

A Cross-Cultural Analysis of Women, Religion and the Law

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ABSTRACT

Protecting women from violence and discrimination is a hot topic. The feminist movement claims to address these issues in its fight for women's rights. However, without knowing the true source for women's rights – or human rights – communities will fail to accurately diagnose the problem and to effectively provide a solution. This article compares four major worldviews and their impact on laws regarding the treatment of women in order to convince the reader that Christianity offers the best treatment of women. Part I defines women's rights in the context of defining human rights. Part II compares laws pertaining to women's rights through the lens of the following major competing worldviews, Islam (specifically Saudi Arabia), Atheist (China), Hindu (India), and Christian (United States). Part III demonstrates that all non-Christian worldviews create extreme problems for so-called women's rights, and that biblical Christianity is the only worldview that offers the best hope for recognising the value, dignity, worth and equality of women. Moreover, this article concludes that this is an important topic for apologetics in providing a defence against the argument Christianity oppresses women; rather, Christianity has the best answers for ending violence and discrimination against women.

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INTRODUCTION

Not until the half of our population represented by women and girls can live free from fear, violence and everyday insecurity, can we truly say we live in a fair and equal world.

—UN Secretary-General Antonio Guterres.¹

Eradicating discrimination and violence against women is an increasingly familiar global topic. Turn on the news any day and discover another report of a woman (or women) suffering from sexual harassment, assault, domestic violence, sex trafficking, rape, or murder. Other examples of discrimination and violence against women include forced marriages, child brides, female genital mutilation, honor killings, dowry deaths, acid attacks, and forced abortions.² The World Health Organisation estimates 1 in 3 women worldwide have experienced physical or sexual violence.³ Discrimination and violence against women is a common international problem.

Mistreatment of women is not new. It has a long history. What appears to be new is the relentless, almost simultaneous, global cry of women to eliminate discrimination and violence against them. In 2006, the #MeToo grass-roots movement was born and went viral, giving a voice to victims of sexual violence.⁴ Better treatment of women is a cross-cultural interest – shared by liberals and conservatives, religious

¹ United Nations, 'International Day for the Elimination of Violence against Women - 25 November', *United Nations: UN Women*, Note: The terms 'woman' and 'women' in this paper, will be used generically to describe the female human being of all ages with XX chromosomes. This paper will not discuss 'gender' as a social construct or as deconstructed.

² Office of the High Commissioner for Human Rights, *Women's Rights are Human Rights*, HR/PUB/14/2 (2014) 27-28 ('*Women's Rights are Human Rights*').

³ World Health Organisation, *Violence Against Women Prevalence Estimates 2018* (Report, 2018) xvi

⁴ 'About: History and Vision', *MeToo* (Web Page).

and irreligious, Easterners and Westerners, developed and developing countries, rich and poor, people of all color, ages and abilities.

The unfair treatment of women can be corrected in the legal arena through laws. Legal discrimination against women can occur directly and indirectly. Directly, it can occur through *de jure* discrimination (direct discriminatory provisions), when a law or policy restricts, prefers or distinguishes between certain groups – eg, prohibiting women from driving, voting or inheriting property.⁵ Indirectly, discrimination can also occur through *de facto* discrimination (discriminatory impact), when a law or policy which appears to be gender neutral yields a harmful effect on women – eg, aid programs which benefits the “head of household” may not benefit women equally since men are more often considered the head of a household.⁶

What causes the problem of discrimination and other mistreatment of women? Is it based on “systems of power” as some feminists would argue?⁷ Laws may be able to provide protection, remedies, and guidance – but which laws? What provides the proper foundation for the most effective laws to end discrimination and violence against women? Which foundational set of principles provides the best hope for women gaining better treatment, and recognition of their inherent dignity and worth? Is there a religious worldview that offers good news for women or do all religions oppress women (as some atheists claim)?⁸

⁵ *Women's Rights are Human Rights* (n 2) 30-31.

⁶ *Ibid.*

⁷ Margaret L Anderson and Patricia Hill Collins (eds), *Race, Class & Gender: An Anthology* (Cengage Learning, 9th ed, 2016) 2. Note: While current feminist ideology cannot fully be understood without discussing feminist critical theory (ie systems of power and oppression), that is beyond the scope of this paper.

⁸ Karen L Garst (ed), *Women v Religion: The Case Against Faith – and for Freedom* (Pitchstone Publishing, 2018) 70-71.

Protecting women from violence and discrimination is an obvious growing concern. The current feminist approach addresses women's rights as human rights.⁹ While this makes perfect sense (even if feminist ideology does not make perfect sense), without knowing the source of women's rights – or human rights – communities will fail to accurately diagnose the problem and effectively provide a lasting solution. In a world of competing ideas, options must carefully be examined before forming conclusions regarding the best approach to eliminating discrimination and violence against women.

This article analyses four major religious worldviews and compares their impact on laws regarding the treatment of women to demonstrate that *biblical Christianity* and its influence on laws offers the best hope for ending invidious discrimination and violence against women – even if *Christians* have not always treated women fairly, with dignity and respect.¹⁰

This article takes a juridical approach to this epistemological question – which religious worldview offers the best hope for women? Decisions about law can only be made once facts have been established.¹¹ As attorney, theologian, and Christian apologist John

⁹ 'Unity Principles', *Women's March* (Web Page, 2021). Women's rights are human rights and human rights are women's rights.

¹⁰ A worldview analysis is simply the study of religions and ideologies; the study of religion can apply to different disciplines like the law, and is necessarily cross-cultural. Ninian Smart, *Worldviews: Crosscultural Explorations of Human Beliefs* (Prentice Hall, 3rd ed, 2000) 2, 4. Some intersectional feminists may dismiss this article as sourced by a woman's "privilege of whiteness." However, this article attempts to address specific issues experienced by women, as viewed from a multi-cultural, multi-racial, and multi-religious perspective, and cites to a variety of reputable sources.

¹¹ John Warwick Montgomery, *Defending the Gospel in Legal Style: Essays on Legal Apologetics & the Justification of Classical Christian Faith* (Wipf & Stock, 2017) 55. Note: A "juridical approach" is a method by which courts interpret law, ie to administer justice per the law. Epistemology is the investigation of what distinguishes justified belief from opinion.

Warwick Montgomery describes it, '[L]awyers and legal scholars must employ the most effective techniques possible in arriving at factual conclusions on which life or death may depend and these must be sufficiently persuasive to convince the 'triers [sic] of fact' (juries and judges) to arrive at just verdicts.'¹²

Part I defines women's rights in the context of defining human rights. Part II compares laws pertaining to discrimination and violence against women, through the lens of Islam (specifically, Saudi Arabia), Hinduism (India), Atheism¹³ (China), and Christianity (United States). Finally, Part III demonstrates that all non-Christian worldviews create problems for women's rights, and biblical Christianity is the worldview which offers the best hope for recognising the equal value and dignity of all women.

Admittedly, historical and contemporary Christianity are replete with examples of *Christians* articulating unfavorable views toward women and even mistreating them, *in the name of Christianity*. Regardless of their error, this does not negate the truth – Jesus Christ offers the best hope for women. Christianity offers the best hope for ending invidious discrimination and violence against women, not because of Christians (maybe even despite them), but because of Jesus Christ.

¹² Ibid.

¹³ This article treats atheism as a religious worldview. The US Supreme Court has stated that religion should not be defined narrowly. *McCreary County, Ky v ACLU*, 545 US 844 (2005). The Seventh Circuit Court explained that the Supreme Court adopted a broad definition of 'religion' that includes theistic, non-theistic and atheistic beliefs. *Kaufman v McCaughtry*, 419 F 3d 678, 682 (7th Cir, 2005). Thus, atheism will be treated as a religious worldview for this analysis.

I GLOBAL CALL FOR WOMEN'S RIGHTS AS HUMAN RIGHTS

Men, their rights, and nothing more; women, their rights, and nothing less. —Susan B Anthony¹⁴

'Women's rights are human rights' is a phrase often used by feminists who may have some valid points in their advocacy for better treatment of women. However, the phrase is not exclusively used by feminists.¹⁵ Assuming women's rights are human rights, the threshold question ought to be: "What are human rights and where do they come from?"

To answer this question, another question must first be answered, "What does it mean to be human?" In the United States, one does not have to guess at a definition because it is defined under federal law. 'Human being' is defined as someone who is a member of the species *homo sapiens*.¹⁶ This view is also supported by the United Nations ('UN's') *Universal Declaration of Human Rights* ('UDHR'), which indicates that 'humans' are all members of the human family.¹⁷ While this may seem obvious, there are some who would question this definition.¹⁸ This article begins with the premise that women are members of the species *homo sapiens*, members of the human family

¹⁴ Elizabeth Cady Stanton and Parker Pillsbury (eds), *The Revolution* (New York, 11 February 1869) 81.

¹⁵ The United Nations promotes this idea in their e-book, *Women's Rights are Human Rights* (n 2) 27-28.

¹⁶ 1 US Code § 8(a): 'In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the words "person", "human being", "child", and "individual", shall include every infant member of the species *homo sapiens* who is born alive at any stage of development.' Note, although I hold the position that an unborn child is a human being, that topic is beyond the scope of this paper.

¹⁷ *Universal Declaration of Human Rights*, Preamble.

¹⁸ David Livingstone Smith, 'What Does it Mean to be Human?: We Can't Turn to Science for an Answer', *Psychology Today* (Web Article, 16 May 2012) Note: Arguments about what it means to be human go beyond the scope of this paper.

– that is, women are human beings.

After understanding what it means to be ‘human,’ the next question is ‘what are human rights and where do they come from?’ The traditional view of human rights is that they are: (1) based on a higher law; (2) inherent (humans are born with rights); and (3) universal (these rights apply to all humans).¹⁹ This was expressed in 1776 in the *United States Declaration of Independence*, which reveals all three elements of the traditional view. In part, it states, ‘We hold these truths to be self-evident, that *all* men [universality] are *created* equal [inherency], that they are *endowed by their Creator* [higher law] with certain *unalienable Rights* [human rights], that among these are Life, Liberty and the pursuit of Happiness.’²⁰ In this historical context, ‘all men’ is generally understood to be a reference to all ‘humanity.’²¹

On a global scale, in 1948, inherency and universality were clearly communicated in the UDHR Preamble: ‘Whereas recognition of the *inherent* [inherency] dignity and of the equal and inalienable rights of *all* members of the human family [universality] is the foundation of freedom, justice, and peace in the world.’²² It is also conveyed in Article 1 of the UDHR, ‘*All* human beings are *born* free and equal in dignity and rights.’²³ The UDHR clearly affirms the admonition

¹⁹ See generally, John Warwick Montgomery, *The Law Above the Law* (NRP Books, 2015); UDHR.

²⁰ *United States Declaration of Independence* (emphasis added).

²¹ Note: Although some people question whether ‘all men’ meant all of humanity, in its historical context, it is generally understood that ‘all men’ was another way of saying ‘humanity.’ (This was the view taken by, for example, Elizabeth Cady Stanton, Abraham Lincoln, and Martin Luther King.: see Library of Congress, ‘Creating the Declaration of Independence’ (Web Page).

²² UDHR Preamble (emphasis added).

