

Reforming Family Law: How Women's Groups Are Confronting Exclusion, Injustice And Violence Against Women



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Partnership**

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Women's Learning Partnership (WLP) is an international non-profit organization, a partnership of 20 autonomous women's rights organizations located throughout the Global South promoting women's leadership, civic engagement, and human rights. WLP has developed training and capacity building curricula in some 30 languages, sponsored locally-led research, and produced dozens of publications and documentary films that are used across cultures and geographical boundaries. The purpose of WLP programming is to change laws, practices, and mindsets so that women and men enjoy equal rights and opportunities. learningpartnership.org

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Abbreviations

CEDAW	Convention on the Elimination of all Forms of Discrimination against Women (United Nations)
CNDM	National Council for Women’s Rights (Brazil)
CPC	Criminal Procedure Code (India)
GIWPS	Georgetown Institute for Women, Peace and Security
IPV	intimate partner violence
UN	United Nations
UCC	Uniform Civil Code (India)
VAW	violence against women
WLP	Women’s Learning Partnership
WPS Index	Women, Peace, and Security Index

Executive summary

The examples of Brazil, India, and Iran demonstrate the importance of reforming family law to ensure women's equality in the private, family sphere where vital decisions are made affecting women. Uneven progress in legal reforms in a relatively young democracy is exemplified in Brazil, the challenges of legal pluralism come to the fore in India, and the setbacks to women's rights occasioned when primacy is accorded to religious law are illustrated in Iran. Irrespective of the nationality, religion, or culture involved, efforts to limit rights for women, and resistance to measures to combat violence against women are frequently voiced as calls for the preservation of family traditions.

Brazil's transition from a military dictatorship to democracy in the 1980s facilitated public discussion of gender inequality. Feminist campaigns led to a constitutional amendment guaranteeing equal protection for all family members and committing the government to reducing domestic violence. The landmark Maria da Penha Law on Domestic and Family Violence of 2006 affirmed that domestic abuse is a violation of human rights and increased penalties for perpetrators. In 2015, Brazil ratified a law criminalizing femicide.

These reforms are reflected in Brazil's relatively good legal discrimination score in the Women, Peace, and Security (WPS) Index, which is almost one-third above the global average. However, the gap between Brazil's rank on legal discrimination (58th best among the 167 countries) and its overall rank (98th best) on the WPS Index suggests that while legal protection is an important part of the gender equality architecture, a broader set of factors shape women's well-being. Nearly three-quarters of women in Brazil report feeling unsafe when walking alone at night. Estimates indicate that only a quarter of survivors of domestic violence

reach out to authorities—not surprising given the understaffed and undertrained police who reportedly often dismiss such cases or require women to recount their stories in open reception areas with no privacy.

By way of contrast, legal discrimination is more pervasive in **India**, even if the national constitution guarantees equality before the law and nondiscrimination on the basis of sex. The Protection of Women from Domestic Violence Act of 2006 increased sanctions against perpetrators, affirmed the protection of women within the family, and recognized gender-based violence as a public health issue. Still, about one in five women report experiencing intimate partner violence (IPV) within the past year, and one in three report feeling unsafe when walking alone at night.

The 1979 Islamic Revolution abrogated women's rights in **Iran** by suspending the Family Protection Law, limiting women's rights in divorce, marriage, and child custody. There have been occasional initiatives to improve women's rights. For example, during the Iran–Iraq war of the 1980s, Ayatollah Khomeini granted widows some inheritance and child custody rights. Iran nonetheless still ranks among the bottom dozen countries in terms of legal discrimination. Patriarchal attitudes aggravate legal deficiencies, and discriminatory gender norms still shape behavior, and 15 percent of women report experience of IPV within the past year.

Despite these challenges, feminist activism across the three case studies has successfully addressed various forms of gendered legal discrimination. However, sustained advocacy is needed on a variety of fronts, including addressing social and cultural norms entrenched in legal frameworks that normalize violence against women, to ensure the needle continues to move toward greater gender equality globally.

Introduction

This paper draws on Women’s Learning Partnership’s anthology of family law case studies, *Feminist Advocacy, Family Law and Violence against Women*, written by in-country scholars and edited by Mahnaz Afkhami, Yakin Ertürk, and Ann Elizabeth Mayer.¹ With a focus on Brazil, India, and Iran, this paper demonstrates how women are organizing for legal reform, helping to shape non-discriminatory policies, and campaigning to counter current legal and social justifications for gender-based violence.

Family law defines and regulates the rights of women and men within the family. As well as specific family law legislation, it comprises secular civil and penal laws, and traditional or customary laws. It also includes laws dealing with violence against women (VAW) in the home. Family law offers a litmus test of women’s status in different societies. The legal discrimination score in the Women, Peace, and Security (WPS) Index² directly considers several aspects of family law: whether married women are required to obey their husbands, whether they are permitted to manage assets, whether they can initiate a divorce, and whether there are effective laws against domestic violence.

