

**GENESYS**

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***Special Studies No. 1***

PN-ABH-72 +  
71096

***Women and the Law  
in Asia and the Near East***

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Prepared for the U.S. Agency  
for International Development conference:

*Women, Economic Growth and Demographic  
Change in Asia, the Near East and  
Eastern Europe*

May 14-15, 1991

Washington, D.C.

## **WOMEN AND THE LAW IN ASIA AND THE NEAR EAST**

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**Prepared for:**

**Office of Technical Resources  
Bureau for Europe and the Near East**

**Office of Women in Development  
Bureau for Policy and Program Coordination**

**U.S. Agency for International Development**

**This paper was supported by the Asia, Near East Regional Population Project through the Gender in Economic and Social Systems (GENESYS) Project. Contract No. PDC-0100-Z-00-9044-00.**

**The author gratefully acknowledges the research assistance of Joanna M. Edwards of The Futures Group.**

**The views and interpretations expressed in this report are those of the author and should not be attributed to the Agency for International Development.**

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## EXECUTIVE SUMMARY

A.I.D.'s development strategies for the 1990s are driven by a commitment to individual choice, both as the moving force behind economic growth and as a valued goal in its own right. A.I.D. programs such as "Open Markets/Open Societies" and "Voice, Choice and Governance" are designed to unleash the power of individual initiative by creating the political and economic conditions market-based economy, free and fair elections, an independent judiciary, openness in government intended to protect and promote the exercise of free choice. Such programs rest on the assumption that each individual is a free and equal agent capable of exercising control over the basic circumstances of his life; given the right societal conditions, he is positioned to make the choices most conducive to growth and development.

But this assumption of individual autonomy stands in stark contrast to the reality of the lives of millions of women throughout Asia and the Near East. For these women, locked into a life cycle controlled from cradle to grave by the men of their families, the vision of political and economic freedom held out by A.I.D. programs remains but a distant glimmer. While there are many factors that converge to deprive women of control over their lives, key among them is law.

This paper attempts to elucidate the complex, often subtle, ways in which the law (a) deprives women of the autonomy to which all human beings are entitled and on which social and economic development ultimately depends; and (b) consistently undercuts the progress that is made when women are able to participate in A.I.D. projects. It demonstrates that giving women the ability or tools to take control over the circumstances of their lives -- for example, through education, training, or income-generation projects -- is simply not enough; unless and until they have the right to most effectively use and benefit from those abilities, they will not truly possess the kind of autonomy that lies at the heart of A.I.D.'s strategies for development.

Thus the central recommendation of this paper is that A.I.D. view women's legal status not just as an inhibiting factor that often prevents women from participating in its other substantive programs and projects, but as an independent element of its WID strategy to be given specific attention in both the policy formulation and project identification processes. In that context, the law must be seen as a two-edged sword: while certain of its elements define and enforce a social order that subjugates women to the will of men in their homes and in the society at large, the law can also be used affirmatively to promote and protect women's autonomy.

However, there is no precise set of laws or legal institutions that will work automatically and cross-culturally to yield autonomy for women. Thus A.I.D.'s goal should not be to design and promote some "ideal" legal system. Rather, the aim should be to develop a deep enough understanding of a particular legal system and its place in the life of the community, to be able to work with men and women there to transform the role and rule of law in ways that have meaning in their own culture and on terms that can garner broad-based support.

To this end, the paper sets out a conceptual framework that A.I.D. officials can use to analyze how the law in any given society relates to women's lives. The framework divides a legal system into three inter-related components:

substantive: the content of the laws;

structural: the organization of the legal system and its institutions;

cultural: shared attitudes about the law, its uses, its efficacy, and its role in the overall life of the community.

By conceptualizing legal problems in this way, the analyst can go beyond an understanding of the theoretical content and form of the law (its formal substance and structure), to see how the law actually functions in the real lives of people and in the corridors of power. For present purposes, the concept of legal culture is particularly important because it helps the analyst put the laws governing women's lives into their broader historical and cultural context in order to explain the great symbolic power that such laws wield throughout much of Asia and the Near East today.

Historically, interaction with the West -- beginning with the colonial conquest and continuing with the integration of Asian and Near East countries into a post-war international economic order dominated by Western powers -- has profoundly influenced their law in two respects: (1) it has determined much of the substance of legal codes and structure of legal systems in place today, and (2) it has transformed traditional law and customs into vehicles for the expression and assertion of cultural identity in reaction to the West.

Typically, when the European colonial powers conquered territory in Asia and the Near East, they enacted their own legal codes to govern economic and political matters, but left untouched the traditional laws that had governed their subjects' private lives for centuries. As a result, most countries in Asia and the Near East still have a dual legal system in which civil law, derived from European legal traditions, governs most aspects of public life including the functioning of government, commercial transactions, labor relations, and criminal sanctions; and personal status law, derived from religious law and customary practices, governs most aspects of private life including marriage and marital relations, divorce, child custody, and some issues of inheritance.

This kind of dual legal system sharpened the distinction between the public and the private worlds -- with very different implications for men than for women. For men, the private world became a refuge from the dislocation caused by colonialism and by the ongoing process of modernization: "Forced to compromise their values, beliefs, and behavior, and surrender power in the public sphere, men reacted by intensifying 'traditionality' and reinforcing their domination within their homes" (Shaheed 1986). In the process, the religious law and custom surrounding family life, the personal status law, became imbued with the symbolism and power of nationalism and ethnic identity.

For women, however, the emergence of personal status law as the repository of a cultural identity requiring constant vigilance as it is threatened from every direction, has a strikingly different effect. This is because, in practice, the traditional laws and customs governing family relations often give men rights and responsibilities over women that effectively deny women meaningful choices about the basic conditions of their lives. Indeed, in some parts of Asia and the Near East, the personal status laws dictate that a woman spend her entire life under the formal guardianship of a man -- first her father or brothers, then her husband -- never granted the legal "capacity" of an adult and so never given the right to determine the course her life will take.

For example, a girl's parents generally decide whether and for how long she will go to school. They decide when and to whom she will be married. Once married, her husband may demand total obedience and, in some places, is explicitly permitted to enforce that demand by physical beating.

In many cultures the wife is secluded in the home (*purdah*) and must be veiled when she ventures into public. The dependence and vulnerability that these laws and customs create is often accentuated by unequal divorce and property laws. In Islam, for example, the husband has the unilateral right to divorce his wife at will and is required to provide only minimal, short-term support. While Islamic law grants women certain property rights that theoretically would provide security, in practice women are often forced to cede control over their property to the men of their families.

In short, the laws and customs operating in the private sphere effectively deprive women of the ability to make choices, to take control over, the most basic aspects of their lives. Under these circumstances, a woman may never enter the public sphere in any meaningful sense; thus changes in the civil law that governs economic and political life -- the kinds of changes needed to implement A.I.D.'s Open Markets/Open Societies and Voice, Choice and Governance programs -- may have no effect on her whatever. This will be true even of changes aimed directly at improving the status of women. For example, if a woman's husband will not permit her to work outside the home (and the law in many countries explicitly gives him this right), then a statute that forbids gender discrimination in employment or in financial markets will do little for her ability to participate in a newly opened economy.

Yet simply abrogating traditional law and enacting secular, western-style codes is clearly not the solution. For, despite their adverse impact on women's autonomy, the personal status laws grounded in religion and custom continue to resonate with meaning for women as well as for men throughout Asia and the Near East. Thus, only a movement that grows from within the society, that has support of a wide cross-section of women, that is expressed in terms and concepts that have meaning in the culture, and that is sensitive to the historical context of the law, has the chance to effect real, broad-based change in the lives of women.