²³ UDHR art 1 (emphasis added).

for equal rights for all.²⁴ In fact, equal rights for everyone is a basic principle guiding the UN.²⁵

If equal rights are inherent in everyone, they are necessarily inherent for all women. In order to address this specific application to women, the UN created the Commission on the Status of Women ('CSW') to prepare international standards to focus on clearly communicating the equal rights of women and define the guarantees of non-discrimination for women.²⁶ CSW's efforts resulted in several declarations and conventions that protect and promote human rights, aimed specifically at women.²⁷ For example, in 1979, the UN adopted the *Convention on the Elimination of All Forms of Discrimination against Women* ('CEDAW').²⁸ It gathered world-wide endorsement. Currently, 189 countries are parties to the CEDAW treaty – only a handful of countries have not ratified it.²⁹ Despite near global community support for CEDAW, violence against women remains an insidious problem worldwide.³⁰

As a result of the troubling persistence of violence against women, in 1993, the UN adopted the *Declaration on the Elimination of Violence*

²⁴ UDHR art 1: 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.'

²⁵ United Nations, 'Member States' (Web Page). The UN has almost 200 member states from around the world.

²⁶ UN Women, 'A Brief History of the Commission on the Status of Women' (Web Page).

²⁷ Ibid.

²⁸ Ibid.

²⁹ *Convention on the Elimination of All Forms of Discrimination against Women*. The United States is one of those few countries who has signed it (in 1980), but not ratified it.

³⁰ United Nations, 'International Day for the Elimination of Violence against Women 25 November', (Web Page).

Against Women ('DEVAW').³¹ DEVAW defines violence against women as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.'³² In adopting DEVAW, the UN recognised a compelling need to advance women's rights with regard to 'equality, security, liberty, integrity and dignity of all human beings.'³³

Unfortunately, in 2003, CSW experienced a considerable disappointment after spending two weeks drafting 'Agreed Conclusions', which addressed the elimination of all forms of violence against women.³⁴ One women's news article explained:

The document on ending violence against women and girls would have been used by advocates to strengthen legislation to end domestic violence and sexual exploitation and trafficking of women. It would also have been used to educate governments on how to promote and protect women's human rights. Consensus on the conclusions came to an end when Iran, Egypt, Pakistan, Sudan and the US raised objections. The Iranian delegation objected to a specific paragraph that said governments must not use religion or custom as an excuse for violence against women. But the failure to pass this text was about more than cultural differences.³⁵

³¹ Ibid.

³² *Declaration on the Elimination of Violence Against Women*, GA Res 48/104, UN Doc A/RES/48/104 (20 December 1993).

³³ UN Women, 'International Day for the Elimination of Violence against Women' (Web Page, 14 November 2019).

³⁴ Emily Freeburg, 'UN Pact Sinks on Issue of Violence Against Women', *Women's E-News* (Web Article, 24 April 2003).

³⁵ Ibid. The Security Council met at the same time as CSW met. When the Security Council experienced a breakdown over Iraq, governments became preoccupied and angry about loss of power at the Security Council. Many United Nations conflicts are grounded in differences in religion and custom.

UN efforts present an attempt to advance human rights for women. It is creating an awareness of the incessant problem of discrimination and violence against women. Nevertheless, the problem persists. It is not enough to declare the need to eliminate invidious discrimination and violence against women. It is important to know the source of human rights for women. This leads to the third point – there is a higher law.

Human rights must have a source to give meaning to the standard. That source must be objective and unchanging for the standard to last from generation to generation. Do women's rights, by way of human rights, result from man-made law or from a law that is higher than man-made law? If rights are only made possible because of man-made governing documents or cultural traditions, what gives women the right to complain about domestic violence, forced marriage, abortions, or any kind of unjust treatment resulting from laws or customs? Are there ultimate truths about human beings and human values, an objective universal moral code? Is there a higher law, ie God's law?

II MAJOR RELIGIOUS WORLDVIEWS AND THEIR IMPACT ON LAWS REGARDING THE TREATMENT OF WOMEN

Whereas recognition of the inherent dignity of the equal and inalienable rights of the human family is the foundation for freedom, justice and peace in the world.

—Preamble, *Universal Declaration of Human Rights*

'What is the ultimate source of women's rights as human rights?' Are they purely positive law (ie man-made), or is there a higher law (ie God's law)? If there is no God, the ultimate source of these rights

would be man-made law. On the other hand, if there is an ultimate source of law above man – ie God – which god? Most importantly, which ultimate source offers the best hope for ending discrimination and violence against women?

This section compares laws pertaining to women's rights through the lens of four major competing religious worldviews: Islam (specifically, Saudi Arabia), Hinduism (India), Atheism (China), and Christianity (United States). Each worldview begins with a brief background of the country, its primary religion, and the source of its laws. Then each country's laws are examined as they pertain to women in discrimination in family matters and violations of bodily integrity.³⁶ Discrimination in the family covers topics such as marriage, divorce, and adultery. Violations of bodily integrity includes topics such as violence against women, domestic violence, rape, sexual harassment, and female genital mutilation ('FGM'). This article cites directly to the country's specific law when possible. Upholding the rule of law is a critical factor in the fight for women's rights.

A Islam: Women and the Laws of Saudi Arabia

The Prophet said: 'I was shown the Hell-fire and that the majority of its dwellers were women who were ungrateful.' It was asked, 'Do they disbelieve in Allah?' (or are they ungrateful to Allah?) He replied, 'They are ungrateful to their husbands and are ungrateful for the favors and the good (charitable deeds) done to them. If you have always been good (benevolent) to one of them and then she sees something in you (not of her liking), she will say, "I have

³⁶ Due to the limited scope of this article, discussion about women's civil liberties, financial and health resources, discrimination, reproductive and abortion issues are excluded.

never received any good from you.”’

—Sahih Bukhari (2:28)³⁷

Saudi women are considered the most controlled group of women in the world.³⁸ When Muslims from all over the world visit Saudi Arabia’s two Holy cities Mecca and Medina, they expect a spiritual experience.³⁹ Therefore, Saudi Arabia is pressured to encourage spirituality and not distract Muslims on a pilgrimage.⁴⁰ Saudi women must serve as role models for non-Saudi Muslim women who might visit.⁴¹ Compared to other Muslim countries, Saudi Arabia is more fundamentalist, following a strict belief in the literal interpretation of religious texts.⁴²

1 *Background*

Saudi Arabia is an Arab Islamic country – its official religion is Islam.⁴³ Islam was born in the early 7th century AD in two Muslim Holy cities in Saudi Arabia (Mecca and Medina) through their Prophet Muhammed.⁴⁴ ‘Islam’ means the submission of one’s will to Allah, but it is not merely a religious ideology.⁴⁵ Its precepts direct the legal,

³⁷ Sahih Bukhari (2:28), Sahih Bukhari (Web Page).

³⁸ Amnah Abahussain, ‘The Rising Tide of Change: Saudi Arabian Women in Dispute Resolution’ (2018) 73(2) *Dispute Resolution Journal* 94.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ *Basic Law of Governance 1992* (Saudi Arabia) art 1 (‘*Basic Law of Governance*’).

⁴⁴ Mona Almunajjed, *Women in Saudi Arabia Today* (New York, 1997) 1; Abahussain (n 38) 92.

⁴⁵ Almunajjed (n 44) 9.

economic and social teachings of Islam, and impact the entire way of life.⁴⁶

The primary source of law in Saudi Arabia is Sharia (from the Arabic verb *sharaa*, meaning ‘to legislate’), which is considered divine in nature.⁴⁷ There are four primary sources for Sharia: (1) the Quran (Islamic holy book, the revealed message of Allah to the Prophet Muhammad); (2) the Hadith or *sunnah* (teachings or actions of the Prophet Muhammad); (3) Qiyas (analytic comparisons of Hadiths and Quran); and (4) Al Ijma (religious scholars’ consensus on Islamic issues).⁴⁸ Saudi Arabia’s interpretation of Sharia law may be viewed as the “purest” interpretation, coinciding with the teachings of the early Prophet of Islam.⁴⁹

The Quran is not just a book about the Islamic religion, but a book about how good Muslims should live.⁵⁰ Yet, this Muslim Holy book has been understood to place women in subservient roles, forcing them to endure discrimination.⁵¹ The following surahs (chapters) from the Quran⁵² are a few examples:

- Men shall take full care of women with the bounties which God has bestowed more abundantly on the former than on the latter, and with what they may spend out of their possessions. And the righteous women are the truly devote ones, who guard the intimacy which God has (ordained to be) guarded. And as for

⁴⁶ Ibid.

⁴⁷ *Basic Law of Governance*, arts 7, 8, 23, 26, 46, 48, 55.

⁴⁸ Almunajjed (n 44) 9; Abahussain (n 38) 91.

⁴⁹ Mackenzie Glaze, ‘Historical Determinism and Women’s Rights in Sharia Law’ (2018) 50 *Case Western Reserve. Journal of International Law* 349, 362-363.

⁵⁰ Abahussain (n 38) 92.

⁵¹ Ibid.

⁵² Muhammad Asad, *The Message of the Quran* (The Book Foundation, 2003).

those women whose ill-will you have reasons to fear, admonish them (first); then leave them alone in bed; then beat them; and if thereupon they pay you heed, do not seek to harm them. Behold, God is indeed most high, great! (Surah 4:34)

- And call upon two of your men to act as witnesses; and if two men are not available, then a man and two women from among such as are acceptable to you as witnesses, so that if one of them should make a mistake, the other could remind her ... (Surah 2:282)
- [B]ut, in accordance with justice, the rights of the wives (with regard to their husbands) are equal to the (husbands') rights with regard to them, although men have precedence over them (in this respect) ... (Surah 2:228)
- And if you have reason to fear that you might not act equitably towards orphans, then marry from among (other) women such as are lawful to you – (even) two, or three, or four ... (Surah 4:3)
- Prophet! Behold, we have made lawful to thee thy wives unto whom thou hast paid their dowers, as well as those whom thy right hand has come to possess from among the captives of war whom God has bestowed upon thee ... (Surah 33:50)

These examples reveal that the Quran approves of the following: (1) Muslim husbands may beat their wives; (2) a woman's testimony is half as valuable as a man's; (3) husbands have authority over wives; (4) men may marry up to four wives (women have one husband); and (5) men may take sex slaves. Since Muslims respect the Quran, these interpretations have not been heavily criticised by them, leaving women to suffer.⁵³ The Hadiths pick up on these themes and provide

⁵³ Abahussain (n 38) 92-93.

further evidence of approving of Islam's low view of women and approval of mistreatment.⁵⁴

In addition to Sharia, legislation is another source of law in Saudi Arabia.⁵⁵ Royal Orders are made by the King and adopted through legislation.⁵⁶ However, Sharia law is supreme over man-made statutes because it is understood to be 'the word of God to whom all humans are subordinate.'⁵⁷ Sharia law always trumps man-made legislation.⁵⁸

Sharia Courts have jurisdiction over family, property, and criminal matters.⁵⁹ Judges must be male and Muslim.⁶⁰ Secular laws adopted by legislation may supplement, but not replace Sharia law.⁶¹ All regulations must be in accordance with Sharia law.⁶² It is important to note, decisions of Sharia Courts are not considered legally binding precedent for subsequent cases to follow.⁶³ In other words, the application of Sharia law in one case does not affect the outcome of another case.⁶⁴ It is not difficult to imagine inconsistent application of

⁵⁴ 'What Does Islam Teach About a Woman's Worth?', *What Makes Islam So Different?* (Web Page). For example: Sahih Bukhari (2:28) and Sahih Bukhari (54:464) (Women comprise most of Hell's occupants. This is important because the only women in heaven mentioned explicitly by Muhammad are the virgins who serve the sexual desires of men.); Kanz al-'ummal (22:10) (suggests that 99% of women go to Hell); Sahih Bukhari (62:58) (A woman presents herself in marriage to Muhammad, but he does not find her attractive, so he "donates" her on the spot to another man.); Abu Dawud (2155) (Women are compared to slaves and camels with regard to the "evil" in them.)

