Social Norms, Rule of Law, and Gender Reality[1]

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Abstract:

Numerous empirical studies have shown that the "Rule of Law" is positively associated
with a range of desirable outcome variables including GDP levels, financial market development,
the rate of investment as well as the volume of trade, human rights, and even with declines in
child mortality, to name a few. In this paper we confront the puzzle that for all but the richest
countries the same positive association does not hold for the status of women in society. Using
country level data, we show that the status of women in society is relatively weakly associated
with various Rule of Law indices, and that in poor countries this association disappears
altogether. Similarly, in high-income countries we find a high correlation between gender
equality and indicators for the rule of law. By contrast, for low(er)-income countries there is no
such correlation. We seek to explain this puzzle. One explanation for which we find some
empirical support is that the status of women in society is determined primarily by social norms
about gender equality and that these norms are only weakly affected by legal institutions. These
findings prompt us to reconsider the relationship between rule of law, social norms, and economic
development. They also lead us to ask how the Rule of Law is conceptualized in available indices
and how this conceptualization may affect our results.

Introduction

The present study is part of the "World Justice Project" sponsored by the American Bar Foundation, which seeks to gain a better understanding of how the rule of law can help improve the plight of people around the world. The project follows on the heels of the International Rule of Law Symposium which convened in Washington, D.C. in 2006.[2] The Symposium featured panels not only for the "usual suspects" in any discussion of the virtues of the rule of law, including the examples set by the rule of law and economic development, the rule of law and business and the rule of law and the fight against corruption, but also on the rule of law and poverty and the rule of law and gender.

This paper follows the symposium in its attempt to broaden the debate about the rule of law and socioeconomic development. It does so by investigating the relation between the rule of law and the status of women in society. If the rule of law has the universal appeal and socioeconomic impact typically associated with it, we should find that high levels of the rule of law go hand in hand with a high status of women in society; however in this paper we show that this simple correlation does not hold, at least not for most countries of the world. Indeed, were we to weigh countries by population we would have to conclude that for 85 percent of women worldwide the rule of law is not a significant determinant of their status in society.

This study stands in contrast to numerous empirical papers that have shown the importance of the rule of law for a range of desirable social outcomes, ranging from GDP levels over financial market development all the way to human rights and child mortality. The importance of the "Rule of Law" for economic development was first documented by Knack and Keefer (Knack and Keefer 1994) as well as Mauro (Mauro 1995). These early studies relied heavily on single surveys primarily of foreign investors and their perception of the rule of law in host countries they were investing in.[4] Over the past 15 years survey techniques have improved and so has the construction of indices. The most comprehensive index related to the rule of law currently available is the World Bank's governance indicator, also referred to as "Worldwide Governance Indicator" (WGI) (Kaufmann, Kraay, and Mastruzzi 2007). It includes several sub-components, such as the "Rule of Law" and "Government Effectiveness". The index is based on surveys but most importantly serves to combine the results from a variety of different sources. By averaging information from multiple data sources, the WGI seeks to mitigate idiosyncracies of individual survey instruments and enhance their informational content. The WGI has been widely used in the literature to assert the importance of the Rule of Law.

Using survey instruments to measure the quality of institutions is not without problems. Sampling issues loom large. So do concerns about how familiar respondents are with the institutions they are queried about, and what implicit benchmark they might be using when ranking the institutions of a particular country on a scale. To avoid these problems, other indices have sought to measure the rule of law in a more objective fashion. The most comprehensive index based on close readings of constitutions and legal statutes is the "Political Constraints Index" (PolCon) developed by Witold Henisz (Henisz 2000).[5] The primary purpose of the PolCon

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[2] For a summary of the topics and discussions covered by the Symposium see (Pistor 2007)

[4] In fact, the data they used had originally been compiled by companies selling information about country risk to prospective investors.

[5] The construction of the PolCon data is detailed in Henisz (2000) and in the downloadable version of the data base available at http://www-management.wharton.upenn.edu/henisz/POLCON/ContactInfo.html. Critical variables are the number of institutional players in a given political system; data on partisan alignment (including coalitions); and data on party composition of the legislature. In the absence of reliable objective data on an independent judiciary, a later version of PolCon uses survey data from ICRG. We have not used that version, as for our purposes the focus on objective measures was critical for comparative purposes with the World Bank's WGI.

index is to record the number of institutionalized vetoes in a given political system. In our analysis we use a number of versions of both indexes; interestingly, the two indices seem to capture different aspects of the rule of law indicated by the relatively low correlation coefficients between the two indices (see Table 1)

[INSERT TABLE 1 HERE]

Most studies on the rule of law are interested in the quality of rule of law at the country level. The implicit assumption is that the rule of law is a social good that benefits all. By contrast, this study focuses on one sub-group of the population and asks whether and to what extent women in society benefit from the rule of law. As will be further discussed below, posing this question introduces existing societal power relations into the debate about rule of law reforms, which has been remarkably absent from most of the conventional rule of law discourse.

The analysis presented in this paper is divided into three parts. In Part 1 we present the results of our data analyses showing that the status of women in most countries is not positively correlated with indices measuring the rule of law. In Part 2 we advance several explanations for the absence of the rule of law building on theories of institutions and institutional change as well as cultural theories. We test several implications of these theories with available quantitative data and use India as a case study to demonstrate in greater detail the difficulties of implementing social change in gender relations by way of legislation. Part 3 draws implications for future research policy strategies.

Part 1: Rule of Law and Gender Reality

Against the backdrop of numerous empirical studies showing a positive correlation between Rule of Law (ROL) or Political Constraints (PolCon) and a host of desirable outcome variables, one might expect that a similar relationship would also hold of Rule of Law and the status of women in society. Equality between men and women, which we would define as equal access to political, economic, and social positions of power has not been achieved in any society. This is the result of a new survey instrument by the Economic Forum in Davos, which measures the gender gap in countries around the Globe. According to the 2007 Gender GAP data, Sweden, which is the highest-ranking country according to this index scores 0.8146, where a ratio of 1.0 would indicate full equality. Thus, even in Sweden there is still a substantial gap between men and women.[6] Nonetheless, there is evidence that in many countries the status of women has improved substantially over the past decades. And it is not unreasonable to believe that legal mechanisms have played an important role in bringing about or at least supporting this change. It is certainly the case that the observed change in socioeconomic status of women especially in countries of the West coincides with important legal change – including universal suffrage, changes in family law, as well as legally enshrined affirmative action programs. Yet, there is little evidence beyond these observations to show that legal change has indeed promoted greater gender equality. In fact, there are also good reasons to be skeptical about the ability of formal legal change to have an immediate impact on social outcomes. Social change tends to be a long-term process and social engineering by way of legal reform has not proved to be wildly successful. Even in the realm of civil and commercial law transplanting legal institutions from one society has required more than simply supplying "good" institutions. Instead, the process of transplanting law, or the "demand" side of legal reform has proved to be critical for new institutions to make an imprint in the host environment (Berkowitz, Pistor, and Richard 2003)(Pistor, Raiser, and Gelfer 2000)(Kraakman et al. 2004) as most clearly evidenced by the

