required spousal consent and lack of maternity policies
- Entitlement to state benefits
- Discrimination with regard to inter-faith marriages⁵
- Status of widows

In addition, the most obviously dangerous examples of laws or lack of protections include the non-criminalization of domestic violence and marital rape, as well as reduced legal liability for honour-based violence, including homicide, especially if the victim’s family forgives the perpetrator(s). As most honour killings are committed by family members, this provision effectively guarantees impunity. For the female Christian convert in a family of non-believers, this can make practising her faith unbearable or even deadly. As of 2018, 24 percent of countries lacked laws against domestic violence, 51 percent had no laws against domestic economic violence and 37 percent of countries lacked specific laws against domestic sexual violence. Overall nearly 1.1 billion women lack legal protection against sexual violence by an intimate partner or family member (Tavares and Wodon 2018).

⁵ Laws to this effect exist in Myanmar, Bangladesh and Egypt. For example, if a Muslim woman cannot marry a Christian man but a Christian woman can marry a Muslim man, this provision ensures that legal heads of inter-faith households and any children of such marriages will always be Muslims. If conversion to Christianity is not recognized, female converts still cannot marry as they remain legally Muslim.

Laws criminalizing extra-marital sex often appear gender-neutral, but women's subordinate position in most cultures means that they are far more vulnerable to violation, accusations and harsh sentencing for this crime, particularly where the legal line between consensual and coerced sex is blurred. A comparison of the numbers and sentences of women and men imprisoned and/or executed for adultery, fornication and prostitution shows vast gender-based disparities.⁶

Violence against women can thus be perpetrated with impunity; if the woman cannot prove rape, such as by providing witnesses, she may be prosecuted for engaging in extra-marital sex.⁷ At least nine countries exonerate a rapist if he marries his victim.⁸ Marriage often confers less shame on the victim's family, providing an incentive to allow it. Christian families, whose daughter, as a result of having been raped, is far less likely to find a Christian husband, may come under additional community pressure to agree. Such laws show the extent to which justice for women is attached to their community standards, rather than to an unbiased legal system.

Even without prosecution, the stigma of accusation or of surviving rape often leads to lifelong ostracism, even from the Christian community, thereby adding to existing trauma. Women are effectively removed from the community in this way. When the Church engages in a prevailing culture of gender disparity, violence and shame, it sabotages itself and does the work of its persecutors itself.

4. Conclusion

Discriminatory laws fundamentally undermine whole nations and the Church within them. A woman who is not free from violence, not free to move around, and not free to be educated or to earn a living is less able to be a contributing member of

⁶ UN CEDAW Committee, quoted in Raday (2012: 6) regarding Pakistan: "High percentage of women and girls in jails awaiting trials for adultery-related hudood offences and at the imposition, by parallel judicial systems, of sentences like whipping, amputation and stoning amounting to torture or cruel, inhuman or degrading treatment"; regarding Yemen: "The majority of women in prison have been sentenced for prostitution, adultery, alcoholism, unlawful or indecent behaviour, in a private or public setting, as well as for violating restrictions of movement imposed by family traditions and Yemeni laws; such sentences are applied in a discriminatory way against women."

⁷ In 2008, 13-year-old gang-rape victim Aisha Ibrahim Duhulow was publicly stoned to death in Somalia for adultery because she could not provide witnesses. Her complaint was viewed as a confession and her attackers were not arrested.

⁸ "Bahrain, Iraq, Jordan, Kuwait, Lebanon, Palestine, Philippines, Tajikistan and Tunisia. It also appears possible in Greece and Russia, Serbia and Thailand, in circumstances where the couple are in a sexual relationship and under the law the girl is otherwise deemed too young to consent to sexual intercourse. A perpetrator can be exempt from punishment by reaching a 'settlement,' financial or otherwise, with the victim or the victim's family in at least 12 (out of 82) jurisdictions. These are Belgium, Croatia, Iraq, Jordan, Kazakhstan, Lebanon, Palestine, Nigeria, Romania, Russia, Singapore and Thailand" (Hassan 2017). As of this writing, Jordan and Tunisia have repealed these laws, and Lebanon has repealed with some loopholes remaining.

her family or society. These laws, or the lack of protections against discrimination, undermine the value of women's lives.

Legal systems which enshrine gender inequality generally also enshrine other inequalities, such as restrictions on religious freedom. Treating men and women as equals is foundational to treating all groups justly. The intersection of gender and religious persecution creates a double discrimination, even before gender is used as a basis for indirect persecution. It is in the Church's interest to fight discrimination against all women, not only for the benefit of Christian women and to strengthen the Church, but also because restrictive and inadequate laws condone violence against women and damage whole societies. These laws are not merely an inconvenience; they are lethal.

References

- Christian Solidarity Worldwide. n.d.. *Pakistan: Christian Solidarity Worldwide*. Available at: http://www.csw.org.uk/our_work_profile_pakistan.htm.
- Haider, Yasmin. 2011. 'Non-Muslim Women in Pakistan: Minority Within Minority', in Ahlstrand, Kajsa and Göran Gunner (eds.) *Non-Muslims in Muslim Majority Societies: With Focus on the Middle East and Pakistan*, Cambridge: The Lutterworth Press, pp.108-116.
- Hassan, Yasmeen. 2017. *The World's Shame: The Global Rape Epidemic* (ebook). Equality Now. Available at: <https://bit.ly/30JN7QO>.
- Human Rights Council. 2015. *Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice (A/HRC/29/40)*. United Nations Office of the High Commissioner for Human Rights.
- Human Rights Watch. 2015. 'Burma: Reject Discriminatory Population Bill'. Available at: <https://www.hrw.org/news/2015/05/16/burma-reject-discriminatory-population-bill>.
- Human Rights Watch. 2018. 'Shall I Feed My Daughter, or Educate Her? Barriers to Girls' Education in Pakistan'. Available at: <https://www.hrw.org/report/2018/11/12/shall-i-feed-my-daughter-or-educate-her/barriers-girls-education-pakistan>.
- Mayer, Ann Elizabeth. 1984. 'Law and Women in the Middle East', *Cultural Survival Quarterly Magazine* 8(2). Available at: <https://bit.ly/37Zq0pK>.
- Quraishi, Asifa. 1997. 'Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective', *Michigan Journal of International Law* 18(2), pp. 287-320.
- Raday, Frances. 2012. *Background Information on the Statement by the United Nations Working Group on Discrimination against Women in Law and in Practice*. United Nations Office of the High Commissioner for Human Rights, [online]. Available by link at: <https://bit.ly/3nxUHRq>.
- Richards, David and Haglund, Jillienne. 2015. How Laws Around the World Do and Do Not Protect Women from Violence. *Washington Post*. Available at: <https://wapo.st/3jehPo>.

- Tavares, Paula and Wodon, Quentin. 2018. *Ending Violence Against Women and Girls: Global and Regional Trends in Women's Legal Protection Against Domestic and Sexual Harassment*. World Bank, [online]. Available at: <https://bit.ly/3lj8Gj8>.
- UNICEF. 2004. *State of the World's Children Report*. Available at: https://www.unicef.org/sowc04/files/SOWC_O4_eng.pdf.
- UNICEF. 2011. *Regional Overview for the Middle East and North Africa Region*. Available at: <https://www.unicef.org/gender/files/REGIONAL-Gender-Equality-Profile-2011.pdf>.