Without such change, the impact of A.I.D.'s initiatives will be substantially muted. For example, even where A.I.D. has succeeded in institutionalizing gender considerations in its own internal procedures, its best-laid plans are regularly thwarted by external factors: A survey sent to all A.I.D. missions has revealed that legal constraints prevented women from participating in half of all A.I.D.-sponsored projects and programs. And women who do participate in A.I.D. projects often lack the legal right to make maximally productive use of the skills they have acquired or of the income they have generated.

Quite apart from its influence on specific A.I.D. projects, women's autonomy (defined in part by their legal status) has been shown to be essential to a society's overall development, even in countries that have enjoyed spectacular economic growth (Caldwell 1986). Finally, women's rights are a vital component of the range of human rights recognized in international law and supported by United States policy. Thus the improvement of women's legal status has value as a goal in and of itself since programs that promote women's rights as human rights seek to give women the dignity and freedom to which every human being is entitled.

For all these reasons, A.I.D. should begin to look at women's legal status not merely as a constraint on its other projects, but as an independent, affirmative element of its WID strategy. This can be done most effectively through PVO support projects that further the work of the many women's groups already seeking to improve the status of women from within the cultural reality of their own societies. For example, some groups are developing the theoretical foundation for reforming Islamic law by exposing the contradiction between Islam as it is currently practiced and the

original intent of the Quran (often more favorable to women), or by demonstrating how the doctrinal tools of Islamic jurisprudence can be used to modify current practices while remaining true to the principles of Islam. Other groups are actively mobilizing to bring about legislative reform at the national level. Still others are involved in grassroots legal literacy programs designed to empower women by helping them understand the legal system and utilize the law to promote and defend their rights in both private and public matters. A.I.D.'s support for such PVOs could be complemented by policy dialogue with lawmakers and other government officials.

Finally, coordinating projects aimed at improving the legal status of women with A.I.D. projects designed to promote women's autonomy through other mechanisms such as training or income-generation, may demonstrate a kind of synergy between these two approaches to the advancement of women. A program that enables women to enhance simultaneously both their ability and their right to control the circumstances of their lives may be the best way to ensure that women can make the kinds of choices that form the foundation of A.I.D.'s vision of development.

## INTRODUCTION

The Open Markets/Open Societies initiative -- ENE's strategy for promoting Third World development in the 1990s -- rests upon one fundamental concept: choice. Open societies are defined by the right of individuals to choose who will govern them, to choose what to say and how to say it, to choose with whom to associate. Thus the strategy for developing open societies is to create the conditions for the free exercise of such choices: the DPI "Voice, Choice, and Governance" program is designed to promote openness in government, strengthen the judiciary, regularize the electoral process, and encourage popular participation in social institutions. Similarly, open markets are defined by the right of individuals to choose freely how they will invest their assets, to choose how and where they will deploy their labor, to choose how to dispose of their income. The Open Markets program -- primarily a drive toward privatization -- is assumed to create the conditions for such free exercise of choice in the economic sphere.

Indeed, individual choice is not only the key concept underlying ENE's particular strategy for economic development, it is for A.I.D. the ultimate goal of economic development. As one A.I.D. document puts it:

"The advantage of economic growth is not that wealth increases happiness, but that it increases the range of human choice. The case for economic growth is that it gives man greater control over his environment and thereby increases his freedom." (Regional Overview at p. 43 quoting Sir Arthur Lewis).

Thus, choice is one of the central values that A.I.D.'s programs for the 1990s are designed to promote.

Yet choice describes perhaps the single most important difference between men's lives and women's lives as they confront the challenges of economic development. Choice implies autonomy and control. In many countries in Asia and the Near East, control or choice is a feature distinctly

absent from virtually every aspect of a woman's life, from the most practical of concerns -- how to expend her labor -- to the most intimate of concerns -- the expression of sexuality. While there are many mechanisms that effectively constrict women's control over their lives, key among them is law.

Of course, law is a factor that has been highlighted in A.I.D. strategies. But most often the rule of law is viewed as a force for liberation, because in the A.I.D. model the rule of law operates primarily at the societal level as a principle that protects choice. For example, as a central element of the Open Markets/Open Societies (OM/OS) initiative, the rule of law protects private property, it makes business transactions reliable and predictable, it guarantees freedom of expression and association, and it ensures fair access to society's financial and natural resources. In short, the rule of law regulates the political and economic interaction among presumptively free and equal individuals.

But, for women, the rule of law begins in the home. In theory, the personal status law<sup>1</sup> that governs that private sphere through its application to such matters as marriage and marital relations, divorce, custody and inheritance, often carves out certain specific rights for women. But, in practice, at the level of family life -- where the most basic conditions for an individual's participation in open markets and open societies are set -- personal status law and custom is a force that severely restricts women's ability to control their lives, to exercise the most fundamental kinds of choice.

Thus a central challenge for A.I.D. program officers will be to link conceptually and programmatically these two areas of the law: (1) the civil law that operates at a societal level creating the conditions for open societies and open markets to function; and (2) the personal status law that operates at the household or family level and that, for women, undercuts the very basis for participation in social and economic life. Until these two categories of law are linked, even the most

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<sup>1</sup> [Insert definition of Personal Status Law here]

elegant system to promote and protect individual choice in the society's political and economic life, will remain for women an empty promise.

Yet it would be a grave error to dismiss the personal status laws that impede women's participation in the community's social and economic life, as anachronistic hold-overs of some irrelevant, feudal past that, with a little diligence and political will, could be neatly wiped away. Especially in Islamic countries, personal status laws have played a pivotal role in the management of confrontation with the West, in the negotiation of the modernization process, as these countries struggle to consolidate their place in the world order. In the process, these laws have been vested with a profound symbolic importance that deeply complicates any effort to promote social change through law. Consequently, any discussion of women and the law, and certainly any plans by an American development agency to address the topic, must be informed by an appreciation of the historical context and its implications for the present situation.

This paper seeks to provide A.I.D. officials with some general guidelines for determining where women fit in the bewildering maze of laws and legal systems found throughout the diverse countries of Asia and the Near East and for analyzing how the law influences women's ability to participate in and benefit from development. Part 1 sketches out a framework -- a sort of conceptual map -- that A.I.D. officials can use both to identify the legal barriers to women's involvement in OM/OS activities and other development programs, and to identify law-related tools that may be available to address these problems. The framework emphasizes the fact that a theoretical grasp of the content and form of the law is not enough; such an understanding must be firmly planted in the legal culture that nourishes the system, that imparts power to certain principles and saps the strength of others. Especially on questions of women's legal status, this cultural dimension of the law must be understood in historical perspective. Accordingly, Part 2 provides a brief overview of the historical context of laws determining women's legal status and concludes that in any given country or

community, this history will, to a large extent, set the terms of the debate over women's legal status and its relation to A.I.D. activities.

Part 3 then looks briefly at the impact that women's low legal status has had on important aspects of development in order to demonstrate that, despite the thorny political and practical problems that any law reform effort faces, this is indeed a critical place for A.I.D. to focus its attention in the implementation of its initiatives. Finally, Part 4 describes some of the strategies that have been successfully employed to address women's legal status and sets out some general recommendations for steps that might be taken to make choice a meaningful element in the lives of all men and women in the Asia and the Near East.

## 1. A CONCEPTUAL FRAMEWORK FOR ADDRESSING THE LEGAL STATUS OF WOMEN

Individual autonomy has multiple dimensions: It entails a woman's personal, subjective ability to make choices, to take control over the circumstances of her own life and it also entails a society's objective recognition of women as full and equal adults whose work in all their roles contributes to the society's welfare and development. As such, individual autonomy is both a valued goal in its own right and an important precondition to development. Of course, women's autonomy is not simply a legal condition; it is very much a social, political, cultural and psychological condition as well. Yet the law is clearly a force that can either inhibit autonomy (as when it explicitly or implicitly denies women the legal right to control particular aspects of their lives) or promote autonomy (as when it grants women rights enforceable through the legal system).