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[6] The Global Gender Gap Report 2006 (World Economic Forum) at 7.

willingness of law importing countries to invest in such institutions (Berkowitz and Clay 2003)(Pistor et al. 2003).

To investigate the relation between the rule of law and the status of women more systematically, we analyzed the relation between WGI sub indices (ROLand GovEFF) as well as PolCon, and indices that purport to measure the status of women in society. Two of these indices have been around for a while, although to our knowledge they have not been widely used in studies related to the rule of law. These are the gender related development index, or GDI, and the gender empowerment measure, or GEM, both developed under the auspices the UNDP. These are essentially subsets of the Human Development Index (HDI). Based on Amatya Sen's seminal work on the importance of human capabilities, HDI codes three aspects of human development: "A Long and Health Life" (measured by life expectancy at birth), "Knowledge" (i.e. educational attainment captured by adult literacy rate and gross enrolment ratio), and a "Decent Standard of Living" (measured by GDP per capita). Specifically, GDI compares how males and females score on the HDI sub-indices and on this basis constructs "equally distributed indices" for each of these sub-indices. GEM measures more directly the political, economic and social status of women by constructing indices for "political participation and decision-making", "economic participation and decision-making", and "power over economic resources". Once again, the differential between males and females is used to construct three "equally distributed equivalent percentage" (EDEP) sub-indices, which comprise GEM. The Economic Forums' GAP index is a variation of GDI and GEM. It measures gender gaps in outcome indicators, rather than relative levels or means and input variables,[7] and ranks countries by the gender difference, or gap, rather than the level of women's empowerment.

Meanwhile the OECD has constructed yet another index, the Gender, Institutions and Development (GID) Index. Unlike GDI and GEM, GID focuses on institutions that affect gender equality in society including the prevailing family code, women's physical integrity, women's civil liberties and women's ownership rights.[8] Mindful of the fact that the line between formal and informal institutions is not always easy to draw most of the sub-indices measure both formal and informal institutions. Together they determine what we call "the status of women" in society. We have therefore constructed our database for the most part around the GID index, which includes 121 countries.[9]

Table 2 below reports simple correlations between the four gender-related indices discussed above and the correlations between these indices and ROL on one hand, and PolCon on the other.[10]

[INSERT TABLE 2 HERE]

As can be seen, the gender indices are positively correlated. The strongest correlation is between GAP and GEM (.8147), which is not surprising as there is substantial overlap in the input variables used. The correlation coefficients with GEM and GID are not quite as high, but still strong. As can be seen, GID is also highly correlated with HDI (.99), which in turn is highly correlated with GDP -- which is an important subcomponent of the index.[11] Most puzzling is the relatively low correlation between most of the gender indices and the two measures for the rule of law, ROL as well as PolCon. Particularly striking is the low correlation between the OECD's

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[7] See GAP p. 3.

[8] The indicators used and coding practices are explained in Appendix I to this paper.

[9] The data and data description of the GID index can be found at www.oecd.org/dev/gender/gid. For a preliminary analysis of the data see (Jütting et al. 2006).

[10] For the sake of completion we report the results for different versions of ROL as well as PolCon.

[11] Using 2005 data, we find that the correlation between HDI and the log of GDP per capita is .92.

[13] ADD LIT

GID index (in both cases around .48). For most of the subsequent analyses we are using GID as well as GAP. The correlation coefficients indicate that they are indeed picking up different aspects of the status of women on society and none is directly linked to income variable. Table 3 below reports the descriptive statistics for both tables represented for the full sample as well as for two smaller groups of countries, namely a restricted sample of only 55 countries for which we have household level data on social norms about gender equality, and the countries of the EU and North America (EU/NA) as a benchmark group for purposes of regional comparisons. As can be seen, GID data are much more varied than GAP data. The difference in standard deviation and variance between EU/NA on one hand, and both the full sample are particularly striking.

[INSERT TABLE 3 HERE]

In a next step we break down the sample by income brackets and regions. While this reduces the number of countries in each sub-group, this still helps us locate the sources of variance in the data. With regards to income brackets we find that there is indeed a strong correlation between ROL and GovEff for high income countries, but no such correlation for any other income group (Table 4). We can also observe again that the scores for PolCon are not always consistent with scores for ROL or GovEff.

[INSERT TABLE 4 HERE]

The results for ROL and GovEFF by income group are illustrated graphically in Figure 1.

[INSERT FIGURE 1 HERE]

The strong correlation between ROL and GovEff with the status of women in high income countries obviously does not tell us much about the direction of causation. A possible explanation is that economic development promotes both the development towards the rule of law and improved status of women. Yet this interpretation is in tension with many studies suggesting that institutional quality promotes growth and development. Moreover, data from China and India suggest that economic growth may be correlated with a decline, rather than an improvement, in the status of women, as suggested by the increase in female mortality rates during the high growth period in both countries.[13] Alternatively, rule of law a better status of women may have promoted economic growth and development. Finally, it could be the case that both our conception of the rule of law and gender equality are social or cultural constructs of the West, which also happens to be one of the richest part of the world. To get a better sense of the regional variation of the status of women in society, we therefore divide the world by region and report correlations between GID and GAP with ROL, GovEff and PolCon see Table 5).