In many countries, women are constrained by family laws that give men the power to control women’s rights to marry or divorce, inherit property, travel without a male guardian, hold a job, choose their place of residence, or to make decisions affecting their children. In some jurisdictions, it is not a crime for a husband to beat or rape his wife, or for parents

to marry off their daughters when they are still children. Inequalities in the family are not limited to the domestic sphere but are often reproduced in the wider society, which can lead to social inequalities and, in some cases, to societal violence and instability.³

A recent review of family law in eight countries covered by *Feminist Advocacy, Family Law and Violence against Women* finds that—regardless of the predominant religion in a country, or whether the society is governed by a secular or religious government, or whether it is affluent or not—“gender relations [are] similar . . . almost always, family legislation [limits] women on whether they [can] have a voice in their place of residence, guardianship of children, and ability to pass their citizenship rights to their husbands or children born outside their native land.”⁴

Feminists seeking to advance women’s equality in the family confront challenges stemming from various problems that can include cultural, religious, or tribal customs and laws that are at odds with women’s equality in rights. Secular laws that ostensibly protect women’s rights may not, in practice, be effective. Where there are laws to protect women from violence, ingrained attitudes and traditions that condone gender-based violence—often justified by culture and/or religion—may still prevail and leave women victims with little in the way of real legal recourse. Further, in countries where legal pluralism exists, the secular and customary laws are not always compatible, making justice unpredictable and “inherently volatile.”⁵

Evolution of women’s rights and the role of women’s groups

In recent decades, women’s rights advocates have “increasingly identified the family as a nexus in the violation of rights in private and public life, and family laws as the legal construction of domination and subordination in both realms.”⁶ Feminists across the globe are working on efforts to reform the laws and judicial practices that govern family relations, particularly where family laws subject women to increased vulnerability to violence in the family and community. These efforts are most successful where they are carried out in conjunction with public education campaigns to build supportive constituencies, and to influence social, political, and cultural leaders. Without broad-based support for women’s rights, and wide condemnation of VAW within the family, laws protecting and supporting women can languish unenforced.

The international consensus on which entities may be held accountable for human rights violations has evolved from being restricted to government actors, to including violations committed by a range of non-state actors, such as private militias, corporations, gangs, and individuals. The evolution of women’s human right to be free from violence within the family is reflected in the evolution of international women’s rights instruments. The United Nations (UN) Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), first adopted in 1979, contained no

references or provisions relating to VAW. It was not until 1992 that the committee responsible for monitoring the Implementation of CEDAW stated unequivocally: “Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”⁷ The following year, the UN General Assembly adopted the Declaration on the Elimination of Violence Against Women,⁸ and in 1994 the UN Commission on Human Rights established a special rapporteur on VAW.⁹

These milestones, to varying degrees, inspired and coincided with the burgeoning international women’s movements. Feminists recognized that harms to women committed by individuals in private spheres were not only human rights violations but were also persistent obstacles to women’s enjoyment of equal rights with men, including their equal rights to travel, work, inherit and bequeath property, and pass on their citizenship to their children and spouses. By focusing “on VAW and the adoption of civil domestic violence bills, in many countries, [women’s rights advocates] unmasked the intricate intersectionality between VAW and the property (maintenance and inheritance) regimes of family laws, which ultimately determine women’s capacity to escape violence and seek protection under domestic violence legislation.”¹⁰

Case studies

This paper focuses on women’s experiences of intimate partner violence (IPV; experience of physical or sexual violence committed by intimate partners in the previous 12 months) in three diverse regions and cultures, and examines how legal discrimination against women takes shape. The countries of Brazil, India, and Iran offer distinct pictures of how women fare across the 11 indicators that make up the WPS Index. Figure 1 shows rates of IPV across country regions.

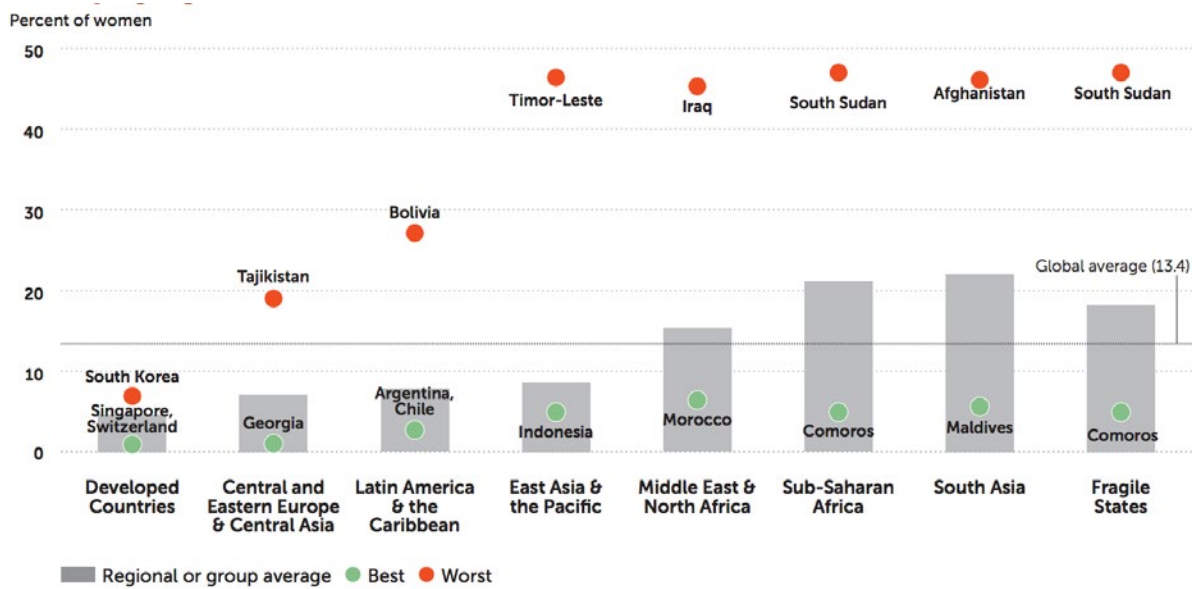
Brazil already ranks relatively well against both of these indicators, coming low down the list on IPV and legal

discrimination, but has nonetheless seen some small improvements since the previous WPS Index in 2017. India’s levels of IPV remain slightly higher than the global average, but the country has seen a decline in its score on legal discrimination, whereas Iran shows levels of legal discrimination that are the highest in the Middle East and North Africa region. Insights into the contextual factors and the legal pathways by which women’s lives are being harmed or improved in these three countries are revealed in the case studies now explored in more detail.