Although autonomy secured through law may be so fundamental a human right that it transcends national boundaries, it is critical to recognize that there is no research -- legal or otherwise -- that identifies a set of precise laws and legal institutions that work universally and cross-culturally to guarantee women the kind of autonomy that is an implicit part of the OM/OS program. Indeed, there is not even an accepted theoretical basis about causal connections between law and social change on which such research might be based (Merryman 1977; Friedman 1969).

Thus A.I.D.'s strategy for promoting women's autonomy in the Asia and Near East regions should not be to facilitate importation of an American legal model for the defense of individual rights, nor should the strategy be to develop some new "ideal" legal model to be used throughout the region. Experience with "legal development" in other areas of the law proves that such wholesale importation of outside systems to be implemented from the top down does not work.<sup>2</sup>

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<sup>2</sup> In the late 1960s and early 1970s, A.I.D., together with some private foundations such as Ford, poured millions of dollars into the "Law and Development Movement" in an effort to create in Third World countries the kind of legal system (based on an American model) that was assumed -- without

Rather the goal should be to develop a deep enough understanding of the legal system of any country or community to be able to work with women there (1) to understand how law inhibits or promotes their participation in social and economic life; and (2) to determine ways in which the legal system might be used effectively to secure women's autonomy.

One approach to understanding how a legal system relates to some aspect of development, such as women's autonomy, is to divide the legal system into three different, but interrelated, components<sup>3</sup>:

- (1) **substantive:** the content of the laws;
- (2) **structural:** the overall organization of the legal system and its institutions;
- (3) **cultural:** shared attitudes about the law, its uses, its efficacy, and its role in the overall life of the community.

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much basis in research, theory or even history -- to be essential for economic development. The law and development movement proved a failure, as efforts to impart American legal values without sufficient regard to indigenous legal cultures either fizzled into irrelevance or were coopted by entrenched interests to promote authoritarian policies directly at odds with the aims of U.S. assistance (Gardner 1980).

<sup>3</sup> The three-part framework is based on the work of Lawrence Friedman, particularly "Legal Culture and Social Change." A similar analysis of legal systems, also based on Friedman's work, is used by Margaret Schuler in *Empowerment and the Law*.

## 1.1 Substantive Component

What does the law actually say? What are the rules as written in law codes or as articulated by courts? To assess women's overall legal status it may be useful to ask what is a woman's legal "capacity" under both the state-enacted civil law that governs public life and under the religiously-derived personal status law that governs family life.

In law, the term "capacity" technically refers to the ability of a person to undertake legal obligations or enforce legal rights on his or her own, without assistance or permission of a guardian - a sort of legal adulthood. But as one commentator has suggested, the concept of capacity can be expanded beyond its technical legal meaning to serve as a broad measure of women's equality (Freeman 1990):

Capacity in its more general sense refers to the ability to accept and to exercise the rights and responsibilities of an adult in one's society. This concept implies both personal commitment to adult responsibilities and the perception of others that one is capable of living up to them. Ultimately, it implies a full range of choice in one's personal, social, and economic life (Freeman 1990 at 112-113).

Using this broader notion of capacity to assess the substantive component of the law, we can ask first whether the law gives women -- including married women -- full legal capacity in the technical sense: Can women sign contracts? can they own property? obtain credit? become guardians of children? testify on an equal basis with men in a court of law? But we can also ask whether the law recognizes women as full-fledged contributors to the country's economic and social life: Are women allowed to be elected to political office, become judges, or be appointed as public officials? Are they entitled by law to equal pay and equal employment opportunity? Is the value of their work in the home legally recognized? Do government programs and policies ever recognize women as sole or joint heads of households, or do they direct benefits designed to assist families solely to men?

The answers to these questions will be found both in the personal status law that governs private life, e.g., marriage, divorce, custody, and inheritance (addressed in Part II below) and in the civil law that governs public life. For the purpose of analyzing women's legal status in the context of a particular A.I.D. program, the civil law can be approached at two different levels. First, there will be innumerable details in the hundreds of statutes and regulations that make up the civil law that will affect women's participation in economic and social life. Some of these laws will be discriminatory on their face, such as a law that requires a woman to have her husband's permission to be employed but does not require a man to have his wife's permission, or a law that authorizes different employment or social security benefits for men than for women. Other laws will be neutral on their face but will have a discriminatory impact on women. For example, laws that limit employee rights in export processing zones may say nothing at all about male versus female workers, but because 90% of the workers in some EPZs are women, the law will, in practice, have a disparate impact. Conversely, labor laws that protect workers' rights will have little impact on the millions of women who earn their living in the informal sector beyond the reach of such laws.

Indeed, for almost any sector of the economy where A.I.D. is involved, it may be possible to find scores of rules and regulations that work to the disadvantage of women. In the context of a particular A.I.D. program, a change in any of these laws might have a salutary effect, and might usefully be pursued with vigor. Yet it should be acknowledged that this kind of piecemeal legal reform is essentially tinkering with the system; it rarely makes a broad-based impact on the lives of women.

The second level at which the substance of the civil law can be assessed is by asking whether the system as a whole incorporates the basic principle of full legal capacity in its widest sense, whether it has acknowledged explicitly that women are full and equal human beings entitled to the same autonomy and control over their lives as men and that their work contributes to the society's

welfare and so should be recognized and valued on an equal basis with that of men. This is a principle that has been incorporated into international law in a wide range of treaties and conventions, and that finds its fullest expression in the Convention on the Elimination of All Forms of Discrimination Against Women. Indeed it is a principle that has been formally adopted by many countries in Asia and the Near East, either in national constitutions guaranteeing freedom from discrimination on the basis of sex, or by the ratification of international conventions that provide the same guarantee.

Adoption of this broad principle in the nation's laws may represent little more than an accommodation to international political pressures; it may represent the honest aspiration of the government in power at the time the instrument was adopted or of the majority of the citizens of the nation; it may even be a vibrant, living rule of law that can be wielded as a scalpel to cut out the individual elements of civil law or personal status law that deprive women of their autonomy. But once such a principle has been formally adopted its true effectiveness as a force for guaranteeing some measure of choice in the lives of women depends on the structural and cultural components of the system.

## 1.2 Structural Component

The legal system can inhibit or promote women's autonomy not just by what the law actually says, but also by how it implements legal rules. Thus understanding the structure of the law -- the separation of legislative, executive, and judicial powers, the legislative process, the court system, the police and administrative agencies -- is an essential step in deciding how to address its substance. For example, we would need to evaluate the structural components of the system in order to decide whether a discriminatory labor law is best addressed through a court challenge, through lobbying legislators, by working with administrative agencies, or by activities outside the legal system altogether. Of course, the structure of the law may in itself present problems for women, as when particular judges mistreat or discriminate against women in their courtrooms, and this too will present strategic questions of how best to attack the problem.

To answer such strategic questions we would need to understand both the structure of the law in theory and the structure of the law in fact. Knowing how the law works in theory enables the advocate to frame his or her argument in the proper terms and to pursue it in the proper forum. Knowing how the law works in fact -- in the everyday lives of the people and in the corridors of power -- is the real key to shaping an effective strategy for addressing the status of women. And that is largely a question of legal culture.

### 1.3 Cultural Component

Together, substance and structure define a legal system in which issues related to women's autonomy can theoretically be located: armed with knowledge of the system's substance and structure, an interested person (or at least a relatively competent lawyer) can figure out what laws restrict women's participation in economic life, what principles can be used to challenge such laws or to halt illegal, discriminatory practices; he can figure out which agency has authority over the matter and which court has jurisdiction over the suit -- in short, he can give a polished legal opinion on the problem in question. But until that opinion and the substance and structure on which it is based, are grounded in the community's legal culture, they remain a total abstraction, providing little concrete guidance on what is the best route to effectively address the question.