[INSERT TABLE 5 HERE]

Surprisingly, the results are much more ambiguous – although in part this may be due to low number of observations. Clearly, on the basis of this data it is not apparent that the affinity between GID and GAP is stronger in Europe and North America than elsewhere. To the contrary, we find statistically significant levels of correlation across the different indices used only in the Middle East and North Africa and in Subs Saharan Africa. These results suggest that the relation between the rule of law and the status of women is not uniform around the globe. While in some parts of the world there is a positive association – which still begs the question of causation –

there is no such relation in most countries in our sample. In fact, if we consider the share of the female world population for which we can establish a positive correlation and for which we cannot, we are confronted with a ratio of 15 to 85 percent.[14]

Part 2: The Ties that Bind

This section tries to explain the puzzle posed in Part 1 of this paper, namely that we do not find a strong positive correlation between the status of women and the level of the rule of law using available data sets. We explore theoretical explanations building on the new institutional economics literature and (Section 1) and seek to bring these insights to the data using both quantitative measures (Section 2) and qualitative information (Section 3). Finally, in Section 4 we analyze the intersection of social norms and formal legal intervention at the international level.

1. Social Theories and the Law

Societies are complex systems. They operate on the basis of multiple subsets of norms, formal law being only one of them (Coleman 1990). To take account of this, the literature on the new institutional economics distinguishes between "formal" and "informal" institutions, where formal institutions refer to the "rules of the game", i.e. the "humanly devised constraints that shape human interaction" (North 1990) that have been either made or were recognized by authoritative bodies; informal institutions are also part of the "rules of the game". They may become formalized, either by incorporating them into statutes or by recognizing them as standard setting or binding in courts or other enforcement agencies with norm setting authority. Equally important, formal norms need to be incorporated into social practices to make a real impact. In fact, some proponents of the institutionalism literature have defined institutions as observable behavioral outcomes. According to them, institutions are regularized patterns of behavior that result from collective expectations about how others, in particular authoritative agents within a system, behave (Aoki 2001)(Greif 2006). By implication, a formal law is not per se an institution. A formal law gains the status of an institution only once it becomes part of a self-sustaining system of shared beliefs (Aoki 2001). Whether this happens this is not only a function of the state's capability to enforce a law, but also, and arguably even more importantly, of the perceived legitimacy of the norm. The reason is that no state has the capacity to effectively enforce most of its laws in the absence of "buy-in" or voluntary compliance.

Where formal law is the product primarily of domestic lawmaking processes, both informal and formal norms are engendered by the same values and belief systems. Even in these systems conflicting norms will undoubtedly co-exist but the famous gap between the law on the books and the law in action tends to be smaller as compared to countries with legal institutions that were predominantly transplanted – or more accurately, superimposed either by conquest, colonization or multilateral lending conditionalities or other forms of external pressures. Countries' that received their formal legal system primarily by way of external imposition thus suffer from the "transplant effect" (Berkowitz, Pistor, and Richard 2003). A further implication of this literature is that a close affinity between transplanted institutions and pre-existing ones is crucial for new legal institutions to have an impact on social reality. Where this is not the case, formal law tends to be either ignored, trivialized, or transformed (Berkowitz, Pistor, and Richard 2003)(Teubner 2001).

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[14] This is simply the ratio of the population in high income countries vs. all other countries assuming a share of 50 percent females.

[16] In fact, Ellickson's study of farmers in the West shows that the norms that govern disputes are often in conflict with existing formal law.

Although these theories and the evidence to support them are well known, it is often assumed that formal law trumps informal law because of its authoritative nature and the enforcement power of the state. Yet, this is an overly simplified assumption. The state does not necessarily wield the same authority in all countries or over all spheres of life. Most conflicts and disputes, whether economic or social, are never adjudicated, even if regulated by formal law. Even when a case makes it to court, judges may not enforce the law on the books. They don't have to when the law is non-binding. And they may not do so even when it is binding in cases where their own belief systems conflict with the law and – lest they be accused of subversion of justice – as long as the case offers sufficient factual or legal ambiguity to allow for multiple legal solutions that can be reconciled with binding law. Lastly, there is ample literature on the ability of social groups to govern themselves in the absence of formal law (Ellickson 1991)[16](Ellickson 2001)(Upham 1987)(Milhaupt and West 2004), as there is of social groups opting out of formal law in favor of a subset of norms they control (Bernstein 1992). Even actors that appear to be operating within the formal system, i.e. who pay their taxes, register their business, and so forth, often tap into informal means of resolving conflicts before mobilizing the legal system (Macaulay 1962).

If this is the case for economic relations, it seems plausible to posit that social relations and in particular gender relations, are also governed largely even if not exclusively by social norms. Social relations in this context refer not only to intra-family or kinship relations, but more broadly to the social norms that determine a woman's status in society and constrain her ability to step outside stereotyped roles by pursuing economic, social, or political opportunities. The source of these norms may vary and can include religious beliefs and traditions, but also social practices of more recent origin and which may have been shaped or re-enforced by law and other formal institutions. This paper makes to attempt to explain the origins of differences in social values and belief systems. We simply try to establish that such differences exist and analyze how they interface with legal institutions, and particularly with the rule of law.

2. Taking Social Theories to the Data

As mentioned, the GID database does not allow us to clearly distinguish between legal constraints on gender equality and practices that may not be endorsed by law, and in fact, even prohibited.[17] We therefore use a different data set that measures social values, namely the World Value Survey (WVS). Like other indices, the WVS is not without substantial conceptual problems (as further elaborated in Part 3 below). As with other data sets, however, these are the best we can do for cross-country analysis at this time.

One of the great benefits of the WVS is that we can move our analysis from the country level to the level of households and individuals. This allows us to take account of the fact that institutions that are designed for a particular policy unit (municipalities, regions, nations) may have a differential effect on individuals and/or types or groups of people within these policy units. We proceed again in two steps. First, we identify indicators that capture social values about gender relations on one hand, and perceptions about government effectiveness and legal institutions on the other; This is to mimic the indicators used for constructing the ROL and GovEff indices. Since the WVS does not contain extensive information on the status of women in society, in a second step we move the analysis back to the country level, but rely on data from WVS aggregated at the national level to measure social values.

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[17] Some of the GID subindices code formal law, namely "physical integrity", which measures whether a country as criminal sanctions in place for violence against women, but also includes evidences on practices, such as genital mutilation. However, since we use GID to measure the status of women in society we might be conflating independent and dependent variables by carving out some of the variables.