Figure 1. Rates of intimate partner violence against women

Note: Current intimate partner violence is the percentage of all women who experienced physical or sexual violence committed by their intimate partner in the previous 12 months. Values for the indicator are inverted (-100) so that the lower IPV score means higher ranking. The worst potential score is 100 percent.

Source: UN Women, *Global Database on Violence Against Women*¹¹



Brazil

In 1934, Brazil's suffragists were successful in their efforts to secure in the constitution women's right to vote. The constitution also recognized equality without distinction of sex, race, or social origin. In spite of this progress, women remained subordinate to their husbands because the patriarchal 1916 Civil Code continued to be the governing legal framework for women's rights in the family. When Brazil's feminist movement gained momentum in the 1970s, women called for the reform of unfair family laws, and changes to the civil code that still required virginity for unmarried women. They demanded equal pay, the right to abortion, and other legal and social reforms. Feminists criticized the patriarchal political and social structure of Brazilian society that justified violence against women. The women's movement was also highly critical of the repressive government of the military dictatorship of 1964-1985, exposing the links between patriarchy, discriminatory practices within the family, and the inequality promoted by the dictatorship.

Brazil's transition from military dictatorship to democracy in the mid-1980s opened up opportunities for more progressive public policies and non-discriminatory laws. These included gender-focused public policy institutions, state councils, and special police stations and health centers for victims of violence against women. Brazil's National Council for Women's Rights (CNDM) coordinated a national feminist campaign that culminated in a meeting at the National Congress attended by women from all regions of the country. Pressure from women activists catalyzed political will for congressional delegates to launch a nationwide campaign to ensure that Brazil's 1988 constitution would include equal rights between men and women, and the right to family planning, and would repudiate violence within the family.

As a result of the work of CNDM and feminists from across the country, Article 226 of the 1988 constitution, which deals with the family, states, among other things, "The State shall ensure assistance to the family in the person of each of its members, creating mechanisms to suppress violence within the family." Brazil's more conservative forces, however, retaliated against CNDM's victories in shaping Brazil's constitutional guarantees, and those of others in the feminist movement. After the passage of the new constitution, the executive branch doubled down on a conservative agenda, particularly towards women and CNDM itself. The president weakened CNDM by slashing

its resources and limiting its power. Nonetheless, the rights of women enshrined in Brazil's 1988 constitution are a lasting reminder of CNDM's work.

While Brazil is a secular country, it is heavily influenced by the Catholic Church and more recently by Evangelical denominations, which lobby to restrict women's sexual and reproductive rights. The 1940 Penal Code still regulates the right to abortion, permitting it, only technically, when the mother's life is at risk or the pregnancy is the result of a rape. Conservative reaction to feminist demands for a woman's right to terminate her pregnancy has impeded progress.

One victory for women came in 1999. Beyond the purview of Brazil's conservative judiciary, professionals at the Ministry of Health promulgated guidelines to aid public hospitals in their care of victims of rape, which included providing pregnancy terminations, emergency contraception, and prophylaxis against sexually transmitted infections.¹²

In 2009, the campaign for the expansion of the right to terminate a pregnancy demanded an extension of the right to abortion in cases where the fetus was shown to be anencephalic (with parts of the brain and skull missing). In 2012, the Supreme Court approved this new legal ruling. Since the outbreak of the Zika virus in 2016, abortion advocates have called for a woman's right to legally terminate her pregnancy if her fetus has been harmed by the virus, which can cause developmental complications such as a congenital Zika syndrome that includes microcephaly (abnormally small head). In 2018, public hearings were held at the Supreme Court to bring about greater public awareness about a woman's right to terminate her pregnancy. A significant number of national and international scholars, medical doctors, feminists, and progressive members of different religious denominations presented arguments in favor of abortion rights. The hearings were broadcast on television, covered in other media, and discussed widely on social media. To date, however, demands from women's rights to decriminalize abortion, particularly for women infected with the Zika virus, have not been supported by the Supreme Court.

Brazil's feminist movement post-dictatorship was buoyed by the UN's world conferences on women and the growing sophistication of the international human rights mechanisms that support women's rights. Brazil's government has participated in the UN and Inter-American¹³ human rights

systems, which feminists have been able to use to their advantage by repeatedly highlighting the discrepancies between treaty obligations and the laws and practices in Brazil.

In 2006, feminists were successful in persuading the Brazilian government to pass the Maria da Penha Law on domestic and family violence (Law 11.340/06), which brought Brazil into compliance with the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (also known as the Convention of Belém do Pará). The law increased the level and duration of punishment for VAW, and affirmed that it is a violation of human rights, regardless of the severity of the sentence for a particular crime. The new law was explicit in including physical, sexual, and psychological abuse as types of violence, and created special courts to prosecute VAW.

In 2013, Brazil’s parliament established a parliamentary inquiry commission on VAW, which conducted public hearings on femicide throughout the country. This led to the passage of a Femicide Law in 2015.

All these reforms are reflected in Brazil’s relatively good legal discrimination score in the WPS Index, which, with an aggregate score of 15 for discriminatory laws and regulations (Figure 2), is about a third better than the global average of 21.9.

The gap, however, between Brazil’s legal discrimination ranking, at 58th best out of 167 countries, and its overall ranking on the WPS Index (98th best), suggests that while legal protection is an important part of the gender equality

Table 1: Legal discrimination against women in Brazil compared with other countries, regional and global averages.