Legal culture refers to attitudes and values about law and its place in society as a whole; it relates both to the law's substance and to its structure. With respect to structure, for example, we would want to know more than just how many judges sit in how many courts; we would want to know what kind of people the judges are: how do they get appointed, what social classes are they from, what is their educational background, are they from the same community as the litigants on whose cases they rule? We would want to know what principles they use to decide cases, how much discretion they have, and to whom they are accountable. Before deciding to bring a law suit as a way to enforce a law guaranteeing women some particular right, we would also need to ask what the social meaning of litigation is in the particular culture. In some countries people file suit with zeal while in others it is considered a shameful or impolite approach to dispute resolution (Friedman 1969b).

Moreover, it would be important to recognize that attitudes about the law can vary drastically by social class, by geography, by ethnic group. Some legislation may have influence and enforceability

in urban areas, but be totally ignored (if it is known at all) in rural areas. So, for example, an upper class, highly-educated woman in an urban center might effectively use an equal protection guarantee in her country's constitution to vindicate her property rights or a claim to equal pay in her profession. But in a rural village in the same country -- where the same constitutional equal protection provision is theoretically "the law" -- it would be unthinkable for a woman to go to court to assert a property right that local custom never granted her to begin with.

Thus, legal culture tells us much not only about how the legal system actually operates, but also about the meaning that any substantive law will have in actual practice. The values and attitudes that make certain laws effective in influencing behavior in one society can be virtually meaningless in another. Tax laws provide a good example. Two countries that need to raise revenue could enact exactly the same tax law. In the United States, raising taxes by law is likely to have the desired result of increasing government revenue because people generally pay their taxes; other countries, Italy or Argentina for example, are notorious for their inability to collect taxes so the same new tax statute might very well turn out to be a dismal failure.

This is not to say that Americans have great respect for all law and other people do not: consider the criminal laws prohibiting fornication and adultery that remain on the books of many states around this country. Even when a violation by a public figure becomes public knowledge, most Americans would be shocked to see the matter treated as a crime, resulting in the kind of prosecution and jailing clearly authorized by duly-enacted statutes. Yet in other countries, such as Pakistan, criminal laws on fornication and adultery have been the center of great debate and controversy because their enforcement is taken extremely seriously (see Mumtaz and Shaheed 1987).

In both examples, the behavior that the laws sought to encourage or prevent was exactly the same. The laws might have been written with identical language and the governments might even have comparable enforcement mechanisms at their disposal. Yet the results were totally different.

It is that difference that distinguishes between the law as it appears in the statute books and treatises and the law as a living force in people's everyday lives.

When it comes to laws related to women, the picture becomes even more complicated. While the principle of equality between men and women may be expressed in a state's carefully drawn legislation, in every society (including our own) that legislation addresses values, attitudes and behavior that are rooted in religious practice and/or deeply-ingrained custom. In some countries, that practice and custom is expressed in a body of personal status law that, while reinforcing patriarchal social structures to the great disadvantage of women, has also reflected the community's struggle with modernity. Thus understanding the interplay between secular, civil law and religiously-derived personal status law requires an assessment of legal culture that is particularly sensitive to its historical context. Perhaps nowhere is this more true than in the Asia and Near East regions.

## 2. THE HISTORICAL CONTEXT

The more than twenty countries that formerly comprised the Asia and Near East regions have extremely varied cultural and political histories. There are, however, certain phenomena that in broad outline are common to nearly all of them. Most significantly, the law of most of these countries has been profoundly influenced by their interaction with the West, first by the experience of colonial rule and later by the drive to modernize their economies in the struggle to secure a place in the world economic order. The influence of this interaction with the West has been two-fold: (1) it has determined much of the substance of legal codes and structure of the legal systems in place today, and (2) it has transformed traditional laws and customs into vehicles for the expression and assertion of cultural identity in reaction to the West.

### 2.1 The Sources of the Law

The economic interests that powered European colonial enterprises required the creation of local economies that would fit the imperatives of empire. This was accomplished, in part, by the enactment of laws modelled on European legal systems that set guidelines for the operation of government, the conduct of business enterprises, and the functioning of labor markets. In essence, public life in colonial territories was regulated by state-created law, based on Western legal concepts, enforced through western-style courts. These laws were instrumental and utilitarian in character, i.e., they were imposed by centralized authorities as rules consciously and purposefully designed to foster certain forms of social and economic life deemed best suited to achieving the state's ultimate goals.

By contrast, the colonial powers had little interest in the conduct of their subjects' private lives -- family relations, social status, religious duties -- and so typically left the rules governing these aspects of life untouched by official enactments.<sup>4</sup> As a result, the religious and customary law that had governed questions of personal status for centuries was allowed to remain intact. Quite unlike the utilitarian basis of public law, personal status law was grounded in religion and custom; emanating from divine or sacred sources, personal status law is thought to embody values that are important in and of themselves and so such law admits of no quick manipulation to meet social goals.

In almost all the countries in Asia and the Near East, including those that were not formerly colonies, this dichotomy between the law governing public life and that governing private life has persisted. Throughout the 1950s and 1960s, bent on a course of industrialization and urbanization, most of those countries continued the trend of secularization (borrowing heavily from Western models) in those realms of public law, such as administration and finance, with obvious import for modernization of the economy (Mayer 1986). Other areas, primarily personal status law, remained largely unaffected. When changes in personal status law were made -- e.g., codification of grounds for divorce or requirements that marriages be registered -- they were typically enacted in a piecemeal, ad hoc fashion, leaving the philosophical foundation of the law firmly intact (Mayer 1986).

As a result of this historical process, most of these countries today have a dual legal system in which:

- (1) **civil law** found in constitutions, statutes, ordinances and judicial decisions, and derived from European legal traditions, governs most aspects of public life including the

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<sup>4</sup> While the colonial regimes may have had little interest in the precise content of this law, they were intensely interested in who wielded the power of enforcement. Thus, in some instances the colonial regimes were able to consolidate power over the population by vesting enforcement power in the local elites (see Shaheed 1986).

functioning of government, commercial transactions, labor relations, and criminal sanctions; and

- (2) **personal status law** derived from religious law and customary practices governs most aspects of private life including marriage and marital relations, divorce, child custody, and some issues of inheritance.

In some countries, such as Thailand and Nepal, there is only one code of law *per se*, but on questions of personal status the code draws directly on religious law and custom for its substance. In other countries, such as Morocco, the two legal systems operate quite independently; indeed, two separate court systems applying the two different bodies of law are maintained (Dwyer 1990). In countries with significant populations of different religions, such as India, the legal landscape becomes even more complicated as each person's private life is governed by his own religion's personal status law.

A legal system that has one body of westernized civil law governing public life while a second body of law derived from religion and custom governs private life has far different implications for women than for men. In practice, personal status law sets the terms of a woman's engagement with the rest of her society. As shown in some detail below, laws and customs that govern family relations often give men rights and responsibilities over women that effectively deny women meaningful choices about the course of their lives. Under these circumstances, a woman may never enter the public sphere in any meaningful sense; thus changes in the civil law that governs economic and political life may have no effect on her whatever. The obvious example: If a woman's husband will not permit her to work outside the home (and the law in many countries explicitly gives him this right (Abul-Husn 1990)), then a statute that forbids discrimination in employment or in financial markets on the basis of sex will do little for her ability to participate in a newly opened economy.

By contrast, the social systems of most countries in Asia and the Near East have always permitted a man to live in both the public and private worlds. As political and economic development have transformed public life, and the laws that guide it, he too has had to bend and change to fit new realities. His experience in adapting to the demands of the public world may do much to shape his relationship to his private world and the women within it. In the process, the laws that govern that private world -- laws whose interpretation and application has been controlled exclusively by men -- have been imbued with new meaning and importance.