Several question in the WVS seek to elucidate norms and values about gender relations.[18] Unfortunately, many of the questions reflect currently contested issues in Western countries (such as a "right" to work or a "right" to abortion), which seem to ignore economic and political circumstances in many developed countries, where work is not a right, but a must, and abortions may be forced rather than chosen. Yet some questions appear to be less afflicted by this problem. For the most part, we use the question whether in times of job scarcity men or women should be given preference (jobs) as an indicator for attitudes about gender equality – although admittedly even with regards to this variable one could raise issues about the social construction of gender equality. Jobs is highly correlated with other variables on gender equality for which, however there are fewer observations. This becomes particularly relevant when aggregating WVS data back to the country level.[19] For capturing the essence of the rule law measures of ROL and GovEff, we use questions that ask respondents about their attitudes about different parts of the government (see Appendix I). In fact, we find fairly strong correlations between this various indicators and ROL as well as GovEff when aggregating the WVS variables at the country level - at least for high and upper income countries (see Tables 6A and 6B below).[20]

[INSERT TABLES 6A and 6B HERE]

By contrast, the correlation coefficients between these variables and jobs are low, and sometimes even negative. The major exception is "army rule" and to a lesser extent "strong ruler", indicating that negative attitudes about army rule and/or a strong ruler are positively associated with social norms in favor of gender equality. See Table 7 below.

[INSERT TABLE 7 HERE]

These results in some measure confirm our earlier findings that there is little relation between perceptions about government and legal institutions and the status of women in society – in the case of the WVS the values of women in society. When we move the analysis back to the country level by aggregating household level data, we even find a negative correlation between "jobs" and most governance indicators (See Table 8).

[INSERT TABLE 8 HERE]

To test more systematically the relation between rule of law, the status of women and social values about gender relations, we conducted simple OLS regressions with GID (status of women) as the dependent variable and controlling for GDP per capita, social norms (jobs) as well as for regional dummies. The "jobs" variable from the WVS covers only 55 countries. We therefore run the regression for the entire sample without controlling for jobs and then again for the restricted sample for which we have "jobs" data, once without and once controlling for "jobs". The results can be found in Table 9.

[INSERT TABLE 9 HERE]

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[18] Examples include: When jobs are scarce, men should have preference over women; university education for boys is more important than for girls; on the whole, men are better political leaders than women.

[19] More specifically, For this question we can cover 69 countries as opposed to 39 or even less for other variables.

[20] We excluded two variables from the WVS from our analysis, which otherwise fit our format of mimicking ROL, namely confidence in the judiciary and confidence in the government. The reason is that survey data for each of these variables are available only for a relatively small subset of non-overlapping countries. Confidence in the judiciary, for example, is available only for Western European countries.

As can be seen, adding jobs as a control variable in the restricted sample (column 3) makes the coefficient on rol less significant while increasing explanatory power (R^2). Adding gdppc (in 4 and 5) makes rol insignificant. The gdppcsq term is always negative, implying a diminishing effect of income on gid, but this effect is small and sometimes insignificant. The most interesting result is model (6). Here gdppc and jobs are significant, rol is insignificant, and the R^2 is a respectable 54 percent. We interpret these results to suggest that social norms as well as income levels are critical determinants for the status of women in society, and more important than what is captured by rol. In a second step we add regional dummies (as in models 7-9), which are set with Europe/NA as the comparison group. Given our previous discussion, it comes as no surprise that the regional dummies explain a lot of the variation, particularly in the case of MENA, SA and SSA, which have very large effects and are always significant. For example, Middle Eastern countries, ceteris paribus, have a GID score lower than European/North American countries by about .3 (recall that GID only runs from 0 to 1). It is worth noting that once we include regional dummies, the coefficient on jobs becomes insignificant (9). This may be due to the fact that regional dummies capture much of the differences in social norms contained in "jobs". These results are consistent with other studies on the interface between culture and law. Licht et al (Licht, Goldschmidt, and Schwartz 2007) use a data set on cultural preferences, which has been constructed by cultural psychologist to test the propensity of different cultures to condone governance systems that are associated with the "rule of law" or "good governance". They find that respect for legal entitlements is much less universal than widely assumed, but instead is associated with "a distinct profile of cultural values".[21] "Countries with high scores for the prevalence of the rule of law and non-corruption are also high on affective and intellectual autonomy and on egalitarianism, and low on embeddedness and hierarchy."[22]

3. Case Study: India

The results of our cross-country analysis are confirmed by case studies analyzing how formal legal rights affect women's ability to realize such rights in practice. India is a prime example for the vast discrepancy between the aspirations of formal law when it comes to gender issues and lived social practices. On paper, India has one of the most progressive legal systems in the world. Indian women have had the right to vote since 1950. Article 14 of the Indian constitution explicitly guarantees 'equality before the law', Article 15 prohibits discrimination on the grounds of sex, and Article 16-1 provides for equality of opportunity in matters of public employment.

Legislation exists to prohibit violence against women, guaranteeing far-reaching negative rights: for example, The Commission of Sati (Prevention) Act 1987 outlaws the practice of burning the widow at the funeral pyre of the dead husband, whilst The Medical Termination of Pregnancy Act of 1971 and The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act of 1994 deal with the problem of selective foeticide and infanticide.[23] In addition, the Indian Penal Code criminalizes a wide range of sexual and matrimonial offences.[24] Obstacles to the liberty and equality of women are also addressed by legislation including The Dowry Prohibition Act 1961, The Child Marriage Restraint Act of 1929, The Suppression of Immoral Traffic in Women and Girls Act of 1986 (criminalizing trafficking in women and children) and

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[21] Ibid at 669.

[22] Ibid.

[23] On sati, and for an excellent, if dated, overview of women's rights in India see Rhoodie (1989) pp. 395-401.

[24] For a compendious overview of the Indian law on offences against women see Dewan (2000). See also Kaushal (2000).

The Indecent Representation of Women (Prohibition) Act of 1986 (on pornography and other related offences).

Positive socio-economic rights for women in India further ensure that they have the legal protection they need to lead a modern life on par with their male counterparts. Women are equal beneficiaries of gender-neutral socio-economic rights, guaranteed by, for example, the Minimum Wages Act of 1948; by legislation protecting the rights of children, such as the Juvenile Justice (Care and Protection of Children) Act of 2000; and by the prohibition of child labor in certain dangerous occupations through, for instance, the Child Labor (Prohibition and Regulation) Act of 1986 and the Employment of Children Act 1938. In addition, the Right to Education Bill - which currently is at the Draft stage - will guarantee universal access to primary and secondary education. In fact, although these statutes apply universally -- they often contain specific provisions protecting the rights of women.