⁵⁵ Abahussain (n 38) 93.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid. Sharia Courts have followed the Hanbali School of Islamic jurisprudence since 1928.

⁶⁰ Ibid 103.

⁶¹ Ibid 93.

⁶² Ibid.

⁶³ Ibid 94.

⁶⁴ Ibid.

the laws if there is no binding precedent.

As for Human Rights in Saudi Arabia, they are specifically defined by Sharia law.⁶⁵ Because Sharia controls, assertive women have been viewed as rebels.⁶⁶ Eleanor Abdella Doumato, Middle East Women's Studies scholar, professor and author, sums it up this way:

The Basic Law of the Kingdom of Saudi Arabia does not guarantee gender equality. To the contrary, gender inequality is built into Saudi Arabia's governmental and social structures, and it integral to the country's state-supported interpretation of Islam, which is derived from a literal reading of the Koran and Sunna. In issuing religious opinions, state-funded *ulema* (religious scholars) generally avoid consideration of judicial precedent and evolving social contexts, so that their official posture resists pressure for change, especially when it comes to controlling women's behavior.⁶⁷

This background gives context for the next section which will discuss Saudi laws as they pertain to women in following focused areas: (1) discrimination in the family and (2) violations of bodily integrity.

2 *Family Matters*

In Saudi Arabia, law regarding family and marriage is derived from the Quran.⁶⁸ Judges make decisions about family matters based on their own interpretation of Sharia law.⁶⁹

⁶⁵ *Basic Law of Governance* art 26, ('the State shall protect human rights in accordance with Islamic sharia.')

⁶⁶ Abahussain (n 38) 103.

⁶⁷ Eleanor Abdella Doumato, 'Saudi Arabia' in Sanja Kelly and Julia Breslin (eds), *Women's Rights in the Middle East and North Africa: Progress Amid Resistance* (Freedom House, 2010) 1.

⁶⁸ Doumato (n 67) 1.

⁶⁹ Ibid.

(a) *Marriage/Child marriage*

Sharia favors men when it comes to marriage.⁷⁰ A marriage contract is usually executed by the groom and guardian of the bride (not by the bride), and must specify if the bride (not the groom) is a virgin, widow or divorcee.⁷¹ Men are allowed up to four wives at a time, provided the wives can be supported and treated equally.⁷² Males are guardians over women and girls.⁷³

There is no legal definition for the minimum age to marry in Saudi Arabia. Child marriage is common because there are no laws against it.⁷⁴ One of the wives of the Prophet Muhammed, Aisha, was six years old when they became engaged, and nine years old when the marriage was consummated.⁷⁵ It is legal to marry a girl even one-hour old.⁷⁶

In 2011, two sisters (ages 8 and 10) were reported to be marrying men in their 60s.⁷⁷ The 10-year old would be her husband's fourth wife.⁷⁸ The girls were getting married because their father was struggling financially and needed the money that their dowries would provide.⁷⁹ Girls this age can be worth as much as \$40,000 each.⁸⁰ Women and girls are like a commodity where the price is negotiated to transfer them from one male guardian to another.

⁷⁰ Ibid 8.

⁷¹ Ibid 8-9.

⁷² Ibid 2; *The Message of the Quran*, Surah 4:3.

⁷³ 'Why is No One Protecting Saudi Arabia's Child Brides?', *Girls Not Brides* (Web Page, 8 November 2011).

⁷⁴ Ibid.

⁷⁵ See Aisha's account in *Sahih Al-Bukhari*, vol 5, bk 58, Hadith 234.

⁷⁶ *Girls Not Brides* (n 73).

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

Child marriage would not exist without tacit support and approval from the country's leadership.⁸¹ The Saudi monarchy itself has a long history of marrying very young girls.⁸²

(b) Divorce

When it comes to divorce, Saudi Arabia has strict laws and favor men over women.⁸³ Saudi men have unilateral power and can divorce women without legal grounds or a judge.⁸⁴ On the other hand, a woman cannot divorce her husband without the consent of both her husband and a court.⁸⁵ Divorce can send a woman into poverty, because before the divorce is final, the woman must surrender all money and assets that were given to her during her marriage to her husband.⁸⁶ If a woman is fortunate enough to gain custody of her children, she will retain custody only until the children are nine years old, then custody goes to the husband.⁸⁷ Throughout the entire divorce process, the husband remains his wife's legal guardian.⁸⁸ For women who do divorce, there is a strong negative social perception and religious stigma towards them.⁸⁹

(c) Adultery

The traditional punishment for adultery is stoning to death and is still practiced today.⁹⁰ Saudi judges are free to interpret Sharia Law as

⁸¹ Ibid.

⁸² Ibid.

⁸³ Although this article examines the differences between women's right to divorce among the various countries, this is not to suggest that it argues the merits of divorce.

⁸⁴ Glaze (n 49) 349, 352.

⁸⁵ Ibid 352.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid 353.

⁸⁹ Ibid 352.

⁹⁰ Ibid 356.

applied to adultery as they wish, eg fines, detention, imprisonment, flogging, and the death penalty.⁹¹

Saudi punishment for adultery is not equally applied to men and women. Women face stricter laws when charged with adultery. In 2015, a married Saudi woman was sentenced to death by stoning after admitting to adultery, while the man with whom she had sex received a punishment of 100 lashes.⁹² In addition, rape victims are often charged with adultery, because Islamic law favors men in nearly every social and legal setting.⁹³

3 *Violations of Bodily Integrity*

(a) *Violence Against Women*

Saudi Arabia does not have any specific laws addressing violence against women, even though there are numerous reports that violence against women is rampant in Saudi Arabia.⁹⁴ In fact, human rights activists are jailed for denouncing it.⁹⁵

(b) *Domestic Violence*

The Saudi government has not clearly defined domestic violence.⁹⁶

⁹¹ Ibid.

⁹² Ibid 357. See Sophie Jane Evans, 'Saudi Arabia Sentences Maid to Death by Stoning for Adultery-But the Man She Slept With Will Escape With 100 Lashes', *Daily Mail* (Web Article, 28 November 2015), (discussing how women who commit adultery are more likely than males to receive a harsher sentencing).

⁹³ Glaze (n 49) 357.

⁹⁴ Adam Coogle, 'Saudi Arabia to Women: "Don't Speak Up, We Know What's Best For You"', *Human Rights Watch* (Web Article, 26 June 2013).

⁹⁵ Ibid.

⁹⁶ US State Department, *Saudi Arabia 2018 Human Rights Report* (Report, 2018) 43-44.

Yet, there is a general law against abuse.⁹⁷ In 2015, Saudi Arabia's Justice Ministry reported that the courts saw 8,016 violence cases in a one-year period.⁹⁸ The ministry recounted that 57.5% of the cases involving violence between spouses were purportedly resolved "amicably."⁹⁹

Male guardianship contributes significantly to domestic abuse. Women are considered legal minors under the control of their *mahram* (closest male relative) and subject to legal restrictions regarding their personal behavior that do not apply to men.¹⁰⁰ Under this system, adult women must obtain permission from a male guardian – usually a husband, father, brother, or son – to do many things, such as travel abroad, obtain a passport, marry, or be discharged from prison.¹⁰¹ Saudi Arabia's male guardianship system has continued despite government assurances to end it.¹⁰²

If a woman wants to file a legal complaint for domestic abuse, she must bring her guardian with her to court to file the report.¹⁰³ In other words, to bring a case for domestic abuse against her husband, she must bring her husband to court with her to file her case.

Saudi women's rights advocates have been critical of domestic

⁹⁷ See *Consideration of reports submitted by States Parties under article 18 of the Convention: Combined third and fourth periodic reports of the States parties due in 2013: Saudi Arabia*, UN Doc CEDAW/C/SAU/3-4 (23 August 2016) 8-9.

⁹⁸ '8,016 cases of abuse recorded in one year', *Arab News* (Web Article, 16 December 2015).

⁹⁹ *Ibid.*

¹⁰⁰ Doumato (n 67) 3.

¹⁰¹ Kenneth Roth, "World Report 2019: Saudi Arabia Events of 2018," *Human Rights Watch*, (Web Page).

¹⁰² *Ibid.*

¹⁰³ Organisation for Economic Co-operation and Development, *Social Institutions & Gender Index: Saudi Arabia* (2019).

violence investigations because some investigators require permission from the male head of household to enter the home – the very man who may have committed the violence.¹⁰⁴ Furthermore, there are reports of domestic violence investigators encouraging victims and perpetrators to reconcile to keep the families intact, rather than prosecute the cases.¹⁰⁵ Police and judges have been known to return women directly to their abusers, as many were their legal guardians.¹⁰⁶

(c) Rape

Saudi Arabia does not have a penal code and there is no written law which specifically criminalises rape.¹⁰⁷ People are subject to arbitrary arrest and detention; the convicted are punished in accordance with Sharia as interpreted by individual judges.¹⁰⁸

Sometimes the rape *victim* is punished. In 2006, a Saudi judge sentenced a woman who was the victim of gang rape, to 90 lashes, along with her rapists.¹⁰⁹ When she appealed, her sentenced increased to six months in prison and 200 lashes.¹¹⁰ In 2007, King Abdullah pardoned the woman from the punishment.¹¹¹

(d) Female genital mutilation

Female genital mutilation includes all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genitalia for non-medical reasons. In 2016, the US State

¹⁰⁴ US State Department (n 96) 43.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Doumato (n 67) 5.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid 13.

¹¹⁰ Ibid.

¹¹¹ Ibid.

Department reported that FGM is not a common practice in Saudi Arabia.¹¹² However, this is incorrect. A study conducted in 2016 and 2017 at King Abdulaziz University Hospital, in Jeddah, Saudi Arabia ('Jeddah study'), explained that it was presumed that FGM was not common because Sharia prohibits the practice.¹¹³ When the Jeddah study initiated a survey of 963 women over an eight-month period regarding their FGM status and attitudes toward the practice, the results showed that FGM is prevalent in Jeddah, among both immigrant and Saudi women.¹¹⁴ The actual prevalence, however, was unknown.¹¹⁵

4 *Extraction*

The stereotypical Saudi woman is subservient and controlled by the men.¹¹⁶ However, the Kingdom has slowly allowed women to enjoy some freedom.¹¹⁷ Regardless, Saudi Arabia is still an Islamic country, based on Sharia. Saudi women suffer child marriages, polygamous marriages, and unequal divorce, adultery and rape laws. The Islamic worldview cannot offer a coherent, compatible and consistent set of laws to protect women from discrimination and violence. Although the Islamic worldview offers a "higher law" approach to human rights – and therefore women's rights – Islamic laws do not present hope for eliminating discrimination and violence against women.

¹¹² Abdulrahim A Rouzi et al, 'Survey on female genital mutilation/cutting in Jeddah, Saudi Arabia' (2019) 9(5) *BMJ Open* e024684:1-6, 1.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ Abahussain (n 38) 91-92.

¹¹⁷ *Ibid* 91. In 2015, Saudi women could vote for the first time. In 2018, the ban on Saudi women driving was lifted.