## 2.2 The Role of Personal Status Law in the Assertion of Cultural Identity

Religion and customary practices remain powerful forces in all countries in the Middle East and Asia. But law is so central to the practice of Islam, and Islamic law is so influential in shaping the lives of Muslim women, that Islamic countries provide the most vivid example both of the intricate historical and cultural forces that make personal status law the powerful political symbol it has become today, and of the way in which personal status law conditions women's ability to participate in development programs. For this reason, I will use Islamic countries as the primary example through which to explicate the power of customary law. On this point, variation among the countries in Asia and the Near East is often more a matter of degree than kind and so the Islamic example will hold important lessons for A.I.D. officials operating in non-Islamic countries as well.

### 2.2.1. The Nature of Islamic Law and Women's Place Within It

Islamic law (*shari'a*) is "a comprehensive set of rules for human conduct as provided through Allah's command, with those rules being instrumental in controlling negative social and political tendencies" (Dwyer 1990 at 1). Thus *shari'a* governs not only man's relationship with God, but also man's relationship with his fellow man. Obedience to Islamic law is therefore basic to the very functioning of Muslim society, to the survival of the community of believers, and so is the essence of the religion. As the legal scholar, Joseph Shacht, expressed it, "Islamic law is the epitome of Islamic thought, the most typical manifestation of Islamic way of life, the core and kernel of Islam itself" (quoted in Dwyer 1990 at 1).

In jurisprudential theory, Islamic law is derived from four sources: the Quran, the *Sunna* (the model behavior of the Prophet as related in collections of sayings or *ahadith*), analogic reasoning (*qiyas*), and the consensus of the community of scholars (*ijma'*). The fluidity of the latter sources meant that, especially in the early years before codification in detailed legal manuals, Islamic law was a flexible and adaptive system (Dwyer 1990). Schisms in the Islamic community in the first few centuries after the Prophet's death in 632 A.D. (most prominently the split between Sunni and Shi'ite Muslims) and the subsequent growth of multiple schools of jurisprudence, has made Islamic law, as it is espoused throughout the world today, a richly varied tradition. With no central church or divinely-ordained clergy that can declare doctrine (as, for example, in Roman Catholicism), there is simply no such thing as the Islamic law.

Indeed, even rules clearly articulated in the Quran take very different forms throughout the Muslim world, though all purport to be grounded in the principles of Islam. For example, the Quran allows a man to marry four wives, but it also enjoins him not to do so unless he can treat them equally and fairly. Some countries, such as Saudi Arabia, permit men full freedom to marry four wives on the basis of this Quranic passage. Other countries, such as Tunisia, have prohibited polygamy entirely on the theory that it is impossible to treat multiple wives equally and fairly. Still other countries take a middle road and permit polygamy while giving women some legal options if they are not treated fairly.

Moreover, anthropological studies of litigant behavior and dispute resolution in *shari'a* courts (Antoun 1990; Rosen 1989) demonstrate that in everyday practice -- i.e., presented with the concrete facts of a particular case -- Islamic law can bend and stretch like any living legal system. Indeed, such studies remind us that in analyzing the impact of Islamic law on any given problem, in any given community in the Asia and Near East regions, context is all important (see Dwyer 1990).

Despite the huge variations in the practice of Islamic law both *de jure* and *de facto*, it is useful for didactic purposes to generalize about the place of women in Islamic countries. In Islam, as in almost every other culture, the conditions for women's participation in public life are set, first and foremost, in the home. And it is there, in the personal status law -- the law that governs family and household relations including marriage, divorce, child custody, guardianship and succession -- that *shari'a* has been the most highly articulated. Indeed, personal status law, more than any other area of *shari'a*, is elaborated in the Quran itself, the most authoritative source of Islamic law.

Significantly, much of the original intent of Quranic rules of conduct was actually to improve the status of women and to make the conjugal family the primary social unit in the new Islamic community. The Arabian society from which Islam arose was a kin-based system ruled by tribal laws that gave women virtually no legal status whatever: "They were sold into marriage by their guardians for a price paid to the guardian, the husband could terminate the union at will, and women had little or no property or succession rights" (Coulson 1979 at 37). In short, in pre-Islamic Arabia, a woman was "regarded as little more than a piece of property" (Esposito 1982). Thus Quranic rules that give specific rights to women -- albeit unequal to those of men -- meant a substantial improvement in their life conditions. Moreover, the Quran commands the Muslim man to respect women, particularly in their role as mothers, and to obey the Islamic laws that grant them important rights (Siddiqi 1975; Hassan 1989).

However, the leap from the ethical principles of the Quran to the actual practices in force in Islamic countries today is a long one. As a number of scholars have shown, over the centuries Islam has been interpreted and reformulated into rules of conduct that have often been used by dominant powers to legitimate practices that subjugate women to the will of the men in their families and that exclude women from the life of their communities -- even when such treatment of women contravenes basic Quranic ethical principles and rules of behavior (e.g. see Shaheed 1986 and 1988,

Hassan 1989, Kandiyoti 1989). Thus the careful separation between the classical dictates of Islam as a religion, on the one hand, and its cultural expression into a body of law used to deprive women of rights, on the other hand, is a task that has occupied a substantial segment of the women's movement in the Asia and Near East regions.<sup>5</sup>

For the purpose of including women in OM/OS activities, the important point to recognize is that in practice in Islamic countries today, women often have little choice about the most basic matters in their lives. Parents generally decide whether and for how long a girl will go to school; they decide at what age and to whom she will be married. Although Islamic law requires the bride's consent to marriage, as a practical matter this is easily and regularly overridden by coercion or by the father giving substituted consent in his role as guardian (*wali*). After the wedding, the bride will move to her new husband's home where she lives and labors under his strict control and the watchful eye of her mother-in-law. The husband often has the formal legal right to decide whether or not his wife may be employed and, if so, whether she may use her wages.

Behind this constellation of laws and customs lies a conception of women as valuable primarily for their ability to bear children and to gratify male sexual needs. Because a girl's value lies in her ability to bear sons to ensure preservation and purity of her husband's family lineage, her virginity becomes a critical asset. Until her marriage -- usually at the earliest possible point after puberty -- preservation of virginity becomes a badge of honor for her brothers and father and they strictly control her movements and interactions with males. After marriage, the husband ensures her fidelity by enforcing her strict isolation from men and, if he can afford it, by keeping her secluded in the home and/o: veiled when she goes into public.

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<sup>5</sup> There is also a growing body of technical legal literature devoted to showing how the tools of Islamic jurisprudence can be used to transform Islamic personal status law into a set of rules more favorable to women without abandoning the essential principles on which classical Islam is based (e.g. An-Na'im 1987; Esposito 1972).

Of course female virginity before marriage and sexual fidelity in marriage are valued in many cultures. Yet rarely do we see those values guarded through laws and customs as controlling of women as those found in Islamic countries. The reasons are obviously complex, but at one level can be explained by a view of female sexuality as untamed and irresistible and thus as deeply threatening to what is perceived as the male world of rationality (Mernissi 1987). Thus customs such as female "circumcision" -- designed to protect virginity by denying a woman sexual pleasure and, in its most severe form (infibulation), by physically preventing penetration -- while not required by Islamic law, have been tenaciously maintained in many Islamic countries.

However, in other, more indirect ways, Islamic law clearly does operate to deprive women of autonomy. For example, the laws governing obligations in marriage and divorce, while designed to improve on the pre-Islamic status of women are generally implemented in a way that leaves the wife in a dependent and precarious position both economically and psychologically. Under Islamic law, the Muslim woman can have only one husband. The Muslim man, however, may take up to four wives. The husband is obligated to maintain his wife during marriage; in exchange, she owes him obedience and total sexual fidelity. This is hardly an equal exchange, however, since the law puts numerous means at the husband's disposal to ensure his wife's obedience and fidelity (including the right to physically beat her) but makes it extremely difficult for the wife to enforce her husband's obligation of support.