Further, socio-economic rights guaranteed by the Indian legal system also include a host of measures enacted specifically to guarantee the equal treatment of women. Thus, women's right to equal pay is guaranteed not only by the Constitution (Article 39.d), but reinforced by the Equal Remuneration Act of 1975; women have the right to maternity leave under the Maternity Benefit Act of 1961; women's property rights are protected by legislation like the Hindu Women's Right to Property Act and The Hindu Succession Act; and all Indian, including Muslim, women, have the right to divorce, as reaffirmed by the Muslim Women (Protection of Rights of Divorce) Act of 1986.[25]

Moreover, there exist institutions whose specific purpose is to implement this substantive law. Apart from an elaborate apparatus of courts and a wide police network, commissions with special mandates in priority areas have been set up. These include the National Commission for Women, set up to review and supervise 'all matters relating to safeguards provided for women under the Constitution as well as other Acts',[26] and the National Human Rights Commission with analogous powers. Lastly, India is a signatory to most major international human rights conventions including those pertaining particularly to women, such as the Convention on the Elimination of All Forms of Discrimination Against Women 1979.[27]

Gender reality is another story altogether. Indeed, perhaps nothing indexes the reality of women's lives in India as graphically as the 'missing' Indian women – all 30 million of them. This describes the phenomenon that – contrary to the biological fact that more girls are born than boys everywhere and that, given equal care, women are significantly more likely to survive than men – the Indian population shows a substantial deficit in women – and one that has increased in the recent period of economic growth.[28] Part of the problem is caused by the fact that despite legislative prohibitions on sex selective abortion and infanticide, their practice continues unabated. But given the number of 'missing women', this can only be a partial explanation. It appears, therefore, that 'the comparative neglect of female health and nutrition, especially… during childhood'[29] is the major factor at play. It is striking that extensive Constitutional guarantees of non-discrimination co-exist with discrimination so pervasive and fundamental that it results in the death of more women than the entire population of a country the size of Canada.[30]

But the violence goes further, still. According to a study done by the World Health Organization, a woman is raped in India every 54 minutes. The National Crime Reports Bureau

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[25] For an overview of legislation and case-law in this area see Kant (2003).

[26] See National Commission for Women Act, 1990.

[27] See http://mha.nic.in/scena.htm for a complete list.

[28] ADD

[29] Sen (1999), pp. 104-7. For a more detailed discussion of this phenomenon, see Bhadra (1999) and Saha (2003).

[30] According to Statistics Canada, Demography Division the population will reach 32,569,394 only by July 1st 2006.

recorded 16,496 rape cases in the year 2000.[31] Iyer (1999) writes that a large proportion of sexual abuse occurs within the family home, often perpetrated by fathers.[32] Contrary to the stringent law on child marriage, Bhadra (1999) estimates that 40% of rural girls are married off before the legal age, a large proportion at an age as young as 14.[33] Despite the prohibitions on dowry, these marriages almost universally take place at enormous cost to the bride's family. And, indeed, the price of not paying is high: there were 'officially' 7,026 dowry deaths in India in 2004, a 13.2 % increase over the previous year.[34] Rhoodie writes that as late as 1987, a Rajisthani woman was burnt along with her dead husband as 100,000 thousand people watched, despite sati having been banned by the British over 160 years ago. The ritual lasted 12 days – uninterrupted by the authorities. In addition, since girls are considered the most dispensable members of the family, they are typically the ones made to work as underage domestic help, or even sold as prostitutes, in order to support the family.[35]

Moreover, in spite of the wide range of guarantees of socio-economic equality, women's achievement indices consistently fall short of men's. Despite both a constitutional and a statutory guarantee of equality in working conditions,[36] there exists a pay differential between men and women of more than 250% times whilst the employment participation rate for women is estimated at 50% that of men.[37]. What is worse is that 90% of the female labor force in India is estimated to be working in the 'unorganized sector' – sectors of the economy recognized as being economically productive but considered to be too diffused to be brought under the ambit of legislation.[38] Finally, in the context of education, arguably the most major battleground in the fight for gender equality, female adult literacy is 65% of the male rate at 47.8% compared with 73.4%.[39]

It is evident from the account provided that law in India is honored more in the breach than in the observance. Despite an elaborate array of legal guarantees, women's rights in India have consistently and blatantly been violated suggesting that the mere existence of law does not tell us anything about its impact.

4. Social Norms and Legal Intervention

The Indian case raises interesting questions about the interface between formal legal reforms and social norms, practices and values. A detailed analysis of this relationship can only be done by way of well designed case studies. At the cross-country level, the best we can do is to analyze how international efforts to strengthen the status of women have been embraced by countries around the world. To do so, we analyzed the impact of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). The Convention had a

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[31] Statistics quoted in *India Today* , September 9 (2002).

[32] pp. 1-8. Iyer notes further that the fear of sexual abuse within the home isf a fundamental impetus to get girls married off as early as possible. See also, Virani (2000).

[33] p. 6

[34] National Crime Records Bureau, Annual Report (2004-5). Dowry deaths refer to the killing of women by husbands and in-laws when the material demands made of their parents are not met. See further onOn this subject, see further Joga Rao (2002) and Menski (1998).

[35] On trafficking see Sen, Sen, Sankar (ed.2005), 2005.

[36] s. 4 of the Equal Remuneration Act expressly states that 'it is the duty of the employer to pay equal remuneration to men and women for the same work or work of a similar nature'; s. 5 further guarantees that 'no discrimination is to be made while recruiting men and women workers.'

[37] Estimates based on statistics in the This and aHuman Development Report (HDR) 2005 .

[38] Government of India II and III Periodic Report on the Convention on Elimination of All Forms of Discrimination Against Women (1997-2002).

[39] HDR, 2005, % of population over 15.

[41] Art. 5 CEDAW states specifically that "States Parties shall take all appropriate measures:

long drafting history, but was finally adopted by the General Assembly in 1979 with 130 countries voting in favor with no objections, but ten abstentions. CEDAW requires member states not only to eliminate formal discrimination against women, but also to adopt "any appropriate measure to eliminate discrimination against women by any person, organization, or enterprise." (Art. 2 CEDAW). The Convention even obliges member states to seek to change cultural patterns of behavior that are discriminatory in effect (Art. 5 CEDAW).[41] Finally, member states committed to report on the efforts they made to eliminate discrimination against women. In most cases, this commitment entailed the collection of new, gender specific, data.