Legal Discrimination Against Women, 2019	
Haiti <i>(worst in Latin America and the Caribbean)</i>	32.0
Brazil	15.0
Mexico <i>(best in Latin America and the Caribbean)</i>	8.0
United Kingdom	6.0
Norway	12.0
Global Average	21.9
Latin America and the Caribbean	13.9

architecture, a broader set of factors shape women’s well-being. The legal discrimination ranking is also just above the regional average, and the ongoing work of women’s rights groups is continuing to have an impact. Table 1 shows where Brazil ranks in comparison with other countries, as well as how it aligns with the regional and global average.

Figure 2: Legal discrimination against women in Brazil, WPS Index

Note: Aggregate score for laws and regulations that limit women’s ability to participate in society and the economy or that differentiate between men and women. This score aggregates 78 laws and regulations that differentiate between men and women. Greater weight is given to six laws: requirement that married women obey their husband, mandate for paternity leave, equal remuneration for work of equal value, nondiscrimination based on gender in hiring and prohibitions of dismissal of pregnant workers, and of child or early marriage. Values for the indicator are normalized, so that a lower legal discrimination score means higher ranking. The worst potential score is 84.



Figure 3: Intimate partner violence scores in Brazil, WPS Index

Note: Current intimate partner violence is the percentage of all women who experienced physical or sexual violence committed by their intimate partner in the previous 12 months. Values for the indicator are inverted (-100), so that the lower IPV score means higher ranking. The worst potential score is 100 percent.

Source: UN Women, *Global Database on Violence Against Women*¹⁵



Relative to other countries that rank much worse on the WPS Index overall, the rate of reported IPV in Brazil is low. Figure 3 shows where Brazil ranks in relation to IPV rates in other selected countries in the region as well as compared with Norway and the United Kingdom, which are among countries that rank best overall for low IPV rates. One contributor to Brazil's low figure may be under-reporting. Estimates indicate that only a quarter of domestic violence survivors in Brazil reach out to authorities—not surprising given understaffed and undertrained police who reportedly dismiss such cases or require women to recount their stories in open reception areas without privacy.¹⁴

Despite progressive legal reforms, VAW remains a challenge. In 2013, Brazil's femicide rate was the highest recorded in the world.¹⁶ Among Brazilian women of color, the rates were even more staggering: nearly twice as many Afro-Brazilian women were killed than white women in that year.¹⁷

India

India is governed by a constitution that guarantees equality before the law (Article 14), non-discrimination based on sex, religion, caste, race, place of birth, or any other category (Article 15), the right to life and personal liberty (Article 21), and the right to freedom of religion (Article 25). Yet, in tandem with the Indian constitution, there are dozens of religious laws and codes that govern family matters and the rights of women within the family.¹⁸

The path to reform of family law in India has been different for adherents of different faiths, because of India's legal pluralism that protects (or ossifies, depending on one's perspective) minority rights and majority privileges. Efforts to unify legal codes, in particular to establish a Uniform Civil Code (UCC) that would apply to all people in India, have been rejected by conservative religious minority leaders who view such reforms as undermining both their religious freedom and their power.

About 80 percent of Indian people are Hindu, while the two largest minority religions are Islam and Christianity, about 13.4 percent and 2.3 percent of the population respectively.¹⁹ These and other religious minorities have their own family and marriage laws, which operate within India's post-colonial, independent, democratic, plural, multi-religious society. However, the debate on passing a UCC has been opposed by advocates of minority rights on the grounds that, under a majoritarian Hindu nationalist government, such a move would result in discrimination against minorities. Reformists among minority advocates argue that reform should be, and has been, initiated from within communities, while conservatives resist any deviation from narrowly construed religious precepts. The challenge to a secular approach to women's rights to equality in India comes both from Hindu majoritarian assertions (now represented in state power) about the oppression of women in minority communities, and from the reactive positions of advocates supporting orthodoxies within minority groups.

Advocates for women's rights generally fall into one of two camps: those who support a UCC, and those who support a "robust recognition of religio-cultural diversity."²⁰ The tension between proponents of universal laws and proponents of religious legal codes has strongly influenced progress on women's rights in India.

One example of progress is against dowry deaths. In the late 1970s through the early 1980s, popular outrage against dowry deaths grew (at about the same time, in 1980, India

signed CEDAW, but did not ratify the treaty for another dozen years). Too many women, mostly Hindu, were killed in family disputes over their dowries. There were nationwide protests demanding that the government take actions to better protect brides from harassment and murder over the size of their dowries. Women were demanding security and justice. In response, the Family Courts Act was passed in 1984, with jurisdiction over criminal and civil matters relating to matrimonial disputes, including over *talaq* divorce,²¹ restitution of conjugal rights, alimony, maintenance, and child custody. The courts were "structured to create a more easily navigable space for women and were an important part of the structural and institutional changes brought about through feminist lobbying with the government."²²

A number of Muslim women's rights movements in India grew out of wider movements for Muslim identity and security. The sectarian violence against Muslims in Gujarat in 2002 resulted in thousands of casualties. The sense of insecurity felt by Muslims led to many parents arranging marriages for their very young daughters, some as young as 13 years. Muslim women responded to the violence with protests and by organizing relief camps. Their activism in response to the community violence soon led to their questioning of violence in their homes as well, and evolved into women's campaigns to address domestic violence, divorce, and polygamy. Muslim women were looking for Muslim solutions to what were formerly considered private family matters. Women provided support services for victims of VAW, such as helping them move out of their homes. They established women's sharia courts, women-organized jamaats (Islamic councils/assemblies), and qazi courts (women-friendly, quasi-judicial assemblies for adjudicating family matters). In 2005, the All India Muslim Women's Personal Law Board established *Khuli Adalats*, mobile adjudicatory forums for women to bring their issues before Islamic scholars.