Specifically, Islamic law gives the husband the unilateral right to divorce his wife for any reason (or for no reason whatever) simply by declaring his repudiation of her three times (*talaq*) and his maintenance obligations after divorce are then extremely minimal.<sup>6</sup> The wife, on the other hand, is generally entitled to divorce her husband only in a court of law and only upon proof of the

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<sup>6</sup> Support of his children is less of an issue since Islamic law automatically grants the husband custody of children over seven years old, thereby depriving the divorced woman of what tradition has taught her is the very reason for her being -- her children.

particular grounds specified by statute. During marriage the wife can, theoretically, sue for payment of maintenance, but in some schools of Islamic law, the husband's failure ultimately to provide that support (no matter what his reason) is not sufficient grounds for divorce and thus she is left with no avenue for escape.

Although Islamic laws give women specific property rights that could offer some measure of economic security, in practice these are quite difficult to assert and protect. For example, in the marriage contract, the husband's family agrees to pay a bride price (*mahr*) which, under Islamic law, technically belongs to the woman herself; in practice, however, the part of the *mahr* due upon marriage is often paid to the bride's father and brothers (Keddie and Beck 1978). Although by law the wife is entitled to collect the balance of the bride price upon divorce, this too often proves impossible. Similarly, although Islamic law of inheritance grants women certain shares in the estate (usually one-half that of males who stand in the same relationship to the deceased), this property is also regularly usurped by the men in the family who claim it as compensation for supporting a girl until she can be married off (at which point she will provide no further economic return to her natal family). For a woman who has been denied an education, been forced into an arranged marriage at puberty, been secluded in the home and veiled when she is permitted to venture into public -- in short, for a woman who has been denied all control over her life circumstances -- repudiation or failure of support can obviously be devastating.

In reality of course, the Islamic personal status laws outlined above operate in an almost infinite variety of ways in the lives of real people in hundreds of thousands of Islamic communities across the Asia and Near East regions. For one thing, the cultural ideal -- a woman who stays at home, tending her children, never interacting with any men outside her family, and remaining in complete isolation from all public life -- often does not prevail. In truth, women throughout these regions must work to survive. Thus growing numbers of women are found in agriculture, in

professions, and in other sectors of the economy. But, despite the growing presence of women in public life, there has been no diminution in the fervor generated by Islamic ideals. Indeed, many educated, affluent women are among the range of voices urging a more central place for Islam in their societies. Thus the picture that presents itself to an American aid agency interested in promoting women's legal rights is complex. Clearly Islamic personal status laws as they are interpreted and enforced in many parts of Asia and the Near East effectively preclude women from benefitting from OM/OS-style programs as those programs are currently designed. Yet just as clearly, civil laws guaranteeing women's equality, which in some countries now co-exist with Islamic personal law, will not automatically, just by their presence in the legal code, eclipse a centuries-old legal tradition. Most importantly, the people in Islamic countries -- including vast numbers of women -- do not necessarily want to abandon Islam in favor of secular norms. For Islamic laws and customs have been transformed beyond just rules for regulating the movements of everyday life, into political statements that are asserted by Muslim women as passionately as by Muslim men.

### **2.2.2 The Political Power of Islamic Law**

It is no accident that the resurgence of Islamic fundamentalism in the last few decades has often been channeled into political demands for the state to enforce a restrictive interpretation of Islamic personal status law, particularly as it relates to women. In part this is a function of the centrality of personal status law in Islam overall, but it is also a function of the dual legal system initiated during the colonial era. By leaving traditional, indigenous law intact in the private sphere, the colonial powers created a natural place for their subjects to express and protect their own cultural identity in reaction to colonial domination. "Forced to compromise their values, beliefs, and behavior,

and surrender power in the public sphere, men reacted by intensifying 'traditionality' and reinforcing their domination within their homes." (Shaheed 1986 at p. 42).

In the process, the law and custom surrounding family life, and so the law most immediately relevant to women, became imbued with the symbolism and power of nationalism and ethnic identity. In that context adherence to the laws of Islam became a symbol of resistance to westernization. For example, in the independence movement in Algeria, the wearing of Islamic dress for women became a symbol of nationalism and of resistance against the French (Kandiyoti 1989; Mayer 1986).

In recent decades, the political power of the fundamentalist movement has grown. In country after country across these two regions, Islam and adherence to Islamic law are regularly invoked to secure the government's legitimacy, and Islam's principles are stretched and molded by diverse interest groups to justify virtually every change in or challenge to the social order.

In this fluid and complex landscape, Islam may be involved and evoked at all sorts of levels -- in cultural practices of kin-based communities, in state ideologies incorporating coherent legislative practices, in a more privatized religious conviction, in organized and militant social movements, as a nod in the direction of Muslim aid donors or internal political allies, or as a more diffuse discourse on national and cultural authenticity. The meaning and daily reality of Islam can be so diverse as to justify the question, which Islam? (Kandiyoti 1989 at p. 8)

For the movement to give women full human rights, the situation is perilous, for in this climate, "westernized" has become a pejorative term regularly used to attack any group agitating for recognition of basic rights for women.<sup>7</sup> Thus, the reality is that in most Islamic countries, Islam has

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<sup>7</sup> Farida Shaheed points out that in Pakistan at least, "'westernized' as a pejorative term has been used almost exclusively to refer to women. Women who cut their hair, speak English, wear the national dress without a chaddor, do not cover their heads, work in new occupations, drive, smoke and engage in sports are all condemned as 'westernized.' Men, on the other hand, can do all the above and more without questioning either their national or Muslim identity. One means by which national identity serves to reinforce patriarchy is forcing women to become the repositories of society's culture, while reserving the prerogative of modifying social behavior to men" (Shaheed 1986 at p. 43).

become the only available "ideological terrain" on which to debate the role and rights of women (Kandiyoti 1989 at p. 5). In the view of many women working to uphold or promote women's rights in the Muslim world "[s]imply positing or refuting the inherently patriarchal nature of Islam can no longer serve any useful analytical or political goal." (Kandiyoti 1989 at 8) The call for the granting of basic rights of choice to women and the methods used to secure them must come from within -- from within the country itself, and from within the terms that define that country's cultural reality (see Shaheed 1986; Kandiyoti 1989; Hassan 1989; An-Na'im 1987).

### **2.3 The Place of Tradition in Non-Islamic Countries in Asia and the Near East**

In every country in Asia and the Near East regions, the movement to grant women legal recognition as full adults entitled to control and choice in their lives, runs up against deeply-ingrained traditions that subjugate women within the home and within the society at large. In Islamic countries those traditions are expressed in legal norms, and adherence to those norms has, in turn, become virtually synonymous with the practice of the religion itself. In other countries in these regions where the majority religion is Buddhism (Thailand, Sri Lanka) or Hinduism (India) or Catholicism (Philippines), religious law *per se* has played a far less important role in defining a woman's place in the family and in public life. But even there, custom and tradition, although not always expressed in formal legal terms, remain a powerful force in buttressing patriarchal social structures. Thus legal changes that would grant women a full measure of individual autonomy are still resisted with the assertion that such changes would clash with a traditional way of life, even when that way of life is not defined by adherence to law, as in Islam.

For A.I.D., the implications are in many ways the same whether the subjugation of women is legitimated by law or by a more diffuse custom and tradition. Granting women full legal

recognition can not be regarded as merely a matter of "modernizing" the laws or the legal system -- as a straightforward task requiring just a touch of quality "technical assistance." Such change often challenges deeply-rooted customs that have played a significant role in structuring the society's course of development and in its interaction with the West. Consequently, as in Islamic societies, only a movement that grows from within, that has the support of a wide cross-section of women, that is expressed in terms and concepts that are meaningful in the society and that has due regard for the historical and cultural context of the laws and customs that now govern family relations, has the hope of effecting real change in the lives of women. (See e.g., Gooneskeri 1986, and Coomaraswamy 1986 on strategies for improving women's legal status in Sri Lanka; Bennett 1983 in Nepal.)