B *Hinduism: Women and the Laws of India*

A woman must be dependent upon her father in childhood, upon her husband in youth, and upon her sons in her old age; she should never be free. — Manu¹¹⁸

India is pluralistic in its laws and religion, and has a history of devaluing women. Since the 1970s, Indian reformers have advocated for equalising laws for men and women.¹¹⁹ The Hindu Nationalist movement pushed equality activists to accept a plural civil code in the name of Legal Pluralism.¹²⁰ Yet, while Hindu leaders criticised discrimination practices among Muslims, they ignored similar prevalent practices among Hindus and in Hindu law.¹²¹

1 *Background*

Hinduism was birthed in India.¹²² It is the world's third largest religion, after Christianity and Islam.¹²³ Hinduism is not confined to one particular doctrine – it embraces several theological perspectives, including monotheism, polytheism and pantheism, absorbing views from other religions.¹²⁴ Hinduism is cultural, assimilating many traditions of its ancestors, not just a single teaching.¹²⁵ It is so diverse,

¹¹⁸ Flavia Agnes, 'Law and Gender Equality: The Politics of Women's Rights in India' in Flavia Agenst, Sudhir Chandra and Monmayee Basu (eds), *Women & Law in India* (Oxford University Press, 2004) 11.

¹¹⁹ Carolyn E Holmes, 'Conventions, Courts, and Communities: Gender Equity, CEDAW and Religious Personal Law in India' (2019) 57(7) *Journal of Asian and African Studies* 965, 969.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Steven J Rosen, 'Hinduism' in Lee Worth Bailey (ed), *Introduction to the World's Major Religions* (Greenwood Press, 2006) vol 6, xvi.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Ibid.

it has been called a living encyclopedia of religions.¹²⁶ India's contemporary legal system deliberately subsumes Buddhism, Jainism, and Sikhism under the Hindu label.¹²⁷ In spite of the diversity, the Hindu tradition with the most followers today is Vaishnavism, a religion centered on the worship of Vishnu, 'the all-pervasive Lord.'¹²⁸

While there is no precise definition of the word 'Hindu' through statutes or judicial pronouncements, in 1966 the India Supreme Court attempted to define it, explaining: 'Acceptance of the Vedas with reverence, recognition of the fact that the means of ways to salvation are diverse and realisation of the truth that number of gods to be worshipped is large is the distinguishing features of Hindu religion.'¹²⁹

In reality, any simple definition of the Hindu religion proves inadequate.¹³⁰ A person who practices or professes Hinduism is clearly a Hindu.¹³¹ However, a Hindu who no longer practices or professes faith in Hindu religion or philosophy may still be considered a Hindu.¹³² A Hindu who starts practicing or professing a non-Hindu religion may also still be considered a Hindu.¹³³ Even atheists do not cease to be a Hindu.¹³⁴ On the other hand, if a Hindu formally converts to another faith, he may finally cease to be recognised as a Hindu.¹³⁵ Today a Hindu community governed by Hindu laws is somewhat a fiction – it

¹²⁶ Ibid.

¹²⁷ Ibid xvii-xiii.

¹²⁸ Ibid xvi.

¹²⁹ *Shastri Yagnapurushadasji v Muldas Vaishya*, AIR 1966 SC 1119; (1967) 69 BOMLR 1, cited by Aapka Consultant, 'Definition of a Hindu' (Web Page, 2 January 2018).

¹³⁰ *Agnes* (n 118) 25.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

is not a religious entity or a social reality.¹³⁶ It is a cacophony of beliefs and practices.

According to Indian lawyer Flavia Agnes, plurality of laws and customs were the characteristics of ancient Indian communities.¹³⁷ During the pre-colonial era in India, there was no distinction between religion, law and morality, that is, *dharma*.¹³⁸ Three sources of dharma are *shruti* (the divine revelations, primarily the *Vedas*), *smriti* (the memorised word – the *dharmasutras* and the *dharmashastras*) and *sadachara* (good custom).¹³⁹ The Vedas were treated as the “fountainhead” of Hindu law by jurists, but they did not contain positive law (man-made law).¹⁴⁰ Codified laws governing Hindu marriage and family derive their roots from the *smritis* and *nibandhas* (commentaries and digests).¹⁴¹

India is well known known for its Hindu caste system, which is based in religion.¹⁴² It has been in existence for about 3,000 years.¹⁴³ It can be described as a social hierarchy of groups of people based on work and dharma.¹⁴⁴ There are four primary groups: Brahmins, Kshatriyas, Vaishyas and Shudras.¹⁴⁵ Brahmins are the purest and highest caste, whereas the Shudras are the lowest caste; Dalits are considered even

¹³⁶ Ibid 26.

¹³⁷ Ibid 12.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ahmed Usman, ‘A Comparison of Hindu and Muslim Caste System in Sub-continent’ (2017) 32(1) *A Research Journal of South Asian Studies* 91, 92.

¹⁴³ ‘What is India’s Caste System?’, *BBC News* (Web Article, 19 June 2019).

¹⁴⁴ Usman (n 142) 91.

¹⁴⁵ What is India’s Caste System? (n 143): ‘The main castes were ... divided into about 3,000 castes and 25,000 sub-castes, each based on their specific occupation.’

lower, outside of the caste system.¹⁴⁶ Although the Indian constitution prohibits caste discrimination, it remains prevalent.¹⁴⁷

According to Monmayee Basu, Associate Professor of History at the University of Delhi, the condition of Hindu women in India began to deteriorate after Muslim conquerors settled India:

By and large women lost their opportunities and freedom, and became increasingly dependent on men ... Worse still, undesirable social customs crept in, which gradually reduced the Indian woman to a state of perpetual bondage. When raids and warfare became a common occurrence, the fear of insecurity which affected unmarried young women was, perhaps largely responsible for the emergence of the system of *early marriage*. This most probably led to the beginning of the cruel and reprehensible *dowry* system which has prevailed for centuries and persists even today. The fear of insecurity was, to a great extent, responsible for the growth and continuance of the system of *sati*. The emergence of the *purdah* system and seclusion of women was another byproduct of such fear. The effect of these disabilities was awesome. Gradually, the belief grew in India society that women were destined to a status inferior to men. At the beginning of the nineteenth century, the position of Indian women had reach the 'lowest depth of degradation.'¹⁴⁸

This background gives context for the next section which will discuss India's laws as they pertain to women regarding: (1) discrimination in the family and (2) violations of bodily integrity.

¹⁴⁶ Ibid 91-92.

¹⁴⁷ US State Department, *India 2018 Human Rights Report* (Report, 2018) 46.

¹⁴⁸ Monmayee Basu, 'Hindu Women and Marriage Law: From Sacrament to Contract' in Monmayee Basu (ed) *Women & Law in India* (Oxford University Press, 2001) 2-3 (emphasis added).

2 *Family Matters*

India's pluralistic legal system is reflected in the Indian Constitution, where personal laws vary according to religion: the Hindu population is governed by the *Hindu Marriage Act 1955*¹⁴⁹; the Muslim population is governed by the *Muslim Personal Law Sharia Application Act 1937*¹⁵⁰ and *Muslim Women's Protection of Rights on Divorce Act 1986*¹⁵¹; the Christian population is governed by the *Indian Christian Marriage Act 1872*¹⁵²; and the Zoroastrian population is governed by the *Parsi Marriage and Divorce Act 1936*.¹⁵³ This article focuses on Indian laws governing Hindus.

(a) *Marriage/Child marriage*

In the late nineteenth century, child marriage (known as *gouridan*), was common in Hindu society.¹⁵⁴ *The Age of Consent Act 1861* raised the minimum age for a girl to marry from ten to twelve years old.¹⁵⁵ Due to Hindu custom, many people continued to support child marriage, even into the twentieth century.¹⁵⁶ Child marriage was finally prohibited under the *Prohibition of Child Marriage Act 2006*.¹⁵⁷ Currently, there are no legal exceptions to the minimum age for marriage for women (18) and men (21).¹⁵⁸ However, while there has been a decline in child marriages reported, they remain pervasive in India.¹⁵⁹

¹⁴⁹ *The Hindu Marriage Act 1955* (India).

¹⁵⁰ *The Muslim Personal Law (Shariat) Application Act 1937* (India).

¹⁵¹ *The Muslim Women (Protection of Rights on Divorce) Act 1986* (India).

¹⁵² *The Indian Christian Marriage Act 1872* (India).

¹⁵³ *The Parsi Marriage and Divorce Act 1936* (India).

¹⁵⁴ Basu (n 148) 4.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid* 52-53.

¹⁵⁷ *The Prohibition of Child Marriage Act 2006* (India).

¹⁵⁸ Organisation for Economic Co-operation and Development, *Social Institutions & Gender Index: India* (2019) 2.

¹⁵⁹ *Ibid.*

Typically, after her marriage, the young girl went to her husband's house and found a miserable life.¹⁶⁰ Under complete control of her husband's family, she had no freedom.¹⁶¹ The mother-in-law was usually the supreme authority and the young wife was required to obey her.¹⁶² Young housewives were prohibited from stepping out of the house.¹⁶³ *Purdah* was the common practice of shutting away women, forcing them into a secluded life.¹⁶⁴

While Hindu widows were often treated like a slave in the family, conditions for the child widow were even worse – she was neglected and mistreated from her very childhood and was destined to suffer.¹⁶⁵ Upper caste child widows were not permitted to remarry.¹⁶⁶ Many widows were compelled to burn themselves on the funeral pyres of their husbands (a practice known as *sati* or *suttee*).¹⁶⁷ So long as her husband was alive, the wife had an acceptable status in society – but as soon as he died, she became doomed to a life of forced labor.¹⁶⁸ Therefore, the widow preferred to die with her husband.¹⁶⁹ Eventually the practice of *sati* was prohibited and made a criminal offense in 1829.¹⁷⁰

The *Hindu Widow Remarriage Act 1856* was enacted to encourage widows to remarry.¹⁷¹ However, it was not as successful as intended;

¹⁶⁰ Basu (n 148) 4.

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ *Ibid* 8.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid* 6.

¹⁶⁶ *Ibid* 7.

¹⁶⁷ *Ibid* 67.

¹⁶⁸ *Ibid* 68.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid* 67.

¹⁷¹ *Ibid* 69.

90% of the prostitutes were widows.¹⁷² In response, the *Special Marriage Act 1872* was enacted to popularise widow remarriage.¹⁷³ Not as successful as hoped, Social reformers realised that without education, the problems of the Hindu widows could never be solved.¹⁷⁴

After India became independent in 1947, Hindu law was codified and women were granted substantial rights. Unfortunately, the problem of widows remained unsolved and widow-remarriage rarely took place.¹⁷⁵ Finally, in the mid-twentieth century, women had access to education and advanced studies, opening opportunities to earn money through employment.¹⁷⁶ The same was true for Hindu widows.¹⁷⁷ Education and employment brought women a measure of freedom from a life of bondage.

The dowry system was another problem that existed in Hindu society during the second half of the nineteenth century. As a rule, dowry had to be paid at the time of the girl's marriage.¹⁷⁸ Dowry was not a gift made by the bride's parents to their daughter as her separate property; it was a gift to the bride's in-laws.¹⁷⁹ While dowry took different forms in different communities, the custom was almost universal.¹⁸⁰ A daughter was a burden in a Hindu family since she had to be married at the right age and within the accepted caste framework.¹⁸¹

During the mid-twentieth century and later, the dowry system became

¹⁷² Ibid 7.

¹⁷³ Ibid 75.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid 76.

¹⁷⁶ Ibid 78.

¹⁷⁷ Ibid 76.

¹⁷⁸ Ibid 7.

¹⁷⁹ Ibid 86.

¹⁸⁰ Ibid 88.

¹⁸¹ Ibid 7.

an outrage of enormous magnitude – it became known as the groom’s price, to procure more money in the marriage market.¹⁸² In other words, fathers of brides were forced to pay more to marry off their daughters. Hence, daughters became an even greater burden to their families.