The adoption of the Convention marked an important mile stone for women's rights; Yet, signing a convention is only the first step in affecting change at home. Prior to ratifying a convention no country is legally bound by it; And even after ratifying the Convention it does not immediately affect the legal rights or obligations of people within that country.[42] Nonetheless, ratification is an important steppingstone requiring action by the domestic legislature of each state before it will become binding on it. To date, most signatory countries have ratified CEDAW, the US being an important exception.[43] For those countries that have ratified CEDAW we tested the propensity of countries to ratify CEDAW earlier rather than later conditioned on their GID scores. While GID data are available only for 2006, we assume that individual country scores do not change radically, an assumption that is confirmed by the stickiness of GDI and GEM in various Human Development Reports. We find indeed that countries with low (bad) GID scores tended to ratify Convention substantially later than countries with high (good) GID scores. More specifically, countries that delayed ratification for ten years or more have GID score that is .17 lower, or put differently, countries that delay ratification tend to have GID scores lower by 25% for every ten years that they delay ratification.

[INSERT TABLE 10 HERE]

A possible interpretation of this result is that domestic legislatures are influenced by institutions that define the status of women in society, when deciding if and when to ratify an international treaty aimed at elevating the status of women. One might therefore presume that the implementation of the Convention follows a similar pattern. Countries that embrace the ideals and norms it embodies should be more willing to implement the required legal and social changes – which, in these cases might also be less demanding. By contrast, countries that embrace different norms may feel compelled adopt the Convention – if only to formally signal their compliance with standards established by the international community --, but are less likely to achieve the stated goals, at least not in the short term. In theory, one should be able to test this proposition by using the country reports that members states of CEDAW are obliged to compile and present to a special commission. Not surprisingly, perhaps, both reporting and the quality of the reports has been uneven, to say the least, and thus is not usable for this kind of analysis. However, substantial qualitative research has been done on the reporting process (Engle Merry 2006). According to these studies, a coalition of international NGOs and multilateral organizations as well as country representatives who are will versed in the style and discourse of this 'international community' largely agree on the meaning of women's rights and on the kind practices that they condemn. Nonetheless, local NGOs, including female representatives who work in a local setting are often frustrated about the lack of understanding of the context in which particular practices arise and

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[42] Without going into details of international law, many countries require that the domestic legislature transposes international law into domestic law before it becomes binding. Even where that is the case, it does not necessarily follow that individuals have a private right of action, i.e. can mobilize these laws to get redress against discriminatory behavior.

[43] This, of course, is not exceptional, as the US is not party to many international treatises.

[48] See Priest (2008) with further references.

the functions they serve. Thus, there is a substantial gap in the understanding of norms, which reporting systems are unlikely to mitigate. In fact, the lax reporting practices and the lack of details in the reports that are submitted suggest that many countries have developed effective strategies of avoidance: As members of CEDAW they formally signal compliance with the principles set forth in the Convention. However, in substance there is much less convergence. These findings are consistent with other studies that have shown that the ratification of international conventions on human rights, torture, and other issues, do not necessarily lead to less human rights abuse or torture in member states (Hathaway 2002).

Part IV: Implications for Research and Policy Analysis

The results presented in this study suggest that reliance on the rule of law as the harbinger of greater gender equality might be over-optimistic, if not misleading. Social norms and culture are powerful determinants of gender reality. They inform practices and institutions – both formal and informal as they are made, interpreted, and implemented. This does not mean that social change is impossible. The radical transformation of the status of women in Western societies since the mid 19th century bears witness to the fact that such transformations are possible. In Western societies part of this transformation has been accompanied by legal change. However, more often than not, legal change followed rather than led these processes. In a recent paper Priest (2008) shows how in late 19th century United States social change that promoted self-organization gradually influenced the legal interpretation of "privacy" norms, which judges had invoked against attempts to criminalize domestic violence. This privacy norm in effect insulated a male head of households from the enforcement of the rule of law in what at the time was perceived to be his domain. First inroads were made to protect animals against cruelty – and only later was this norm expanded to children, and ultimately women. However, this change would probably not have happened absent new social organizations that emerged to promoted anti-cruelty reform. These organizations later served as a model for women organizations that advocated for women suffrage.[48]

An important lesson that emerges from our results and case studies from countries around the world is that legal change is an integral part of social change. This is clearly recognized by institutional theories that focus on behavioral outcome as indicators of institutions. It is, however, less recognized in the conceptualization of the rule of law that informs the ROL or PolCon indices. These indices assume at least implicitly that the design of institutions can be isolated from social practices, but that nonetheless, once these institutions are in place social practice will change in response to new incentives created by such institutions. This understanding of the rule of law itself is, of course, culturally embedded as the study by Licht et al suggest (Licht, Goldschmidt, and Schwartz 2007). Or as Engle-Merry put is: "…culture itself is constituted by the systems of law, government, education, and politics within which groups of people live" (Engle Merry 2006). In contrast, much of the contemporary rule of law literature views the rule of law as a system put in place and operated by the state as a "neutral agent" (North 1990). The function of the state is to provide a set of neutral institutions that citizens can use to mobilize their own interests. If the state itself is in capable of accomplishing this task, technical assistance programs offer help in designing institutions, training judges, and informing people about their rights. A further implication of the neutrality assumption of the state and the law it creates is that the state itself should not take sides and should not promote special interests. Rather in this neoliberal conceptualization, the states' function is limited "clear property rights", courts that independent and impartial and can enforce contracts and other legal entitlements, including "rights" defined in family codes. The implicit social theory is that once these institutions are in place they can and will be mobilized by those whose rights have been infringed – and that ultimately these institutions will help rectify injustice. In other words, the causality runs from institutions to social outcomes.

As this papers and numerous other studies have shown, this simple causal relation is highly problematic. Not only do policy interventions based on these assumptions often fail to produce the desired results. They can also be counter-productive. It is quite possible that a policy intervention – such as the introduction of a titling system for property rights, an independent judiciary, etc. has a differential impact on different groups within society. There a numerous case studies documenting the effect of property rights on poorer vs. richer members of society as well as on males vs. females. While it is impossible to generalize from a few case studies, there is substantial evidence that initial conditions matter – and that initial conditions can be entrenched by legal reforms. For example, Carter and Olinto (2000) show that titling in rural Paraguay has had little effect on investment prospects for small farmers, but substantially improved the well-being of big farmers. Lastarria and Cornheil (1997) document that formalizing titles in African societies where the status of women is low has often led to a further *decrease* in their status. Kevane and Gray (1999) in a study that focuses on titling in Burkina Faso suggest that formalization of property rights has weakened women's access to real estate and property rights They attribute this to the fact that the formalization eliminated previously existing informal property rights to land.