### 3. THE IMPORTANCE OF WOMAN'S LEGAL STATUS TO OM/OS

If the foregoing description of the power of traditional law and custom makes the advocacy of women's legal rights by outside donors such as A.I.D. daunting, it is not meant to deflect them from the task. Women's autonomy -- the ability to make choices, to take control over, the circumstances of their own lives -- matters. It matters because universal principles of human rights and human dignity that affirm such autonomy extend to women, as well as men, and have value as a fundamental characteristic of the quality of human life. And it matters because women's autonomy is a critical ingredient in the drive for economic and social development around the world.

The low legal status that characterizes the position of women throughout the ANE region not only denies those women the benefits of development, but it also retards the growth of the society as a whole. In many respects, the legally-sanctioned exclusion of women from social and economic institutions and opportunities has obvious ramifications: it deprives the country of fully one-half of the energy, talents and potential of its population. Yet even when a country is thriving economically, the failure to accord women the kind of control and choice over their lives that is taken for granted by men, has other, more subtle -- though no less serious -- implications for the welfare of society as a whole.

A recent study by the Australian demographer, John Caldwell, entitled "Routes to Low Mortality," illustrates the point (Caldwell 1986). Caldwell ranked 99 Third World countries by per capita GNP for the year 1982. He then ranked these same countries by

their infant mortality levels (infant mortality being generally accepted as the best single indicator of a country's health status). Those countries whose ranking on infant mortality was 25 or more places above their ranking by GNP were termed "superior health achievers." Those countries whose ranking on infant mortality was 25 or more places below their GNP ranking were termed "poor health achievers." Caldwell's list of superior and poor health achievers, reproduced on the next page, is instructive: eight of the 11 poor health achievers are countries in the A.I.D.'s Near East subregion; four of the 12 superior health achievers are in A.I.D.'s Asia subregions.

Caldwell then set out to examine why countries placed as they did. He looked at a number of basic characteristics of the countries in question -- including literacy, education, family planning, health care systems, culture, and political history -- and then focused in on three superior health achievers: Sri Lanka, Costa Rica, and the Indian state of Kerala.

He concludes that two critical factors explain what makes countries both superior and poor health achievers: (1) female autonomy, and (2) the equitable distribution of social resources and services. Caldwell is careful to point out that female autonomy means more than just female education or female status (in the sense of respect or reverence for women); female autonomy means the right and confidence to make decisions, to take control over the conditions of one's life and that of one's children. Caldwell postulates that where women's autonomy is secure, women perform better in all their roles -- as mothers, as keepers of the home, as economic providers, as participants in the life of the community.

**Table 1** Exceptional mortality levels relative to income levels for 99 Third World Countries, 1982: Rankings separated by at least 25 places as measured by infant mortality rankings

Country	Per capita GNP (\$)	Mortality rate (per 1000 live births)	Ranking of infant mortality relative to income	Expectation of life at birth (years)	Ranking of life expectancy relative to income
<b>Panel A Superior health achievers</b>					
(Kerala)	(160-270)	(39)	(+75)	(66)	(+73)
Sri Lanka	320	32	+62	69	+61
China	310	67	+46	67	+61
Burma	190	96	+39	55	+38
Jamaica	1.330	10	+37	73	+32
India	260	94	+36	55	+33
Zaire	190	106	+31	50	+23
Tanzania	280	98	+31	52	+22
Kenya	390	77	+31	57	+22
Costa Rica	1.430	18	+27	74	+29
Ghana	360	86	+26	55	+19
Thailand	790	51	+25	63	+14
Unweighted averages	501	64		61	
<b>Panel B Poor health achievers</b>					
Oman*	6.090	123	-70	52	-57
Saudi Arabia*	16.000	108	-61	56	-50
Iran*	6.465	102	-52	60	-37
Libya*	8.510	95	-50	57	-47
Algeria*	2.350	111	-48	57	-32
Iraq*	6.465	73	-35	59	-39
Yemen A.R.†	500	163	-34	44	-32
Morocco†	870	125	-32	52	-18
Ivory Coast†	950	119	-28	47	-37
Senegal†	490	155	-27	44	-30
Sierra Leone†	390	190	-25	38	-25
<b>Unweighted averages</b>					
All countries	4.462	124		51	
*Oil producers	7.647	102		57	
†Non-oil producers	640	175		45	

SOURCES: World Bank. 1984 and Krishnan. 1985.

The recognition that women's contribution to the society's overall welfare extends well beyond their biological role in childbearing and that their autonomy is a key determinant of how effectively they manage their many tasks, has significant implications for the movement to improve women's legal status. At one level it means that some particular laws may be more significant in inhibiting women's autonomy than others. For example, laws requiring a husband's or guardian's permission for a woman to obtain contraceptives have been shown to have a substantial impact in some countries on the number of women who use contraceptives (Cook and Maine 1985). The ability to control the number and spacing of their children, in turn, has obvious implications for women's ability to control the many other aspects of their lives that influence a society's development. Thus, measured by the extent to which they promote women's autonomy, challenges to such "spousal veto" laws may be more effective than challenges to some other specific laws.

At a deeper level, the very process by which women come to understand and analyze their legal situation, and then develop and implement strategies to change it, can itself be an empowering one. Thus, while it is surely important for all A.I.D. officials to be aware of particular laws that might influence women's participation in specific A.I.D. programs, the broader question of women's legal status is best addressed by starting with those who feel its effects most keenly: the women themselves. It is by encouraging women in all walks of life to actively confront their own legal situation in terms and by means that make sense for them, that A.I.D. can best help remove the legal barriers that cripple a country's development by denying women a full and meaningful role in building their own communities' future.

**4. PROGRAMS TO IMPROVE WOMEN'S LEGAL STATUS AND RECOMMENDATIONS FOR A.I.D.**

The American approach to law -- especially the American lawyer's approach to law -- is a highly utilitarian one. Particularly when it comes to questions of individual rights, we tend to think of the law as one of the truly powerful tools for producing social change, as indeed it has been in our own history. In the United States, Supreme Court rulings or new legislation can have pervasive, even revolutionary, consequences for individuals' life circumstances. Consequently, the American lawyer's first instinct about how to initiate social change would be to find the perfect test case to nurse along up through the court system or to draft and get enacted a local version of our Title VII employment discrimination law. But this utilitarian approach is built on a series of assumptions about law and its efficacy that may not apply in the slightest to questions about women and law in many countries in Asia and the Near East.

Thus, in considering how A.I.D. should approach questions of women's legal status, the first step may be to recognize our own implicit assumptions about the role of law in producing social change, and then to set them aside and look with open eyes at how law actually operates in the particular community where A.I.D. is working. To do that, it is useful to return to the framework set out in Part 1. A legal problem and the potential range of solutions can best be analyzed by examining its three separate components -- substantive, structural and cultural. Where the legal problem is a very precise one that arises in the context of a specific A.I.D. program -- for example, in a program to encourage entrepreneurship, a bank refuses to extend credit to women unless they have their husbands' permission -- the three-part analysis should clarify the substantive legal basis for or against the bank's action, as well as the possible approaches to changing the bank's policy, working either inside or outside the formal legal system.

But if the question is what steps A.I.D. should take to improve the legal status of women generally, then this three-pronged analysis will not be enough because it does not address this logically prior question: In the huge range of law-based rules and policies that affect women, what really matters most in constricting control over the circumstances of their lives and so what issues most deserve close attention? That question can not be answered by reading government reports on the status of women under the country's law codes, nor even by talking to the judges who implement the law or to the lawyers who manipulate it for a living. The question can only be answered by consciously working to understand women's situation from women's point of view; and to do that we must start by talking to the women whose lives are shaped, directly or indirectly, by the legal system.