The Dowry Prohibition Act 1961 outlawed dowry in India.¹⁸³ Even so, the US State Department reports that dowry continues to be widely practiced and often contributes to violence against young brides, sometimes resulting in death.¹⁸⁴ Dowry deaths – like bride burning – is a tragic method of punishing women for insufficient dowries or creating an opportunity for the husband to remarry and receive another dowry.¹⁸⁵ In 2013, the Indian government announced the appointment of dedicated, full-time Dowry Prohibition Officers to enforce the Act and train law enforcement agencies on issues of dowry related harassment and dowry deaths.¹⁸⁶ However, in 2016, authorities reportedly arrested 20,545 persons for dowry deaths.¹⁸⁷ Someday dowry may disappear, but this goal seems remote when bride burning cases consistently appear in the news.¹⁸⁸

¹⁸² Ibid 88.

¹⁸³ *The Dowry Prohibition Act 1961* (India).

¹⁸⁴ US State Department (n 147) 38.

¹⁸⁵ See ‘Bride Burning: What is it, where does it happen and how to end it’, *Rights Universal* (Web Article, 15 April 2017). Bride burning occurs when a wife is soaked with a flammable liquid and set on fire. Women rarely survive. Those who do survive are severely and permanently scarred. This extremely violent act is performed by the husband or his family because the bride’s family has refused to pay an additional dowry. Bride burning, also known as a dowry death, primarily occurs in India and Pakistan. It is estimated that 8,000 women die from bride burning each year.

¹⁸⁶ Planning Commission (Government of India), *Twelfth Five Year Plan 2012-2017* (Sage Publications India, 2013) vol III, 172.

¹⁸⁷ US State Department (n 147) 38.

¹⁸⁸ Basu (n 148) 96.

(b) Divorce

The right to divorce in India depends on the laws under which one marries, civil or religious.¹⁸⁹ According to the *Special Marriage Act 1954*,¹⁹⁰ and *Hindu Marriage Act 1955*,¹⁹¹ either the husband or wife may petition for a divorce.¹⁹² Hindu men and women have equal right to a divorce.

(c) Adultery

Until 2018, adultery was a crime under s 497 of the *Indian Penal Code 1860* ('*Indian Penal Code*'), which defined it from the man's perspective:

Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years or with fine or with both. In such case the wife shall not be punishable as an abettor.¹⁹³

In September 2018, the Supreme Court of India, unanimously struck down s 497 as unconstitutional.¹⁹⁴

¹⁸⁹ *SIGI: India* (n 158) 3.

¹⁹⁰ *The Special Marriage Act 1954* (India).

¹⁹¹ *The Hindu Marriage Act 1955* (India).

¹⁹² *SIGI: India* (n 158) 3.

¹⁹³ *The Indian Penal Code 1860* (India) s 497 ('*Indian Penal Code*').

¹⁹⁴ 'Explainer: What Is Adultery Law And Section 497 Of IPC', *Outlook India* (Web Article, 27 September 2018).

3 *Violation of Bodily Integrity*

(a) *Violence Against Women*

Women in India face many obstacles to their safety and protection from physical, sexual and psychological violence. Rape, domestic violence, dowry-related deaths, honor killings and sexual harassment pose serious threats to women's physical integrity in Indian society.¹⁹⁵ Women from lower castes and tribes (eg Dalit women) are especially vulnerable to sexual violence due to caste-based discrimination.¹⁹⁶

India does not have an overarching law covering violence against women.¹⁹⁷ Instead, violence against women is covered by sections of the *Indian Penal Code*,¹⁹⁸ the *Protection of Women from Domestic Violence Act 2005*¹⁹⁹ ('*Domestic Violence Act*') and the *Protection of Children from Sexual Offences Act 2012*.²⁰⁰

Acid attacks continue to take place, despite amendments to *Indian Penal Code* in 2013 which increased penalties for acid-throwing from five to seven years.²⁰¹ Victims of acid attacks are often women who challenge norms, eg opposing a marriage proposal.²⁰² The Delhi government announced it would cover 100% medical expenses for victims of acid attacks in private hospitals in its territory.²⁰³ The

¹⁹⁵ Women's International League for Peace & Freedom, *Caught Between Arms: The State of Women's Rights in India, Shadow Report to CEDAW 58th Session* (Report, 2014).

¹⁹⁶ Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Rashida Manjoo, UN Doc A/HRC/26/38 (28 May 2014).

¹⁹⁷ *SIGI: India* (n 158) 4.

¹⁹⁸ *Indian Penal Code*.

¹⁹⁹ *The Protection of Women from Domestic Violence Act 2005*.

²⁰⁰ *The Protection of Children from Sexual Offences Act 2012* (India).

²⁰¹ *Indian Penal Code* s 326B.

²⁰² *SIGI: India* (n 158) 6.

²⁰³ US State Department (n 147) 36.

Supreme Court of India has also approved assistance to acid attack victims, up to 800,000 rupees (\$11,500) for acid attack injuries.²⁰⁴

(b) Domestic Violence

Domestic Violence is against the law in India under the *Domestic Violence Act*²⁰⁵ and the *Indian Penal Code*.²⁰⁶ Domestic violence includes physical, psychological, sexual and economic abuse.²⁰⁷ The punishment is up to three years in prison.²⁰⁸ The *Protection of Women from Domestic Violence Act* sets forth measures to prevent and reduce domestic violence, including free legal aid for women and access to free services of official service providers.²⁰⁹ Domestic violence in India continues to be a problem.

(c) Rape

The *Indian Penal Code* criminalises rape, which is punishable by imprisonment up to ten years and up to twenty years for gang rape.²¹⁰ Rape is the lack of consent to sexual intercourse and does not require evidence of force or resistance, but it does require penetration.²¹¹ Gang rape of minors is rampant.²¹² The punishment for raping a girl under the age of 16 is between twenty years and life.²¹³ The punishment for raping a girl under the age of 12 is life imprisonment or the death

²⁰⁴ Ibid.

²⁰⁵ *The Protection of Women from Domestic Violence Act 2005* (India).

²⁰⁶ *Indian Penal Code* s 498A.

²⁰⁷ *The Protection of Women from Domestic Violence Act 2005* (India).

²⁰⁸ US State Department (n 147) 37.

²⁰⁹ *The Protection of Women from Domestic Violence Act 2004* (India).

²¹⁰ US State Department (n 147) 36.

²¹¹ *Indian Penal Code* s 376 A-D.

²¹² US State Department (n 147) 37.

²¹³ Ibid 36.

penalty.²¹⁴ Marital rape is illegal when the wife is under 18 years old.²¹⁵

Rape is the country's fastest-growing crime in India, likely due in part to the increased willingness of victims to report their rapes, albeit a large number of rape cases remain unreported.²¹⁶ Even so, law enforcement and legal recourse for rape victims remain largely inadequate.²¹⁷ Police have been known to attempt to reconcile rape victims and their attackers, even encouraging the rape victims to marry their attackers.²¹⁸ Inadequate victim support, protection of witnesses, and health care guidelines for victims leads to lack of convictions.²¹⁹ Low conviction rates is considered one of the main reasons sexual violence against women continues.²²⁰

(d) Female genital mutilation

India has no law specifically addressing FGM, despite the common practice.²²¹ Human rights groups and non-governmental organisations report that between 70 and 90 percent of the *Dawoodi Bohras* practiced FGM, a population of approximately one million.²²² The government continues to investigate the issue and strategise how to respond.²²³

(e) Forced abortion/sex selection

The government of India has promoted female sterilisation as a form of

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ *SIGI: India* (n 158) 5.

²²² US State Department (n 147) 37-38.

²²³ Ibid.

“family planning” for decades.²²⁴ Reports of coerced and involuntary sterilisation are not uncommon.²²⁵ As of 2018, several states still had policies penalising families with more than two children.²²⁶ Women continue to be forced or choose to abort a girl child in India (gender-selective abortion) despite the passage of the *Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994*.²²⁷ However, almost all states have implemented “girl child promotion” to counter sex selection based on son preference.²²⁸

4 *Extraction*

India’s pluralistic religion and laws have not adequately protected women from unjust discrimination and violence. Indeed, Hinduism has lent itself to the diminished value of women as evidenced by child marriages, *purdah*, *sati*, rape, dowry deaths, acid attacks, son preference, etc. While women are making progress through education and reform, this progress cannot be supported by Hinduism which ranks people in value pursuant to a hierarchical caste system. Thus, the Hindu religious worldview does not appear to offer much hope for ending discrimination and violence against women.

C *Atheism: Women and the Laws of China*

Vocal feminism and atheism now are moral obligations: anything less makes us complicit in the dehumanization, commoditization, and sexual exploitation of women. To protect

²²⁴ Ibid 39.

²²⁵ Ibid.

²²⁶ Ibid 40.

²²⁷ *SIGI: India* (n 158) 6.

²²⁸ US State Department (n 147) 40.

the defenseless and progress toward humanism, women must abandon religion. —Lauri Weissman²²⁹

Some women think all religion is bad for women, that it stands in the way of advancing women's rights as human rights and better treatment of women. Madhavi Sunder, Professor of Law at Georgetown University, insists that securing human rights requires deconstructing religion.²³⁰ Atheist feminist Karen L Garst goes further, declaring that religion is anti-women and the last cultural barrier to gender equality, due to the historical subjugation and degradation of women.²³¹ If all this is true, then one would expect to see the best example of human rights protections and gender equality (not to mention the end of the discrimination and violence against women) in an atheistic state. This section will examine laws from China, the most atheistic country in the world, to show this it does not offer the best hope for women.

1 *Background*

In 2019, a WIN/Gallup International poll revealed that China is the least religious country in the world.²³² Less than 10% of residents of China stated that they feel religious and over 60% are 'convinced atheists.'²³³ Although China's constitution guarantees religious freedom, the reality is that any religious organisation without official

²²⁹ Lauri Weissman, 'Half Human: How Jewish Law Justifies the Exclusion and Exploitation of Women' in Karen L Garst (ed), *Women v Religion: The Case Against Faith – and for Freedom* (Pitchstone Publishing, 2018) 71.

²³⁰ Madhavi Sunder, 'Piercing the Veil' (2003) 112 *Yale Law Journal* 1399, 1404.

²³¹ Karen Garst, 'Introduction', in Garst, (n 229) 13.

²³² 'Least Religious Countries Population', *World Population Review* (Web Page, 16 August 2019); see also 'Religion Prevails in the World', *Gallup International* (Web Article, 10 April 2017).

²³³ *Ibid.*

approval faces state persecution.²³⁴ China is officially an atheist state.²³⁵

In addition to being the most atheist country in the world, according to the US State Department, the People's Republic of China ('PRC') is an authoritarian state in which the Chinese Communist Party ('CCP') is the supreme authority.²³⁶ CCP members hold almost all the top government and security positions.²³⁷ Atheism is the basic doctrine for the CCP.²³⁸ Therefore, atheist propaganda is necessary to exterminate religion.²³⁹ Although the CCP acknowledges the presence of religion and people practicing religion in China, it affirms that religion will eventually fade away and atheist propaganda should be carried out relentlessly.²⁴⁰ It is important to keep this communist propaganda agenda in mind when examining purported equality laws in China.

This background gives context for the next section which will discuss China's laws as they pertain to women regarding: (1) discrimination in the family and (2) violations of bodily integrity.

2 *Family Matters*

Chinese law espouses equality, expressly giving husbands and wives

²³⁴ 'China Population 2019', *World Population Review*, (Web Page, 11 July 2019).

