



# **Rights, Laws and Economic Institutions**

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## **Introduction**

- Country's legal system often includes a combination of different types of laws
  - Statutory law: all parts of the formal legal system (legislation, regulations, rulings, etc.)
  - Traditional or customary law: rules that derive their legitimacy from tradition and custom rather than a government act
- Different parts of this legal framework reflect - and codify - social norms and customs about gender roles and relations.
  - Examples: tax allocation and land registration associated with head of household

## **Human Rights de Jure and de Facto**

- National constitutions around the world affirm the principle of basic human rights. Many of them also contain an explicit reference to nondiscrimination between women and men with respect to these rights:
  - right to vote and be elected to public office - but if gender disparities in literacy and access to information this will limit participation in political forums
  - Mandatory education laws - way education is delivered deters girls more than boys from going to school in many settings

## **International Law**

- International law has important influences on national law, especially human rights
- Most countries recognize the international standards set by the UN starting with the Universal Declaration of Human Rights adopted in 1948
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Declaration on the Elimination of Violence against Women of 1993
- Others
- UN members countries (other than Afghanistan and Islamic Republic of Iran) have ratified the conventions

## Foundation of Equal Rights

- An important development goal: legal, social, and economic rights provide an enabling environment in which women and men can participate productively in society, attain a basic quality of life, and take advantage of the new opportunities that development affords
- Greater equality of rights is also consistently and systematically associated with greater gender equality in education, life expectancy, and political participation - independent of income

## Family Law

- Regulates men's and women's autonomy in and control of family matters - including marriage, divorce, reproductive decisions, child custody, control of conjugal property, and inheritance. An area in which unequal rights still strongly prevail - and where the impact of gender norms and customs is probably most felt.
- Civil statutes and customary laws may not work together
  - Example: Uganda's Divorce Act of 1964 provides for equal rights upon divorce, but does not mention division of conjugal property... Customary law prevails, so women gain access to land through their husband and on widowhood must depend on male relatives for access to land.

## State Intervention

- Should the state intervene in what many people regard as personal - and thus private - affairs?
  - Legal reforms in Canada: property settlement in divorce and rates of suicide among, older married women correlated
  - China's Marriage Law of 1950 (eliminate arranged marriages, allow divorce, etc.) linked to violence where several tens of thousands of suicides and murders of women shortly thereafter

## Gender-related Violence

- Laws intended to address violence against women often define violence very narrowly or entail evidentiary requirements for proving violence very burdensome
  - Some Latin American countries defines some sexual offenses as crimes only if committed against "honest" women or girls
  - Laws in Chile and Guatemala exonerate a man who agrees to marry the girl he has raped
  - In Jordan and Pakistan a man who maims or kills his wife to protect his honor receives more lenient punishment
- Strong evidence that legal reforms that strengthens women's rights as victims can be very effective

## Enforcement

- Traditional attitudes of law enforcement and undermine the law's ability to deter violence
- Laws are often enforced by males - therefore reeducation might be needed
- Legal literacy campaigns and judicial training programs need to do more than focus on abstract human rights guarantees. They need to make clear the extent to which domestic law itself is part of the problem of violence against women.
- Women also need to be educated about legal rights

## Land Rights

- Land a very important asset - equal rights in land missing
- Strong evidence from Latin America the impact of land reform (titling and registration), on women's access to land
  - Costa Rica: before reform women held 12 % of land, after the reform in early 1990's held 45%
  - Colombia: reform of joint titling, couples had 18% in 1995 and in after reform in 1996, 60%. Land titled exclusively to men fell from 63% to 24%
  - In other countries, when land reform took place it only went to head of households - generally male

## Land Rights

- In Africa often conflict between customary and statutory law
  - In Kenya widows can farm, but not own land registered in their husband's name. Introduction of statutory inheritance law meant land went to sons.
  - Land reform in Kenya has had to deal with customary law, Islamic law, Hindu law, etc.
    - Customary law gives son rights to inherit, wives and son can only maintain the land, married daughters have not claim
    - Islamic law grants widows with children 1/8 of property, with childless widows receiving 1/4; daughters get half the amount of sons
    - Hindu law only gives women the right to maintain the land
    - Statutory law gives widows the right to continue living in the matrimonial home and to benefit from husband's assets if named a beneficiary to an insurance policy covering the assets

## Participation and Voice

- Nearly all countries give men and women right to elect political leaders
- In developing countries equal voting rights came with independence (exception is Kuwait and the United Arab Emirates), although may have literacy and property requirements
- Women make up less than 10% of seats in Parliament in development regions
  - In India, two constitutional amendments in 1992 required that at least a third of the seats in local councils and municipal councils be reserved for women. Within the first two years, more than 350,000 women had political positions, and more women were voting.

## Economic Institutions

- Economic institutions influence the resources to which women and men have access
- Like legal systems they reflect prevailing social norms and customs, including gender structures that discriminate against women
- Examples:
  - Apparently gender-neutral practices in the labor market, such as hiring only workers who can work full-time during set hours, effectively shut out mothers who may need flexible hours. They contribute to perpetuating a sharp division of labor in the home

## Economic Institutions

- Examples:
  - Information networks about job opportunities are typically centered around formal organizations, public or private. This makes information more accessible to people already associated with those organizations, usually leaving out more women than men
  - Undeveloped health insurance markets usually leave women without access to health insurance or only through spouses employed in formal sector jobs. And the absence of a formal old-age security system, coupled with unequal rights to property, forces women to rely primarily on male relatives for support in old age

## Economic Institutions

- Examples:
  - Credit markets that require ownership of land or house to secure loans are out of reach for women who do not or cannot own land independently - or who lack social or business networks. Such women need their husband or other male relatives to co-sign loans, making it more difficult for women to establish or maintain viable business enterprises.
- Gender stratification in markets and hierarchies is often more explicit and deliberate than those examples imply. In the land market property rights laws determine who can own and buy and sell land. Labor market employers who believe that all women workers will eventually leave the labor force to get married and have a family - often deny women work

## Regulation in the Labor Market

- Equal Pay
  - Equal treatment for women and men by requiring employers to provide equal pay for workers performing the same job with equal efficiency
  - Can developing countries enforce and benefit from equal pay policies? Evidence from wealthier countries is that it is quite costly and concentrated only in the formal sector



## Regulation in the Labor Market

- Special protection and affirmative action
  - Labor laws that protect women's time with newborns after childbirth and limit women's exposure to strenuous or hazardous activities
    - Raises the costs to hire women
  - Traditional approach has been to protect women against unreasonable hours and types of work. Laws have excluded women from such sectors as construction and mining, considered hazardous occupations. Working hours restrictions popular in US and Europe during the Industrialization period
  - Most Asian countries overtime limits for men and women. In South Asia, some prohibit women working overtime.

## Regulation in the Labor Market

- Special protection, continued
  - By decreasing women's employment and hours worked, studies have shown this has slowed women's earnings in China and Taiwan.
  - Recently, women's organizations have moved away from supporting protective measures
  - Consideration:
    - Who bears the cost of the mandate?
      - If wages fall, due to the higher cost, no negative impact on employment
- Affirmative action policies
  - Targets
  - Impact other policies (recruitment, training, screening, promotion)
  - Limited in scope in societies where most employment continues to be in agriculture or the informal sector

## Family Support

- Women spend more time in non-market and care activities than men, and these activities impose costs on their leisure, health status, paid employment, and autonomy. Recognizing these costs, many countries now have legislation that supports the reproductive roles of women.
- Maternity leave: a policy of most developing countries
  - Some payment during leave
  - Protection against dismissal during leave
  - Paid nursing breaks
  - Etc.