Christian women's rights in the family advanced during the same period as Muslim women's rights, but through different mechanisms. The first was through case law. Using Christian laws and courts, women successfully sued for equal inheritance and increased the available grounds for women to divorce. In 2001, the 1869 Indian Divorce Act governing Christians was amended. The revised law gave Christian men and women equal rights to divorce: "It (a) made divorce available to men and women upon mutual

consent; (b) removed the requirement of high court confirmation of lower court divorce decrees; (c) increased alimony entitlements; and (d) removed the punitive approach to adultery that authorized transfer of the property of adulterous women to their husbands and children on divorce.”²³

The competing interests of protecting minority sovereignty and protecting women came to the fore for Muslim feminists in 1985 in the divorce case of *Mohammad Ahmed Khan v. Shah Bano Begum*. At the time, India’s Criminal Procedure Code (CPC) required men to support their dependent ex-wives. The timeframe for support required by the CPC exceeded that required by Muslim law, which was restricted to *iddat*, the Islam-prescribed period of time during which a widow or a divorced woman may not remarry. The plaintiff, Shah Bano, won her legal case, but the judges’ finding was so full of anti-Muslim rhetoric, as well as a call to support the controversial UCC, that she ultimately renounced the alimony that she had won.

Strident anti-minority sentiment in government and the majoritarian public sphere have made reforming Muslim family law in India problematic. When a reform is framed as an interpretation of Muslim law, however, with an “accommodative and careful approach to interpretation,” there is less resistance from the Muslim community.²⁴ In the year following the Shah Bano decision, the Muslim Women (Protection of Rights on Divorce) Act was passed, which decreed that a divorced woman’s natal family and community would provide support to her in the period after *iddat* (without clearly delineating any additional responsibility for ex-husbands).

India currently has a score of 23 on the WPS Index when measuring legal discrimination, compared with the regional average of 38.7 among South Asian countries, as shown in Figure 4.

Figure 4: Legal discrimination against women in India, WPS Index

Note: Aggregate score for laws and regulations that limit women’s ability to participate in society and the economy or that differentiate between men and women. This score aggregates 78 laws and regulations that differentiate between men and women. Greater weight is given to six laws: requirement that married women obey their husband, mandate for paternity leave, equal remuneration for work of equal value, nondiscrimination based on gender in hiring and prohibitions of dismissal of pregnant workers, and of child or early marriage. Values for the indicator are normalized, so that the lower legal discrimination score means higher ranking. The worst potential score is 84.



Figure 5: Intimate partner violence in India, WPS Index

Note: Current intimate partner violence is the percentage of all women who experienced physical or sexual violence committed by their intimate partner in the previous 12 months. Values for the indicator are inverted (-100), so that the lower IPV score means higher ranking. The worst potential score is 100 percent.

Source: UN Women, *Global Database on Violence Against Women*²⁷



In 2006, India’s Protection of Women from Domestic Violence Act passed into law. The law recognized violence against women in the home as a public health issue, with medical as well as legal repercussions. While not specific to minorities, the law accommodated the common family practice in India where married couples frequently live with parents or in-laws. The home, under this law, “was conceived as a shared space with entitlements to residence that did not flow from ownership.”²⁵ In effect, the law placed the private space of the family home under police and government oversight for the purpose of protecting women from domestic violence. Moreover, by establishing that the

protection of women in the family is guaranteed under the Indian constitution, the law endowed women with individual, constitutionally protected rights within the family.

Despite these advances in legal protections for women, the prevalence of IPV in India is very high by global standards. More than one in five women in the country, 22 percent, report experiencing IPV in the last 12 months, well above the regional average of 15.3 percent (Figure 5).²⁶

Iran

Women in Iran struggling against inequality face a multitude of legal barriers and challenges in which religious norms play an especially prominent role. Iran did much to expand women's rights in the 1960s and 1970s, only to run up against a repressive system imposed after a takeover by conservative clerics who were determined to push women back into subordinate domestic roles. The 1979 Islamic Revolution overturned the predominantly secular character of the country and raised clerical interpretations of Islamic law to the status of the supreme law of the land. The new system—wherein the executive, parliament, and judiciary are overseen, under article four of the constitution, according to Islamic *ahkam* (rules) and *fiqh* (jurisprudence)—greatly impedes women's human rights. In the decades after the revolution, Iranian feminists have campaigned on behalf of women's equality, and there have been occasional rollbacks of certain discriminatory rules. In practice, Iranian women seek out ways to circumvent the restrictions placed on their freedoms, regularly showing attitudes that are at odds with the ideology propagated by the all-male clerical elite.

In response to the Shah's White Revolution in the 1960s and '70s,²⁸ women campaigned against laws that denied them political participation and restricted their rights in the family. In 1966, the founding constitution of the Women's Organization of Iran was ratified in a meeting of 5,000 activists, scholars, and civic leaders to "raise the cultural, social and economic knowledge of the women of Iran and to make them aware of their family, social and economic rights, duties, and responsibilities."²⁹ In response to growing public pressure, in 1967 the Iranian Parliament passed the Family Protection Law, which was followed by a number of progressive family law reforms. These included the establishment of Family Courts that could authorize divorce proceedings even when husbands did not want the divorce.