²³⁵ China does not survey its people on their religion. Therefore, the religious demographics may not be accurate.

²³⁶ US State Department, *China (includes Tibet, Hong Kong, and Macau) 2018 Human Rights Report* (Report, 2018) 1.

²³⁷ Ibid.

²³⁸ Fenggang Yang, 'Between Secularist Ideology and Desecularizing Reality: The Birth and Growth of Religious Research in Communist China' (2004) 65(2) *Sociology of Religion* 101, 103.

²³⁹ Ibid.

²⁴⁰ Ibid 105.

equal status in the family.²⁴¹ Women even have the same legal rights as men to be recognised as head of household.²⁴² Marital property is partial community property and both spouses must agree how to manage the property.²⁴³ Both mother and father have equal rights and responsibilities to their children, during and after marriage.²⁴⁴ The same applies to children born out of wedlock.²⁴⁵

Regardless of the Chinese government's purported efforts to promote equality of men and women, the reality is that general stereotypes exist – women take care of working inside the home, men take care of working outside of the home.²⁴⁶ Further, despite equality laws, discrimination and violence against women remains a problem.

(a) Marriage/Child Marriage

Under Chinese law, the consent of both husband and wife is required for marriage.²⁴⁷ Protections exist for a spouse (wife) who is coerced into marriage.²⁴⁸ Regardless of marriage equality laws, Chinese birth limitations and cultural preference for sons created a culture where men outnumber women, leaving large numbers of single men, especially in rural areas.²⁴⁹ According to the US State Department, this has increased demand for foreign women as brides for Chinese men and triggered an increase in human trafficking and forced marriages.²⁵⁰ These women

²⁴¹ Organisation for Economic Co-operation and Development, *Social Institutions & Gender Index: China* (2019) 2.

²⁴² *Ibid* 2.

²⁴³ *Marriage Law of the People's Republic of China* arts 17, 19.

²⁴⁴ *Marriage Law of the People's Republic of China* arts 17, 19.

²⁴⁵ *Ibid* art 25.

²⁴⁶ *SIGI: China* (n 241) 2-3.

²⁴⁷ *Marriage Law of the People's Republic of China* art 5.

²⁴⁸ *Ibid* art 11.

²⁴⁹ US State Department, *2017 Trafficking in Persons Report: China* (Report, 2017).

²⁵⁰ *SIGI: China* (n 241) 2-3.

may be kidnapped or sold by relatives and transported to China.²⁵¹

In China, the legal age to get married is not the same for men and women – 22 years old for men, and 20 for women.²⁵² Parents or guardians are prohibited from allowing or forcing minors into marriages, or arranging such marriages.²⁵³ This is likely the consequence of the increase in human trafficking and young foreign brides.

As for statistics regarding child marriage in China, there is a lack of data.²⁵⁴

(b) Divorce

Men and women have the same divorce rights under Chinese Marriage Law. Additionally, Chinese law offers protection for pregnant women – husbands may not apply for divorce within one year of his wife giving birth, or with 6 months after the termination of her pregnancy.²⁵⁵ Women are not subject to the same restriction.²⁵⁶

Despite equal divorce rights, women suffer from the social stigma of divorce more than men because traditional Chinese standards are more liberal for men when it comes to family.²⁵⁷ Therefore, women – especially rural women – are likely to suffer economic hardship because their husbands were the only source of financial income.²⁵⁸ Equal opportunity for divorce does not yield equal consequences.

²⁵¹ Tahirih Justice Center: Forced Marriage Initiative, 'Forced Marriage Overseas: China' (Web Page).

²⁵² *Marriage Law of the People's Republic of China* art 6.

²⁵³ *SIGI: China* (n 241) 2.

²⁵⁴ *Ibid.* Although UNICEF is an organisation which collects data on child marriage for East Asia, there is a lack of data on child marriage in China in the UNICEF database.

²⁵⁵ *Ibid.*

²⁵⁶ *SIGI: China* (n 241) 3.

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*

3 *Violations of Bodily Integrity*

Human trafficking is the most common type of violence against women in China.²⁵⁹ Women and children are the primary victims of kidnapping, physical and sexual assault, and sale.²⁶⁰ The women's slave trade has affected hundreds and thousands of families in rural areas and in the cities.²⁶¹ No official statistics exist regarding how many women and children have been kidnapped and sold in the black market.²⁶²

(a) Violence Against Women

The Chinese Constitution prohibits the mistreatment of women, children, and the elderly.²⁶³ However, the law that was designed to protect women who were victimised by domestic violence or trafficking lacks teeth to provide civil or criminal remedies to punish the perpetrators.²⁶⁴ In other words, it is a law with no remedy. When it comes to sexual violence, the criminal law does not address it, although it does prohibit rape.²⁶⁵

(b) Domestic Violence

For a long time, domestic violence was considered a private matter in China.²⁶⁶ Finally, in 2016, China's first domestic violence law went into effect.²⁶⁷ Domestic violence is defined as physical and psychological

²⁵⁹ *SIGI: China* (n 241) 4.

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*

²⁶² *Ibid.*

²⁶³ Chinese Constitution art 49.

²⁶⁴ *SIGI: China* (n 241) 4.

²⁶⁵ *Ibid* 5.

²⁶⁶ *Ibid* 4.

²⁶⁷ *Ibid.*

abuse of family members and cohabitating non-family members.²⁶⁸ Due to the new law, more women have reported domestic violence. Despite this progress, the US State Department opines that the law has been inconsistently implemented due to lack of awareness of the law.²⁶⁹ Thus, victims of domestic violence often remain reluctant to report the abuse to authorities or go to court due to the prevailing sentiment that these are largely private matters.²⁷⁰

(c) Rape

Rape is against the law in China and defined as a female victim's lack of consent – punishable by a maximum of 10 years in prison.²⁷¹ According to a US State Department human rights report on China, some convicted rapists in China were executed.²⁷² The law does provide enhanced remedies for aggravated forms of rape and sexual violence.²⁷³ As for China's law regarding statutory rape, it prohibits consensual sexual contact with a person under the age of 14.²⁷⁴ Punishment is even more severe if the younger party was under 14 and acting as a prostitute.²⁷⁵ There is no separate law for spousal rape, but a wife can file a complaint for the rape.²⁷⁶

Unfortunately, victims of rape are still likely to be blamed in Chinese culture. A study conducted by the University of Pennsylvania in 2016 found that Chinese culture considers rape at least partly a

²⁶⁸ Ibid.

²⁶⁹ US State Department (n 236) 49-50.

²⁷⁰ *SIGI: China* (n 241) 5.

²⁷¹ Ibid 5.

²⁷² US State Department (n 236) 49.

²⁷³ *SIGI: China* (n 241) 5.

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ Ibid.

woman's fault.²⁷⁷ The topic is taboo and shameful, hindering women's willingness to report it.²⁷⁸

(d) Female genital mutilation

There is no evidence that female genital mutilation is common in China.²⁷⁹

(e) Forced abortion/sex selection

In 2018, the U.S. State Department reported coerced abortions and sterilisations in China, although exact statistics were not available.²⁸⁰ The Chinese government restricts the parents' rights to choose how many children they have.²⁸¹ On 1 January 2016, the birth limit imposed on its citizens was raised from one to two children per married couple – finally ending the 1979 “one-child policy.”²⁸² Nevertheless, Chinese law requires a woman with an unauthorised pregnancy to abort the baby or pay a fee, which can be ten times a person's annual disposable income.²⁸³

Due to the birth limitation policy and traditional preference for sons over daughters, sex-selective abortions, and the abandonment and neglect of baby girls continues to be a problem.²⁸⁴

4 *Extraction*

Like women in Saudi Arabia and India, Chinese women are not treated

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ *SIGI: China* (n 241) 6.

²⁸⁰ US State Department (n 236) 52.

²⁸¹ Ibid.

²⁸² *SIGI: China* (n 241) 7.

²⁸³ US State Department (n 236) 53.

²⁸⁴ Ibid 56.

as valuable as Chinese men. Although the law purports equality between men and women, women still suffer unjust discrimination and violence as evident in son-preference, forced abortions (usually girl babies), and human trafficking. Propaganda serves to advance Chinese communism and atheism. Therefore, laws purporting freedom and equality for women must be met with some skepticism. Without a transcendent source for law, China's man-made laws are subjective, arbitrary and subject to change on a whim by those in power. In a country where communism is the highest goal, the reality is, genuine freedom for women is a pipedream.

D *Christianity: Women and the Laws of the United States*

There is neither Jew nor Gentile, neither slave nor free, nor is there male and female, for you are all one in Christ Jesus.

—Galatians 3:28

From its founding, the law of the United States were influenced by biblical Christianity. Although not perfect, the history of the advancement of women's rights in the US is long and complex.²⁸⁵ While unjust discrimination and violence against women still exist in the US, women have more freedom in the US than the other countries discussed in this article.

²⁸⁵ Anne M Boylan, *Women's Rights in the United States: A History in Documents* (Oxford University Press, 2016) 3. Often the advancement of women's rights in the US is examined through the different waves of feminism. In general, the first wave of the feminist movement culminated with the 19th Amendment to the *United States Constitution*, giving women the right to vote. The second wave of the feminist movement emerged in the 1960's, with the advancement of the Equal Rights Amendments (which did not pass). Subsequent feminist waves have not been so clearly distinguished: at 8. An examination of the different waves of feminism is beyond the scope of this paper.

1 *Background*

In the early American colonies, women were under the authority of a husband or father.²⁸⁶ European settlers from England, France, Spain, or Holland, brought their traditions of the written law with them.²⁸⁷ The British Northern American colonies established its legal system based on the British Common Law.²⁸⁸ French, Spanish and Dutch colonies established their legal systems based on Roman Law.²⁸⁹ The notion of individual rights evolved slowly and ignited at the time of the American Revolution.²⁹⁰

For early European settlers, a woman's economic and legal rights depended on her marital status.²⁹¹ In the British colonies, under English Common Law, single women (*feme sole*) could stand "alone" or "solo" before the law, while a married woman (*feme covert*, ie covered by her husband) had no right apart from her husband.²⁹²

The French, Spanish and Dutch colonies treated these matters differently, in the Roman law tradition.²⁹³ Married women kept the property they brought into the marriage, co-owned property acquired during marriage, and sometimes owned part of their late husband's personal property.²⁹⁴ This legal principle is known as *community property*²⁹⁵ and is applied in many states in the US today.

²⁸⁶ Ibid 3.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Ibid.

²⁹¹ Ibid 17.

²⁹² Ibid.

²⁹³ Ibid 22.

²⁹⁴ Ibid.

²⁹⁵ Ibid.

Historical documents reveal that American women struggled for better treatment and more rights from the early colonies and the American Revolution.²⁹⁶ An example is a letter Abigail Adams wrote to her husband, John Adams, who became the second President of the United States in 1797. Abigail Adams wrote:

I long to hear that you have declared an independancy—and by the way in the new Code of Laws which I suppose it will be necessary for you to make I desire you would Remember the Ladies, & be more generous & favourable to them than your ancestors. Do not put such unlimited power into the hands of the Husbands. Remember all Men would be tyrants if they could. If perticular care and attention is not paid to the Laidies we are determined to foment a Rebellion, and will not hold ourselves bound by any Laws in which we have no voice, or Representation.