There are also studies that suggest that women have benefited from some legal intervention. One instance of successful targeting was the nationwide titling program in Peru. Field (2003) finds that as a result of an express focus in the titling program on gender equality through including female names on land titles there was an increase in household decision-making power and a fertility decline. Similarly, a study by Datta (2006) finds a positive impact on women's empowerment indices associated with the joint titling of households in a region in India. Unfortunately, we have little systematic evidence as to when and how legal interventions, such as the introduction of titling systems affect the status of women positively, negatively, or not at all.[49] Unfortunately, we lack rigorous social theories that would help in identifying critical conditions and make predictions about the impact of policy interventions under such conditions.

Against this backdrop it is difficult to ascertain that the rule of law will make a substantial difference in policy areas such as gender equality. The hope that -- in analogy to Adam Smith's invisible hand -- one could simply let the rule of law play its magic to achieve desirable policy outcomes is certainly misplaced in this area. An alternative strategy would be to clearly spell out the desirable policy outcomes and to adjust the means for achieving these ends to local conditions.

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[49] For a summary of land titling and the status of women in society, see {Deininger, 2003 #2830}

Table 1: Correlation: ROL and PolCON

	rol2000	rol2004	rol2006	polconiii
rol2000	1.0000			
rol2004	0.9679	1.0000		
rol2006	0.9574	0.9832	1.0000	
polconiii	0.4446	0.4543	0.4404	1.0000

Table 2: Gender Related Indices Correlated against Rule of Law Indices
(including number of observations; unit: countries)

	gid	gap06	gdi	gem	hdi	rol2006	polconiii
gid	1.0000						
	117						
gap06	0.7089	1.0000					
	96	115					
gdi	0.7545	0.5864	1.0000				
	105	107	131				
gem	0.6450	0.8143	0.7166	1.0000			
	62	73	69	73			
hdi	0.7157	0.5684	0.9995	0.7128	1.0000		
	116	114	131	73	153		
rol2006	0.4862	0.5099	0.7482	0.7361	0.7213	1.0000	
	117	115	131	73	153	211	
polconiii	0.4800	0.3959	0.4127	0.5446	0.3745	0.4404	1.0000
	117	115	131	73	150	182	182

Table 3: Descriptive Statistics on GID and GAP

	gid			gap06		
	full sample	restricted sample	EU/NA	full sample	restricted sample	EU/NA
mean	.782	.841	.975	.662	.673	.719
median	.868	.958	.979	.665	.675	.717
st. dev.	.210	.202	.013	.058	.057	.050
variance	.044	.041	.0001	.003	.003	.003
min	.178	.248	.943	.460	.524	.646
max	1	1	1	.813	.813	.813
skew	-.813	-1.389	-.565	-.317	-.155	.248
kurtosis	2.608	3.799	3.146	4.055	3.384	2.17
obs	117	55	21	115	62	21

Table 4: Gender Related Indices Correlated Against Rule of Law Indices by Income Brackets (including significance and number of observations; unit: countries)

		gid	gap06
HIC	rol2006	0.5850**	0.7030**
		33	36
	goveff2006	0.6581**	0.7573**
		33	36
	polconiii	0.7942**	0.6110**
		33	36
UMC	rol2006	0.0852	-0.0682
		23	23
	goveff2006	0.2370	0.0104
		23	23
	polconiii	0.5748**	0.0960
		23	23
LMC	rol2006	-0.2315	0.1065
		29	31
	goveff2006	0.0266	0.2739
		29	31
	polconiii	-0.0774	0.0685
		29	31
LIC	rol2006	-0.0157	0.0963
		32	25
	goveff2006	-0.0764	0.1952
		32	25
	polconiii	0.1070	0.1155
		32	25

* = significant at .10 level; ** = significant at .05 level

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Figure 1a): GID vs ROL by Income

QuickTime™ and a
TIFF (PackBits) decompressor
are needed to see this picture.

Figure 1b): GAP vs ROL by Income

QuickTime™ and a
TIFF (PackBits) decompressor
are needed to see this picture.

Table 5: Gender Related Indices Correlated against Rule of Law Indices by Region (including significance and number of observations; unit: countries)

Region			gid	gap06
CAS	rol2006		0.4746	-0.0203
			12	21
	goveff2006		0.4547	-0.0107
			12	21
	polconiii		0.1083	0.0982
			12	21
EAP	rol2006		0.4341	0.2370
			13	12
	goveff2006		0.4099	0.2236
			13	12
	polconiii		0.2795	0.0874
			13	12
MENA	rol2006		0.1096	0.6711**
			16	13
	goveff2006		0.2620	0.7756**
			16	13
	polconiii		0.5632**	0.5702**
			16	13
SA	rol2006		0.5292	0.5523
			5	5
	goveff2006		0.0430	0.3060
			5	5
	polconiii		0.5254	0.8228*
			5	5
SSA	rol2006		0.4657**	0.5014**
			31	23
	goveff2006		0.4227**	0.6071**
			31	23
	polconiii		0.1505	-0.0587
			31	23
LAC	rol2006		0.3175	0.2030
			19	20
	goveff2006		0.3239	0.3188
			19	20
	polconiii		-0.1518	-0.0740
			19	20
EU&NA	rol2006		0.2344	0.6425
			21	21
	goveff2006		0.2707	0.6913
			21	21
	polconiii		0.2984	0.3114
			21	21

* = significant at .10 level; ** = significant at .05 level

Note: SA = South Asia; SSA = Sub-Saharan Africa; MENA = Middle East/North Africa; EAP = East Asia and Pacific; LAC = Latin America and the Caribbean; EU/NA = Europe and North America; CAS = Central Asia.