In 1975 the Family Protection Law was revised, solidifying and expanding protections and rights for women. Among the legal gains, the minimum age for marriage was raised to 18 years for women and 20 years for men; courts were given the power to decide which parent should have custody of children after a divorce, based on the best interests of the children; and polygamy was banned, except in the extreme cases when a second wife was permitted with the consent of the first, who would then have the right to uncontested divorce. In 1978, further revisions to the law increased women's rights in child-rearing and child custody. Other legal reforms gave women greater rights in employment

outside the home, including paid maternity leave, half-time work with full benefits for mothers of children under three years of age, and childcare facilities on the premises of the work place. At the time, some left-leaning factions criticized the advances as "Westoxication," while on the right, conservative clerics equated the reforms with prostitution and moral depravity.³⁰

The 1979 Islamic Revolution gave political power as well as legal authority to Iran's conservative Shiite clergy with Ayatollah Ruhollah Khomeini at the apex of the system as supreme leader, possessing ultimate authority over interpreting the holy texts and deciding what became law. As would be expected in a theocratic system, the new constitution positioned women's status as complementary to men's and lacked any guarantees for the rights of women. In fact, the first fatwa Khomeini issued when he came to power before there was a government or a constitution was to suspend the Family Protection Law. This meant "[W]omen no longer enjoyed equal rights with men to divorce; men regained the right to marry up to four permanent and an unlimited number of temporary wives; mothers lost equal rights to child custody, and the minimum legal age for marriage decreased to age fifteen for boys and age nine for girls."³¹

Patriarchal values informed definitions of women's role in the family, and family disputes were resolved to the advantage of men regardless of their education or class. Clerics used their control over the government and religion to rule on which activities were incompatible with Islam, interpreting Islamic morality and imposing extensive restrictions on women's lives and opportunities. Given their patriarchal bias, they resisted allowing women freedoms that would detract from what were seen as their proper functions in the family as mothers and wives. Although the repressive measures were imposed in the name of upholding Islamic morality, it would be wrong to attribute the regime's repressive policies to Islam itself. As Mehrangiz Kar and Azadeh Pourzand conclude in their chapter about Iran in the anthology of family law case studies, "the basic barrier that Iranian women have been facing is not Islam, which is susceptible to different interpretations depending on time, place, and circumstance, but the nature of the Islamic Republic; the theocratic system created by the political and legal fusion of government and religion."³²

Without equal access to divorce or child custody, many women in Iran are effectively coerced into staying in

marriages, even when they are victims of domestic violence. Laws that privilege husbands make it possible for a man to deny his wife a divorce unless she waives alimony and/or the custody of her children. Men who sexually and/or physically abuse their partners can escape punishment. The combination of lax law enforcement and a social stigma applied to women who expose private family problems makes it nearly impossible for women to seek legal remedies to violence in the home. The situation is even more grave for women from ethnic and religious minorities who are subject to “local and legal patterns of patriarchy. . . combined with the Islamic Republic’s discriminatory policies.”³³ For some, suicide is the only way out: “In some cases, women from [minority] communities feel such discrimination and seclusion that they go as far as self-immolation.”³⁴

With a weakened civil society and a social and legal framework that makes political and legal reform advocacy difficult and frequently dangerous, there are few legal or safe opportunities for feminist activism in Iran. Today, many women’s rights advocates rely on cyber activism to educate the public, working from inside and outside the country. Others have formed informal groups for collective advocacy, despite the constant threat of arrest or exile. With so many Iranian women’s rights advocates living outside Iran, there is little continuity or exchange of knowledge and ideas among different generations of activists.

Overall, Iran has a score of 46 on the WPS Index for legal discrimination, where a higher score indicates more discrimination. This is well above the South Asian regional average score of 38.7 and more than double the global average of 21.9 (Figure 6).

The modest legal reforms that have come about in Iran have

been through three different approaches. The first approach has been popular action, where a critical mass of women simply ignores or work around restrictions. One example of this has been the growing popularity of ‘white marriages,’ in which couples live together without being formally wedded. While white marriages are not legal, and cohabitating couples risk strong condemnation from family and friends, they are still a growing trend. A white marriage is one way for a woman to be in a relationship with a man without having to subject herself to the discriminatory marriage laws and, potentially, discriminatory divorce laws.

The second reform approach has been through the actions of moderate government officials. For instance, in the early 2000s, “women representatives in the Majles [Iranian Parliament], all reformists, went to the offices and homes of high-ranking Shi’a clerics, especially grand ayatollahs, to discuss discriminatory laws against women.”³⁵ Although not all of their proposed reforms passed, the Sixth Majles, 2000–2004, was able to reform aspects of the child custody law in favor of women, bringing the law closer to the principles of Article 3(1) of the Convention on the Rights of the Child.³⁶

The third approach has been through Islamic jurisprudence and fatwas made by high-ranking clerics. This occurred during the Iran–Iraq war in the 1980s when many widows of martyrs demanded that the Martyr Foundation give them custody of their children, and provide them with direct access to their widow allowance, rather than give the control to a male relative. In response, in contravention of Iran’s inheritance and child custody laws, Ayatollah Khomeini was moved to issue a fatwa in support of these demands.³⁷

Figure 6: Legal discrimination against women in Iran, WPS Index

Note: Aggregate score for laws and regulations that limit women’s ability to participate in society and the economy or that differentiate between men and women. This score aggregates 78 laws and regulations that differentiate between men and women. Greater weight is given to six laws: requirement that married women obey their husband, mandate for paternity leave, equal remuneration for work of equal value, nondiscrimination based on gender in hiring and prohibitions of dismissal of pregnant workers, and of child or early marriage. Values for the indicator are normalized, so that the lower legal discrimination score means higher ranking. The worst potential score is 84.