That your Sex are Naturally Tyrannical is a Truth so thoroughly established as to admit of no dispute, but such of you as wish to be happy willingly give up the harsh title of Master for the more tender & endearing one of Friend. Why then, not put it out of the power of the vicious & the Lawless to use us with cruelty & indignity with impunity. Men of Sense in all Ages abhor those customs which treat us only as the vassals of your Sex. Regard us then as Beings placed by providence under your protection & in imitation of the Supreem Being make use of that power only for our happiness.²⁹⁷

Nearly all citizens of early colonial America were Christians – the

²⁹⁶ See generally *ibid.*

²⁹⁷ *Ibid* 48 (spelling in original).

overwhelming majority were Protestants.²⁹⁸ Values and customs of Protestant Christianity permeated civil and political life. From the early colonists and until the mid 1900's, the Christian religion saturated American public life.²⁹⁹ All three branches of government – legislature, judicial, executive – affirmed and endorsed America as a religious, even Christian, nation.

As for the legislature, it declared that religion was necessary for good government. In 1789, the First Congress of the United States passed the *Northwest Ordinance*, which provided: 'Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.'³⁰⁰ On the same day, James Madison also introduced proposed amendments which became the *Bill of Rights*, including the first amendment for religious freedom.³⁰¹

As for the judiciary, as early as 1799, the United States Supreme Court declared Christianity the established American religion: 'By our form of government, the Christian religion is the established religion; and all sects and denominations of Christians are placed upon the same equal footing, and are equally entitled to protection in their religious liberty.'³⁰²

²⁹⁸ Stephen B Epstein, 'Rethinking the Constitutionality of Ceremonial Deism' (1996) 96 *Columbia Law Review* 2083, 2099.

²⁹⁹ Leonard W Levy, *The Establishment Clause* (2nd ed., University of North Carolina Press, 1994) xiv.

³⁰⁰ *SIGI: China* (n 241) 3.

³⁰⁰ *An Act to provide for the Government of the Territory of the River Ohio*, Journals of the Continental Congress: 1774-1789, vol 32 (13 July 1787) 340, recodified at 1 Stat 50, 51 na (7 August 1789); *Wallace v Jaffree*, 472 US 38, 100 (1985) (Rehnquist J dissenting).

³⁰¹ *Wallace v Jaffree* 472 US 38, 100.

³⁰² *See Runkel v Winemiller*, 4 H & McH 429, 442 (1799) (held that a mandamus was proper to restore a pastor to his pulpit after he had been wrongfully dispossessed by part of his congregation).

As for the executive branch, President George Washington publicly prayed at his inaugural address in 1796, offering ‘fervent supplications to that Almighty Being who rules over the universe, who presides in the councils of nations, and whose providential aids can supply every human defect.’³⁰³ Since that first inaugural prayer, formal prayers offered by Christian ministers have been associated with presidential inaugurations.³⁰⁴

America’s grounding in Christianity paved the way for women to petition for rights. After obtaining the right to vote, other laws were enacted to advance women as equal in value and dignity.³⁰⁵

This background gives context for the next section which will discuss the United States laws as they pertain to women regarding: (1) discrimination in the family and (2) violations of bodily integrity.

³⁰³ President George Washington, ‘Washington’s Farewell Address’ (17 September 1796), reprinted in James D Richardson (ed) *A Compilation of the Messages and Papers of the Presidents* (United States Government Printing Office, 1896) vol 1, 213-34; see also Epstein (n 298) 2109.

³⁰⁴ Epstein (n 298) 2106.

³⁰⁵ In 1920, American women were given the right to vote with the ratification of the 19th Amendment to the *United States Constitution*. In 1961, the President’s Commission on the Status of Women (‘PCSW’) was established by President John F Kennedy, chaired by Eleanor Roosevelt to expose sex discrimination. In 1963, the *Equal Pay Act* was signed. In 1964, Title VII was signed into law to prohibit employment discrimination based on race or sex. In 1972, the Equal Rights Amendment (‘ERA’) was passed by Congress and sent to the states for ratification (it failed by ratified by the states). Boylan, *Women’s Rights in the United States* (n 285) 141, 203-203, 207-208, 241-246.

2 *Family Matters*

(a) *Marriage/child marriage*

In the US, marriage is generally governed by the laws of each State.³⁰⁶ Most states established the minimum age for marriage without parental consent at 18, and with parental consent at 16.³⁰⁷ Every state has exceptions to the minimum age when there is parental consent or judicial approval.³⁰⁸ A few states have passed laws prohibiting forced marriage.³⁰⁹ This may help prevent the parental-consent exception from being misused by immigrant parents who coerce their children into early arranged marriages.³¹⁰

In 2011, a survey of immigrant families was conducted regarding forced marriages in the US. Over 3,000 cases were reported, with victim's families originating from 56 different countries, including: India, Pakistan, Bangladesh, Mexico, the Philippines, Yemen, Afghanistan, and Somalia.³¹¹ Almost half of the reporting victims recounted actual physical violence from their forced marriage.³¹² Over a quarter of these reported death threats.³¹³

³⁰⁶ Occasionally the federal government does create law regarding marriage, eg, in *Obergefell v Hodges* 2584 SCt (2015), 135 the US Supreme Court ruled that same-sex couples had the right to marry pursuant to both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the *United States Constitution*

³⁰⁷ *Report of the working group on the issue of discrimination against women in law and practice on its mission to the United States of America*, UN Doc A/HRC/32/44/add.2 (4 August 2016).

³⁰⁸ Tahiri Justice Center: Forced Marriage Initiative, *Understanding State Statutes on Minimum Marriage Age and Exceptions* (1 July 2019) 1.

³⁰⁹ Tahiri Justice Center, *Forced Marriage in Immigrant Communities in the United States: 2011 National Survey Results* (Report, 2011) 1, n 4.

³¹⁰ *Ibid.*

³¹¹ *Ibid* 2, 8.

³¹² *Ibid* 9.

³¹³ *Ibid.*

Polygamy is illegal in every state in the United States.³¹⁴ Regardless of the illegality, it is still practiced in the US based on certain religious beliefs, especially among Fundamentalist Mormons and Muslims.³¹⁵

(b) Divorce

Women and men have equal rights to initiate divorce in the United States.³¹⁶ Divorce laws are a matter of state law, not federal law.³¹⁷ Since at least the 1940's, women are more likely to initiate divorce than men, initiating about 2/3 of the divorces.³¹⁸ A recent Stanford study explained this phenomenon by a power differential between the spouses and difference in perceived relationship quality.³¹⁹ A woman who experiences a controlling husband or an unhappy marriage may initiate a divorce as a way out of a disappointing marriage.

(c) Adultery

US adultery laws extend before the founding.³²⁰ Most early states criminalised adultery.³²¹ In more recent years, many states have decriminalised adultery.³²² In 2015, twenty states still had adultery on

³¹⁴ Casey E Faucon, 'Marriage Outlaws: Regulating Polygamy in America' (2014) 22 *Duke Journal of Gender Law & Policy* 1, 1-2.

³¹⁵ *Ibid* 2.

³¹⁶ Organisation for Economic Co-operation and Development, *Social Institutions & Gender Index: United States* (2019) 3.

³¹⁷ *Ibid* 3.

³¹⁸ Michael J Rosenfeld, 'Who Wants the Breakup?: Gender and Breakup in Heterosexual Couples' (June 2017) 3.

³¹⁹ *Ibid* 21.

³²⁰ Alyssa Miller, 'Punishing Passion: A Comparative Analysis of Adultery Laws in the United States of America and Taiwan and their Effects on Women' (2018) 41 *Fordham International Law Journal* 425, 428.

³²¹ *Ibid*.

³²² *Ibid* 429-32.

the books as a crime, but rarely is it prosecuted.³²³ Regardless of the decline in the number of criminal statutes prohibiting adultery, adultery may be relevant in the legal system, eg as an injury in family law matters.³²⁴ According to a 2013 Gallup poll, adultery was still viewed as immoral (over 91%).³²⁵ Regardless, moral opposition to adultery has not been successful at deterring it.

3 Violations of Bodily Integrity

According to a 2018 Center for Disease Control ('CDC') report, 43.6% of women in the US (nearly 52.2 million) have experienced some form of sexual violence in their lifetime.³²⁶ Approximately 1 in 6 women (an estimated 19.2 million) have experienced sexual coercion.³²⁷ More than a third of women (approximately 44.3 million) have reported unwanted sexual contact.³²⁸ Over half of female stalking victims were stalked before the age of 25, including 21.2% who reported being stalked before the age of 18.³²⁹

(a) Violence Against Women

The *Violence Against Women Act of 1994* ('VAWA') is a United States federal law.³³⁰ VAWA established the Office on Violence Against

³²³ Ibid 434. (States include Alabama, Arizona, Florida, Georgia, Idaho, Illinois, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New York, North Carolina, Oklahoma, Rhode Island, South Carolina, Utah, Virginia and Wisconsin).

³²⁴ Ibid 430-31.

³²⁵ Ibid 435.

³²⁶ Center for Disease Control, *National Intimate Partner and Sexual Violence Survey: 2015 Data Brief-Updated Release* (Report, November 2018) 2.

³²⁷ Ibid.

³²⁸ Ibid.

³²⁹ Ibid 6.

³³⁰ Title IV, § 40001-40703 of the *Violent Crime Control and Law Enforcement Act*, HR 3355, signed as Pub L No 103-322 by President Bill Clinton on September 13, 1994 (codified in part at 42 USC §§ 13701-14040).

Women ('OVW') within the Department of Justice ('DOJ').³³¹ OVW administers assistance to communities across the country that are developing policies aimed at ending domestic violence, dating violence, sexual assault, and stalking.³³² As of 2019, VAWA was expired.³³³

(b) Domestic Violence

According to a 2015 CDC's National Intimate Partner and Sexual Violence Survey, over one in three women (43.6 million) experienced sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime.³³⁴ Most women were under 25 when they first experienced such victimisation (71% or nearly 31 million), 25.8% were under 18.³³⁵

Domestic laws vary from state to state, including the definition of domestic abuse, when mandatory reporting is required and police arrest policies.³³⁶ Most states have adopted *preferred* arrest policies that require police to either arrest one or both parties at the scene, or justify why an arrest is not made.³³⁷ Some states have *mandatory* arrest policies requiring that an officer make an arrest if the domestic violence meets certain criteria.³³⁸

(c) Rape

³³¹ US Department of Justice Office on Violence Against Women, 'About the Office' (Web Page, 25 January 2021).

³³² Ibid.

³³³ Madison Hartman, 'Employment-Based Legal and Policy Solutions for Female Victims of Intimate Partner Violence' (2019) 31 *Health Lawyer* 17, 25.

³³⁴ National Intimate Partner and Sexual Violence Survey (n 327) 7.

³³⁵ Ibid 10.

³³⁶ 'State Domestic Violence Laws', *FindLaw* (Web Page, 23 November 2018).

³³⁷ Ibid.

³³⁸ Ibid.

Sexual assault is a significant problem in the United States. It is defined by the DOJ as ‘any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.’³³⁹ Anyone can experience sexual violence, but most victims are female; the person responsible for the violence is typically male and usually someone known to the victim.³⁴⁰

According to a 2018 CDC report, 1 in 5 women experienced rape or attempted rape during her lifetime.³⁴¹ Approximately 81.3% of female victims reported the age of their first rape or attempted rape was before the age 25.³⁴² Those under the age of 18 was 43%.³⁴³ And those between 11 and 17 was 30.5%.³⁴⁴

(d) Female genital mutilation

Female genital mutilation, or cutting the labia majora, labia minor, or clitoris of a girl under the age of 18, is a federal crime in the US and punishable for up to 5 years in prison.³⁴⁵ In 1996, the US Congress passed the law and at least 23 states have passed FGM laws.³⁴⁶ In 2013, the law was updated to make it illegal for a person to knowingly send a family member to another country for FGM.³⁴⁷

³³⁹ US Department of Justice Office on Violence Against Women, ‘What is Sexual Assault?’ (Web Page).