In almost all the countries in Asia and the Near East where A.I.D. operates, there are women's organizations working at all levels of society to promote women's rights. Many of these organizations struggle continually with the profound issues presented by religiously-derived personal status laws that reinforce the social structures that deprive women of their autonomy, but at the same time resonate with layers of meaning for both men and women in their societies. These organizations have also learned much about how internationally-recognized principles of women's human rights intersect with the legal cultures of their countries. They have wrestled with strategic problems of how to maneuver through the structural obstacles that face any movement working for legal change.

From their experiences, it is clear that no one program, by itself, will solve the problems of women's ambiguous relationship with the law; but multiple programs operating simultaneously at several levels of society can have a significant impact. To illustrate the point: successful efforts to enact a new law guaranteeing equal pay or non-discrimination in employment will have little effect unless judges or non-government agencies are willing to enforce it; efforts to sensitize judges or other government officials to their obligation to enforce such laws will have little impact unless women are

aware of their rights and stand up to assert them. On the other hand, simply making women aware of their rights is useless unless they have access to enforcement mechanisms; and helping women understand how some provisions in the law oppress them becomes a frustrating, largely academic exercise unless the law also contains broadly worded guarantees of rights for women that can be used to strike specific discriminatory provisions.

Dedicated and resourceful women's groups throughout Asia and the Near East have found ways to address many of these problems simultaneously. The concept that underlies some of the most successful initiatives is "legal literacy." In its broadest sense, being "literate" about law entails (1) understanding how the substantive law, directly and indirectly, influences people's lives; and (2) understanding how the legal system can be mobilized to improve the conditions of their lives.

Often the term "legal literacy" refers to program targeted to indigent people at the grassroots level. But, when it comes to the relationship between women and law, illiteracy plagues men and women in every quadrant of social life from the highest reaches of government, to the media, the bar, the health care system, the religious establishment, business, and organized labor; and for most men and women who participate in those areas of public life, legal illiteracy also plagues their relationships in their homes and among the members of their families. Not until men and women in every walk of life come to understand how the denial of legal rights to women, both in the home and in the society at large, undercuts their country's development, will substantial, broad-based progress be made. The need to address legal literacy efforts to all segments of the population was recently emphasized in a pamphlet entitled "Guidelines on Upgrading the Legal Status of Women" published by the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP). ESCAP sponsored legal literacy programs in Bangladesh, Indonesia, the Philippines and Sri Lanka and then drew lessons from their experiences. Among the key points ESCAP makes is that legal literacy

programs designed to improve the status of poor women will be most effective if they are directed to many other groups in society as well as to the women themselves:

These groups include teachers, journalists, activists, social workers, and members of the legal profession, among others. These groups need orientation about the law, albeit with a different thrust, if women -- especially poor and needy women, the main target group -- are to be able to avail themselves of their rights (ESCAP 1989 at p. 2).

Significantly, the most effective legal literacy programs were found to be community based programs that involve both men and women.

Many such lessons about how to organize legal literacy drives apply cross-culturally. But the particular strategies used to promote legal literacy at various levels of society will clearly differ from culture to culture. Thus, for example, a prerequisite for any kind of legal literacy program in Islamic countries may be the sort of academic work done by groups such as Women Living Under Muslim Laws, an organization based in France and comprised of women from Islamic countries around the world, or Shirkat Gah, a women's resource center in Pakistan. Many women in these organizations are committed to promoting women's rights within an Islamic context, and on terms that can generate wide support in their societies. Their research and writing on the difficult issues that surround legal change within Islam and in Islamic states forms a solid basis for the groups actively advocating law reform at the national level, such as the grassroots legal literacy programs conducted by the Bangladesh Rural Advancement Committee in Bangladesh (ESCAP 1989).

Some successful projects in other parts of the regions combine traditional legal services for women with creative legal literacy programs addressed to a more general audience. For example, the Women's Legal Services Project (WLSP) in Nepal has provided traditional legal services to Nepalese women for over 25 years. Traditional legal services programs offer professional legal counselling and litigation assistance to individual women on a case-by-case basis. In the period 1982-1989 alone, WLSP represented over 2000 women, helping them draft some 1900 petitions to the Nepal Royal

Palace and 495 applications to administrative and semi-judicial offices. WLSP uses litigation only as a last resort; thus in this seven-year period it was able to resolve some 290 disputes between private parties without going to court, and to resolve another 140 cases after formally filing lawsuits (Singh 1990). But recognizing the limitations of such traditional programs that deal with legal problems only on a case-by-case basis, WLSP has launched legal literacy programs that include radio call-in shows, mass media campaigns, distribution of simple, easy-to-read booklets, community-based classes and workshops, and training of paralegals who work in their communities on a model akin to barefoot doctors.

Another effective strategy for providing legal services to women has been to set up law clinics in affiliation with other kinds of organizations that service women. So, for example, legal services and legal literacy efforts affiliated with family planning organizations have been successfully mounted in countries as diverse as Indonesia and Colombia, South America.

Finally, women's organizations have been extremely successful in mobilizing women around specific legal issues that have arisen in their individual communities. For example, although women had been selling vegetables in the main fruit and vegetable market in Ahmedabad, India for over 50 years, they were routinely denied licenses to do so on a legal basis. They were subject to harassment from law enforcement authorities, including substantial fines and regular demands for bribes resulting in serious economic harm and its attendant consequences in the lives of the women and their families. The Self-Employed Women's Association (SEWA), an organization with over 20,000 members around India, organized the women vegetable vendors in Ahmedabad and eventually sued the municipality on their behalf. The Supreme Court ultimately ruled that the denial of licenses to sell vegetables violated Article 19(1)(g) of the Indian constitution by denying the women their constitutionally protected right to carry on any occupation, trade, or profession. With this ruling, more than 300

women were finally granted licenses and the right to conduct their businesses (Jethmelani 1986 and Bhatt 1986).

In other instances, a single legal issue of great importance to a community has presented an opportunity for women's groups to employ legal literacy strategies that have effectively changed the way that women in the community think about themselves, and their ability both to challenge oppressive laws and to affirmatively use legal mechanisms to assert their interests. In 1984, in a poor fishing village in Toril, Davao City in the Philippines, a typhoon demolished the homes of a group of women living along the shoreline. The women moved to higher ground and built shanties on the only available land. After being arrested and jailed as squatters, the government certified the women as victims of the typhoon, and they were released. It was then discovered that a banking corporation owned the land they now live on. The bank ordered the women to vacate immediately, but there was nowhere else for them to go. The women met together and sought help from a community development center which ultimately put them in touch with PILIPINA Legal Resources Center. PILIPINA provided not just lawyers to represent the women's interests, but also a staff that, with the help of a community organizer and support from a private foundation, conducted a community-based legal literacy program. Ultimately, by coming to an understanding of the law and how it related to their situation, the women of Lizada, Toril devised a strategy to buy the land from the bank. As of the report of these activities, negotiations with the bank were underway and lawyers from PILIPINA described substantial positive changes in the way that the women were able to analyze legal, social and political forces that shaped their predicament and to organize themselves to take control over the circumstances of their lives (Quintillan 1986).

Organizations and programs such as the ones described above offer A.I.D. the most promising routes for promoting women's autonomy as part of its overall development strategy. Women's research groups such as Shirkat Gah in Pakistan provide the culturally-specific theoretical rationale

and empirical data on which law reform efforts and legal literacy campaigns can be based. Organizations that focus on changing substantive laws or on modifying the judicial system take another essential step in advancing the legal status of women.

But perhaps the most significant impact is made by the groups who conduct legal literacy and legal services programs in the community. By starting in communication with the women themselves, these programs can focus on the issues that really make a difference in women's lives. By involving women in the analysis of their situation and the development of strategies, the process itself becomes potentially empowering. Finally, because they work from within the cultural reality of the women who autonomy they seek to promote, such programs will ultimately be best positioned to initiate the kind of broad-based legal changes that can truly influence a country's course of development.

It is with women's organizations such as these that A.I.D. ought to begin to explore what role it can play in the crucial drive to make choice a meaningful concept in every man and woman's life.

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