In Iran, legal reform is slow and can be frustrating for feminists, many of whom feel that there have been few if any positive amendments to Iran's laws that are "worth discussing."³⁸ Yet, millions of Iranians are carrying out small protests in how they live their daily lives. Examples include women who challenge the rules about wearing a veil and not fraternizing with men in public. Professional women are demanding the reform of discriminatory laws through their work. Some women participate in women's groups or charities dedicated to addressing discrimination challenges. There is a "handful" of decision-makers who risk their official status by advocating progressive reform.³⁹ Moreover, despite the obstacles, there have been a number of coordinated women's rights campaigns. Over the last two decades, these have included the White Scarf Women (2005), the One Million Signatures Campaign for Equality (2006), the Stop Stoning Forever Campaign (2006) and the Banning Domestic Violence Campaign (2016).

Some women's rights activists argue that one unintended consequence of feminist activism in Iran has been that "efforts to obtain gender equality have deepened the Islamic Republic's fear of women."⁴⁰ On the other hand, international attention on Iranian women's rights has made it more difficult for the government, which is seeking legitimacy as a modern state, to continue with its most regressive practices and discriminatory laws against women. In this context, a number of Iranian feminists are reaching out to diverse sectors of society to understand concerns and to offer solidarity, while raising awareness about women's rights.⁴¹ They are maintaining dialogue with government officials and clerics, and engaging as much as they can with domestic media. For many, their efforts have shifted from criticizing the state for discriminatory laws, to seeking strategies to lessen their impact on women.

Conclusion

Family law and the traditions that govern women's rights within the family intersect with all three criteria in the WPS Index to measure women's well-being: inclusion, justice, and security. Family law by itself is simply the legal and social framework governing the lives of women and men within the family unit. Wherever advocates are working to reform family law, they are trying to build supportive constituencies as well as pressing governments for fairer laws. The case studies of Brazil, India, and Iran show the importance of collecting and analyzing statistics to educate the public about the gap between laws and the social and economic realities lived by women and men today.

Resources like the WPS Index provide context, data, and resource for feminist advocates. The common denominators of the WPS Index provide tools for 'scorecard diplomacy', but, even more importantly, they provide a global standard of achievement for women's well-being that accommodates diversity and reflects women's actual lives. The moral and legal arguments supporting efforts to reform family law in Brazil, India, Iran and elsewhere are not always the same, but at their root is a shared optimism that reforms can enhance prospects for both women and men.

Historically, most decisions made within families that affect the treatment of individual members have lain beyond the purview of the police or justice systems, with male family members implicitly and explicitly considered to be the rightful heads of households. People who resist feminist efforts to change the laws and practices within families that lead to the mistreatment of women often claim their objective is to preserve the nation's culture or their religion. Conservatives accept that modernity raises standards of living, improves communication, and promises greater health and longer life. But where this demands women's inclusion, justice, and security, so their argument goes, it undermines culture and tradition. Feminist analyses show this to be a cover, however, for ingrained patriarchal values.

To counter the arguments from conservatives and traditionalists, women's rights advocates have sought to illuminate how unjust the policies are for women, and how detrimental they are for all of society. As the harms caused by retrograde family practices become more widely understood, these practices, such as child marriage or restrictions on a woman's right to inherit, become easier to dissociate from the dominant culture and religion. When people appreciate that the practices are not inherent to a culture or a religion, the practices become much easier to challenge and to change. Moreover, the door opens to positive reforms when a society is sensitized to the suffering of victims of abuses, and grasps that culture and religion should not excuse the wrongful behavior causing the suffering.

Ann Elizabeth Mayer, in her concluding chapter to the anthology, gives a striking example of one such impunity that has been challenged successfully by a recognition of its harms: "some countries have had laws that offer rapists exoneration for their crimes if they marry their victims. Viewed through the prisms of patriarchal systems that prioritize family honor and discount the harms caused to the rape victim, such cancellations of rapists' criminal liability make sense."⁴² Attitudes have changed: "[n]ow that VAW is widely understood as a harmful phenomenon, it has become harder to defend practices that segments of society long viewed as completely normal human behavior."⁴³ This is merely one of many signs that the women's rights campaigns are bearing fruit.