³⁴⁰ Centers for Disease Control and Prevention, ‘Sexual Violence’ (Web Page, 5 February 2021).

³⁴¹ National Intimate Partner and Sexual Violence Survey (n 327) 2.

³⁴² *Ibid* 4.

³⁴³ *Ibid*.

³⁴⁴ *Ibid*.

³⁴⁵ 18 USCS § 116.

³⁴⁶ Mark Mather and Charlotte Feldman-Jacobs, ‘Women and Girls at Risk of Female Genital Mutilation/Cutting in the United States’, *Population Reference Bureau* (Web Page, 5 February 5, 2016).

³⁴⁷ *Ibid*.

A CDC report published in 2016, revealed that approximately 513,000 women and girls in the US were at risk for FGM in 2012.³⁴⁸ This was three times higher than an earlier estimate based on 1990 data; the risk for girls under the age of 18 was four times as high.³⁴⁹ The increase was entirely the result of fast growth in the number of US immigrants from FGM practicing countries.³⁵⁰ They did not estimate the number of women and girls who actually suffered the procedure.³⁵¹ FGM violates several human rights principles and is associated with a wide variety of physical, sexual, and psychological/emotional complications, both immediate and long term.³⁵²

4 *Extraction*

Comparatively speaking, laws in the US offer women greater protection from invidious discrimination and violence, than Saudi Arabia, India or China. Child marriages and FGM are due to an influx of immigrants bringing their cultural traditions. While discrimination and violence against women exists, the legal remedies in the US offer better protection and enforcement than in the other three countries. Biblical Christian principles undergird the foundation of the American system of government and laws. This is key to understanding why the US offers more protection for women against discrimination and violence. The final section of this article demonstrates how the biblical Christian worldview offers the best hope for women to end invidious discrimination and violence.

³⁴⁸ Howard Goldberg et al, 'Female Genital Mutilation/Cutting in the United States: Updated Estimates of Women and Girls at Risk, 2012' (2016) 131(2) *Public Health Reports* 340, 340.

³⁴⁹ Ibid.

³⁵⁰ Ibid.

³⁵¹ Ibid 341.

³⁵² Ibid 2.

III THE BEST HOPE FOR WOMEN

Lord, to whom shall we go? You have the words of eternal life.
We have come to believe and to know that you are the Holy
One of God. —John 6:68-69

The idea of dignity, value and equality for women did not develop in a vacuum. This idea has been nurtured because the ancient problem of invidious discrimination and violence against women has persisted. This article identified the problem of discrimination and violence against women. Part I discussed women's rights in the context of human rights. Part II explored various laws as they relate to women from four different countries, representing four different religious worldviews: Saudi Arabia (Islam), India (Hinduism), China (Atheism), US (Christian). The treatment of women, as viewed through the lens of the laws, varied significantly between the countries. While none of them may seem perfect in the treatment of women, one country stood out as superior than the others in its efforts to achieve better treatment for women. This Part will highlight the results of that comparative religious worldview analysis as viewed through the lens of the law.

UDHR Article 2 announces: '*Everyone* is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'³⁵³ Since everyone necessarily includes women, what is the source for this instinct for universality?

This instinct for the universality of human rights cannot come from Islam. Islam was born in Saudi Arabia. An examination of Saudi laws

³⁵³ UDHR art 2 (emphasis added).

as they pertain to women, family, discrimination and violence against women, expose that Islam does not give the equal treatment of women, but rather treat women as inferior and subservient. Islamic law is based on the Quran and Sharia. It is higher law, as revealed from Allah to the Muslims' Prophet Muhammad. The problem is that Sharia favors men and devalues women. Women must have male guardians, who dictate what they can do. Women are treated unequally in marriage, divorce, child custody, inheritance, adultery, and rape. Men may beat their wives and have sex slaves. None of these are examples of inherent human rights for everyone, certainly not for women.

This instinct for the universality of human rights cannot come from Hinduism. Hinduism is a pluralistic belief system and the basis for India's laws. It has made a theology out of the caste system. Upper castes have more rights than lower castes. Indians prefer sons over daughters. Hinduism has contributed to the inferior value of women as evidenced by child marriages, *purdah*, *sati*, rape, bride-burning, acid attacks, female genital mutilation, etc. There is no evidence of inherent human rights for everyone in a Hindu religious worldview. Thus, it does not offer hope for ending discrimination and violence against women.

This instinct for the universality of human rights cannot come from an atheist worldview like China. An atheistic worldview is anti-supernatural, and therefore, materialistic. It cannot look to a higher law – God's law – as a source for human rights. Without an objective, transcendent basis for equality laws, they must be purely man-made, which are subjective, arbitrary, and subject to change on a whim by those in power. A naturalistic, materialistic worldview values the strong more than the weak (ponder Charles Darwin's "survival of the

fittest”). Therefore, an atheistic worldview must devalue those lacking capacity, competency, or agency. It must devalue the weak, poor, old, uneducated, unborn, disabled, ill and infirm. Like India, China has son-preference – it favors boys over girls. Due to birth limitations, China also has forced abortion (usually baby girls). In addition, China also has a growing human trafficking problem. Despite China’s purported equality laws, the reality is that women are viewed as inferior and less valuable than men. China does not demonstrate inherent human rights for all. Therefore, it cannot offer hope to end discrimination and violence against women.

Admittedly, there are Muslims, Hindus, and atheists who strongly believe and advocate for the equality of all human beings. This is a common global moral understanding. And rightly so. But the irony is that their worldviews, when followed consistently, do not support their advocacy for human rights.

Human rights is the common language of morality in our time. However, human rights are impossible without the transcendent basis for human rights that Christianity offers. The United States was highly influenced by biblical Christian principles at its founding. Its laws, and the progression of laws protecting women from discrimination and violence, demonstrate a view of women that is superior than other worldviews (even if not perfect). In addition, the United States demonstrates a more consistent enforcement of its laws. The Christian worldview is the only worldview that grounds human rights in a sustainable, coherent, and consistent way. An article in *Christianity Today* magazine stated it this way:

It is in Christianity and, more specifically, in the Bible that we find the source of universal human rights. All humans are created

in the image of God – this is the abolitionists’ argument for the dissolution of slavery. All women are created in the image of God – this is the argument of women’s rights advocates for equal pay and voting rights. Children are created in the image of God – this is the argument against child labor. For pro-life advocates, this truth extends even into the womb, as they argue that every fetus is a human being, an image bearer in utero, and therefore is deserving of freedom and life.³⁵⁴

The consistent message of Christian Scripture is that human beings are inherently and universally valuable not because of rationality, agency, capability or anything else, but because human beings are created in the image of God, and He loves them. Though this lesson is simple, it is deeply profound.

The Christian worldview identifies the ultimate source of the human rights problem and a lasting solution. As described in Genesis chapters 1 and 2, while in paradise, God created man and woman in His image.³⁵⁵ Human beings are his image bearers. As such, human beings should reflect the nature of God. God is love, and he commanded human beings to love him and each other.³⁵⁶ This is the essence of human rights, treating one another with love because human beings are his image bearers.

But then came the fall. Sin infected all humanity.

Understanding this creates a context for the real problem underlying human rights violations, and underlying discrimination and violence

³⁵⁴ Lauren Green McAfee and Michael McAfee, ‘The Bible’s Impact on Human Rights: The ideas of human dignity and respect for all didn’t develop in a vacuum’, *Christianity Today* (Web Page, 29 June 2019).

³⁵⁵ Genesis 1:27.

³⁵⁶ I John 4:8; Matthew 22:36-39.

against women. These problems are not external – they are internal. The problem is the human heart, due to the sin nature.

Human efforts alone cannot solve the problem of the human heart, our sin nature. The forces of evil are strong. Human beings need the help of one who is stronger. In the gospel of Luke, Jesus tells a story: ‘When a strong man, fully armed, guards his own house, his possessions are safe. But when someone stronger attacks and overpowers him, he takes away the armor in which the man trusted and divides up his plunder.’³⁵⁷ In this parable, Satan is the strong man, guarding his evil dominion, over people’s naturally evil hearts. However, Jesus is the ‘someone stronger,’ more powerful than Satan, attacking and overpowering him, taking away his defense and possessions. In other words, Jesus can destroy the evil dominion in hearts. His death on the cross provided the way for humanity to be saved from the penalty, power, and eventually the presence of sin. Jesus is the only way to take a wicked heart and make it new.³⁵⁸

Jesus’s death and resurrection provide a way for a new heart, a new life, a life of freedom, freedom from the bondage of the sin nature and evil heart, for those who believe and follow him. After all, Jesus declared: ‘I am the way, the truth and the life. No one comes to the

³⁵⁷ Luke 11:21-11.

³⁵⁸ Ezekiel 11:19 (‘And I will give them one heart, and a new spirit I will put within them. I will remove the heart of stone from their flesh and give them a heart of flesh.’); Jer. 36:26 (‘And I will give you a new heart, and a new spirit I will put within you. And I will remove the heart of stone from your flesh and give you a heart of flesh.’); Jer 31:33 (‘For this is the covenant that I will make with the house of Israel after those days, declares the LORD: I will put my law within them, and I will write it on their hearts. And I will be their God, and they shall be my people.’); Heb 8:10 (‘For this is the covenant that I will make with the house of Israel after those days, declares the Lord: I will put my laws into their minds, and write them on their hearts, and I will be their God, and they shall be my people.’).

Father but through me.³⁵⁹ Apart from Jesus we can do nothing.³⁶⁰ Only through a transformed life in Jesus are human beings able to truly love others. This is the only lasting way to stop invidious discrimination and violence against women.

All human beings have inherent dignity, value and worth because God created us in His image. As image-bearers, women are enormously valuable. As such, women should be treated with equal dignity, value and worth. All people should advocate for laws that reflect this.

IV CONCLUSION

The problem of discrimination and violence against women is undeniable and exists in all countries and all cultures. Laws of Saudi Arabia, India, China and the United States are designed to remedy the inequality toward women. However, in practice, only the laws of the United States deliver the protections women deserve and elevate the status of women to equal men. This article has presented evidence to support the primary reason for why American laws and practices are superior for women, namely that they are derived from a transcendent God and are rooted in biblical Christianity, the dominant worldview of America. Biblical Christianity reveals both the root of the problem (sin in the human heart) and the solution (a new heart through faith in Jesus). From Scripture, we see that women's rights are human rights, such as when Jesus affirmed the humanity of the Samaritan women at the well by caring for her soul and offering her 'living water' (John 4:1-42), and the Apostle Paul stating that 'in Christ there is neither

³⁵⁹ John 14:6.

³⁶⁰ John 15:5.

male nor female' (Galatians 3:28).

The evidence presented demonstrates that laws shaped by a Christian worldview are much better for women than laws shaped by Islam, Hinduism or atheism. Biblical Christianity, therefore, has the best answers for ending invidious discrimination and violence toward women. This evidence further serves to defeat the challenge that somehow Christianity suppresses women. Thus, for purposes of Christian Apologetics, we can point to both the laws and the application of the laws of America that affect women, and the biblical foundation behind those laws, as a demonstration of the superiority of the Christian worldview. In Christ, women are free. And if the Son makes you free, you will be free indeed (John 8:36).