Table 6A and 6B:WVS Governance variables correlated with ROL, GovEff and PolConiii high-income and upper-middle countries (including significance and number of observations; unit: countries)

	confpo~e	confparl	confci~v	polsys~v	strong~r	armyrule	respec~R	bribe
rol2000	0.7455** 41	0.6662** 41	0.4444** 42	0.7041** 34	0.4850** 42	0.6163** 42	0.7817** 42	0.0890 44
goveff2000	0.7349** 41	0.6982** 41	0.4191** 42	0.6533** 34	0.4590** 42	0.5539** 42	0.7786** 42	0.0524 44
polconiii	0.1339 39	0.2071 39	-0.2230 40	-0.0225 33	0.1016 40	0.4137** 40	0.1613 40	-0.0631 42

* = significant at .10 level; ** = significant at .05 level

Table 6B:WVS Governance variables correlated with ROL and PolConiii for non high-income countries (including significance and number of observations; unit: countries)

	confpo~e	confparl	confci~v	polsys~v	strong~r	armyrule	respec~R	bribe
rol2000	0.3904* 24	0.1790 24	0.0714 24	0.4068 16	-0.0379 25	-0.2556 24	0.4574** 25	0.2268 25
goveff2000	0.2628 24	0.3032 24	0.1471 24	0.5333** 16	-0.0473 25	-0.2941 24	0.5143** 25	0.0516 25
Polconiii	-0.2460 24	-0.4608** 24	-0.1891 24	0.0415 16	-0.0877 25	-0.0986 24	-0.1127 25	-0.0238 25

* = significant at .10 level; ** = significant at .05 level

Table 7: WVS Governance variables correlated with 'social norms on gender' at the individual level (including significance and number of observations; unit: individual respondent)

	confpo~e	confparl	confci~v	polsys~v	strong~r	armyrule	respec~R	bribe
jobs	-0.0755** 78995	-0.0933** 76385	-0.1104** 76307	0.0052 59215	0.1228** 75958	0.2051** 74560	0.0459** 81085	-0.0152** 81525

* = significant at .10 level; ** = significant at .05 level

Table 8: WVS Governance variables correlated with 'social norms' at country level (including significance and number of observations; unit: countries)

	confpo~e	confparl	confci~v	polsys~v	strong~r	armyrule	respec~R	bribe
jobs	-0.0382	-0.2559**	-0.3973**	-0.0220	0.2097*	0.5196**	0.1446	-0.1663
	65	65	66	50	67	66	67	68

* = significant at .10 level; ** = significant at .05 level

Table 9: GID regressed against ROL with restricted samples

	Dependent Variable (gid)					
	Model(1)	restricted sample (2)	(3)	(4)	restricted sample (5)	(6)
rol2006	.100	.103	.042	-.004	-.042	-.026
	.017***	.022***	.022*	.036	.044	.040
gdppc(in $1000s)				.019	.028	.018
				.006***	.007***	.007**
gdppcsq				-.000	-.000	-.000
				.000**	.000***	.000**
CASdum						
EAPdum						
MENAdum						
SAdum						
SSAdum						
LACdum						
jobs			.471			.371
			.096***			.102***
_const	.780	.801	.552	.624	.553	.454
	.017***	.025***	.055***	.048***	.065***	.064***
No. of Obs	117	55	55	116	55	55
Adj R^2	0.2297	0.2786	0.4985	0.3681	0.4348	0.5439

	Dependent Variable (gid)		
	(7)	restricted sample(8)	(9)
rol2006	.043	.026	.024
	.024*	.024	.024
gdppc (in $1000s)	.003	.002	.001
	.004	.004	.005
gdppcsq	-.000	-.000	-.000
	.000	.000	.000
CASdum	.037	.007	.011
	.053	.045	.045
EAPdum	-.021	-.044	-.024
	.051	.051	.057
MENAdum	-.301	-.356	-.316
	.050***	.056***	.074***
SAdum	-.310	-.476	-.449
	.073***	.074***	.081***
SSAdum	-.260	-.340	-.337
	.058***	.067***	.067***
LACdum	.080	.042	.036
	.055	.056	.056
jobs			.084
			.100
_const	.870	.908	.861
	.063***	.069***	.089***
No. of Obs	116	55	55
Adj R^2	0.7281	0.8503	0.8493

Standard errors below * = significant at .10 level; ** = significant at .05 level, *** = significant at .01

Table 10: Gender Related Indices Regressed Against 'Years to Ratify CEDAW'

Ind. Var.	lngid	gid	gem	gdi	gap06
ratyears	-.025 (.004)**	-.017 (.003)**	-.005 (.003)	-.005 (.003)**	-.003 (.001)**
R^2	0.2513	0.2679	0.0277	0.0327	0.0829

Standard errors given in parentheses
* = significant at .10 level; ** = significant at .05 level

Appendix 1: WVS Indicators on "government effectiveness" and "rule of law"

Confpolice	Do you have "a great deal of confidence, quite a lot of confidence, not very much confidence or none at all" in the police
Confparl	….in the parliament
Confcivilserv	….in the civil service
Confgov	….in the government
Confjustsys	….in the justice system
Polsysforgov	People have different views about the system for governing this country. Here is a scale for rating how well things are going: 1 means very bad; 10 means very good. Where on this scale would you put the political system as it is today?
Strongleader	Having a strong leader who does not have to bother with parliament and elections is very good …to… very bad
Armyrule	Having the army rule is very good …to …very bad
Respect HR	How much respect is there for individual human rights nowadays (in our country)?
Bribe	Someone accepting a bribe in the course of their duties is acceptable

Appendix II: GID Indicators, Definitions and Coding Practice

Index	Sub-Indicator	Definition
Family Code	Age Marriage (average)	Mean age of Marriage of women (in years)
	Ever married (15-19)	Percentage of women ever married between 15-19 years
	Repudiation	Men have the right of repudiation
	Family Code: Inheritance	Inheritance rights given equally to men and women
	Parental Authority	Parental authority over children given equally to men and women (0=yes)
	Polygamy	Acceptance of Polygamy within a society (1=completely accepted)
Physical Integrity	Female Genital Mutilation	Estimated prevalence of female genital mutilation (in %)
	Violence against women (leg)	Existence of legislation punishing acts of violence against women (3 components)
Ownership Rights	Land	Women's right to acquire and own land (0=no discrimination)
	Loans	Women's access to bank loans (0=no discrimination)
	Patrimony	Women's right to own property other than land (0=no discrimination)
Civil Liberties	Veil	Requirement that women wear a veil in public (1=yes)
	Freedom to move	Women's freedom of movement in public (1=discrimination)

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