References

- 1 Afkhami, Mahnaz, Yakın Ertürk, and Ann Elizabeth Mayer, eds. *Feminist Advocacy, Family Law and Violence against Women: International Perspectives* New York: Routledge, 2019.
- 2 Georgetown Institute for Women, Peace and Security (GIWPS) and Peace Research Institute Oslo (PRIO). 2019. *Women, Peace and Security Index 2019/20: Tracking Sustainable Peace Through Inclusion, Justice, and Security for Women*. Washington, DC: GIWPS and PRIO. <https://giwps.georgetown.edu/wp-content/uploads/2019/12/WPS-Index-2019-20-Report.pdf>.
- 3 Bowen, Donna L., Valerie M. Hudson, and Perpetua L. Nielsen. 2015. "State Fragility and Structural Gender Inequality in Family Law: An Empirical Investigation." *Laws* 4, no. 4 : 654-672. <https://doi.org/10.3390/laws4040654>. This important study demonstrates the strong correlation between family violence and state instability.
- 4 Afkhami, Mahnaz. "Introduction." In *Feminist Advocacy, Family Law and Violence against Women: International Perspectives*, edited by Mahnaz Afkhami, Yakın Ertürk, and Ann Elizabeth Mayer, 4. New York: Routledge, 2019.
- 5 Ertürk, Yakın. "Feminist Advocacy for Family Law Reform: Cross-Country Overview." In *Feminist Advocacy, Family Law and Violence against Women: International Perspectives*, edited by Mahnaz Afkhami, Yakın Ertürk, and Ann Elizabeth Mayer, 12 (New York: Routledge, 2019).
- 6 Ertürk, Yakın, "Feminist Advocacy for Family Law Reform," 11.
- 7 Convention on the Elimination of all Forms of Discrimination against Women, "General recommendations made by the Committee on the Elimination of Discrimination against Women," UN Women (no date), General Recommendation No. 19 (11th session, 1992), accessed March 9, 2020. <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.
- 8 United Nations General Assembly, "Declaration on the Elimination of Violence against Women: Proclaimed by General Assembly resolution 48/104 of 20 December 1993," Office of the United Nations High Commissioner for Human Rights (no date), accessed March 9, 2020. <https://www.ohchr.org/en/professionalinterest/pages/violenceagainstwomen.aspx>.
- 9 United Nations Commission on Human Rights, "Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women." Adopted at the 56th meeting, March 4, 1994. In: Commission on Human Rights: report on the 50th session, January 31-March 11, 1994. E/1994/24-E/CN.4/1994/132, 140-145.
- 10 Ertürk, Yakın, "Feminist Advocacy for Family Law Reform," 17.
- 11 UN Women, "Global Database on Violence Against Women," UN Women (no date), accessed June 2019. <https://evaw-global-database.unwomen.org/en>. This database is based on Demographic and Health Survey data.
- 12 The guidelines were titled, Technical Guidelines for Prevention and Treatment of Injuries Resulting from Sexual Violence against Women and Adolescents, 40.
- 13 Inter-American Commission on Human Rights, and Inter-American Court of Human Rights.
- 14 Human Rights Watch (HRW), "Brazil: Domestic Violence Victims Denied Justice: State of Roraima Fails to Investigate, Prosecute Abusers," HRW (June 21, 2017), accessed March 9, 2020. <https://www.hrw.org/news/2017/06/21/brazil-domestic-violence-victims-denied-justice>.
- 15 UN Women, "Global Database on Violence Against Women," UN Women (no date), accessed June 2019. <https://evaw-global-database.unwomen.org/en>. This database is based on Demographic and Health Survey data.
- 16 Waiselfisz, Julio Jacobo, "Mapa da Violência 2014: Homicídios e Juventude No Brasil Atualização 15 a 29 Anos," accessed August 2020. http://flacs.org.br/files/2020/03/Mapa2014_AtualizacaoHomicidios.pdf
- 17 Afro-Brazilians are Brazilians who have predominantly African ancestry.
- 18 Carless, Will, "Brazil's shocking violence against women, in five charts," Public Radio International (November 18, 2015), accessed March 9, 2020. <https://www.pri.org/stories/2015-11-18/brazils-shocking-violence-against-women-five-charts>.
- 19 Kannabiran, Kalpana. "India." In *Feminist Advocacy, Family Law and Violence against Women: International Perspectives*, edited by Mahnaz Afkhami, Yakın Ertürk, and Ann Elizabeth Mayer, 51. New York: Routledge, 2019.
- 20 Office of the Registrar General & Census Commissioner, "Religion," Ministry of Home Affairs, Government of India (2001), accessed March 9, 2020. http://censusindia.gov.in/Census_And_You/religion.aspx.
- 21 Kannabiran, Kalpana. "India," 56.
- 22 Triple *talaq* is a method of divorce that has been used by Muslim men in India, where the husband divorces his wife by simply uttering "*talaq*" three times. This practice of ending marriage became illegal in 2017.
- 23 Kannabiran, Kalpana, "India," 57.
- 24 Kannabiran, Kalpana, "India," 63.
- 25 Kannabiran, Kalpana, "India," 64.
- 26 Kannabiran, Kalpana, "India," 64.
- 27 UN Women, "Global Database on Violence Against Women." This database is based on Demographic and Health Survey data.
- 28 UN Women, "Global Database on Violence Against Women," UN Women (no date), accessed June 2019. <https://evaw-global-database.unwomen.org/en>. This database is based on Demographic and Health Survey data.
- 29 The White Revolution in Iran was a national development program instigated by the Shah in 1963, aimed at land reform, literacy, and the enfranchisement of women, among other goals. It ended with the Shah's ouster.
- 30 Ertürk, Yakın, "Feminist Advocacy for Family Law Reform," 18.
- 31 Kar, Mehrangiz and Azadeh Pourzand. "Iran." In *Feminist Advocacy, Family Law and Violence against Women: International Perspectives*, edited by Mahnaz Afkhami, Yakın Ertürk, and Ann Elizabeth Mayer, 73. New York: Routledge, 2019.
- 32 Kar, Mehrangiz and Azadeh Pourzand. "Iran," 74.
- 33 Kar, Mehrangiz and Azadeh Pourzand. "Iran," 75.
- 34 Kar, Mehrangiz and Azadeh Pourzand. "Iran," 75.
- 35 Kar, Mehrangiz and Azadeh Pourzand. "Iran," 79.
- 36 United Nations General Assembly, resolution 44/25, "Convention on the Rights of the Child," November 20, 1989, https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf.
- 37 Kar, Mehrangiz and Azadeh Pourzand. "Iran," 78-79.
- 38 Kar, Mehrangiz and Azadeh Pourzand. "Iran," 80.
- 39 Kar, Mehrangiz and Azadeh Pourzand. "Iran," 86.
- 40 Kar, Mehrangiz and Azadeh Pourzand. "Iran," 86.
- 41 Kar, Mehrangiz and Azadeh Pourzand. "Iran," 87.
- 42 Mayer, Ann Elizabeth. "Conclusion: Reflections on Recent Progress and Reversals in the War to Curb Violence against Women." In *Feminist Advocacy, Family Law and Violence against Women: International Perspectives*, edited by Mahnaz Afkhami, Yakın Ertürk, and Ann Elizabeth Mayer, 240. New York: Routledge, 2019.
- 43 Mayer, Ann Elizabeth, "Conclusion," 240.



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