SAVING FACE: ACID ATTACK LAWS AFTER THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

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I. INTRODUCTION

Three years ago, eighteen-year-old Bina Akhter lived in the outskirts of Dhaka, Bangladesh. As an acid attack survivor, she often heard from people in the street, "Why bother going to the zoo when you can see a monkey right here?" The story of her tragic injury begins in the same village where a teenage boy, Dano, had a crush on Bina's cousin, Mukti; Dano's affection, however, was never returned. Offering flowers and expensive necklaces, he sought to win Mukti over. When a messenger informed the suitor that his gifts had been discarded because "Mukti refused to accept flowers from a man she hardly knew," he retaliated. On the night of August 26, 1996, while Bina

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1 See Paromita Vohra, Maryland Public Television, Educational Guide to the Film, A Woman's Place 21 (Maria Nicolo & Talat Shah eds., 1998) (quoting Indian Proverb). See also A Woman's Place (Maryland Public Television broadcast, Mar. 21, 2000).

2 Liz Welch, Facing the World, Ms., June-July 1999, at 34 (detailing the acid attack against Bina and her work as head of an advocacy program for acid victims). There have been several accounts of acid attacks. See generally, Nasreen Huq, A Very Special Journey, The Independent, April 16, 1999, available in 1999 WL 11578181, at 3 (reporting the encounter of a news journalist with Nurun Nahar, an acid attack victim who rejected a suitor on the way to school and subsequently was attacked in Bauphal, Bangladesh); Olumide Lyanda, Domestic Violence Is On a Steep Ascent, Africa News Service, August 11, 1999, available in 1999 WL 22790408, at 2 (discussing the rise of violence against women including acid attacks and efforts made by activist to address violence against women in an international forum); Acid Horrors, The Economist, Jan. 17, 1998, at 35 (discussing the growing number of women being attacked with acid by angry husbands and spurned suitors in Bangladesh, India, and Egypt); Acid-Wielding Attackers Slated to Die, The Edmonton Sun, May 14, 1999, at 77, available in 1999 WL 16533054 (reporting the sentence of a jilted suitor who threw acid on a woman and her new husband, badly burning the faces of both in Bhola, Bangladesh); Meenakshi Ganguly & Farid Hossain, Cowardly Acts of Passion: Women in Bangladesh, Long Targets of Abuse, Now Must Cope With an Especially Brutal Trend--Disfiguring Acid Attacks, Time International, Feb. 1, 1999, available in 1999 WL 7394055 (summarizing the stories of several victims of acid attacks in Bangladesh and India and reporting the failure of law to protect these women). For a pictorial depiction of acid victims, see Martin Adler, Acid Attacks in Bangladesh, (visited Sept. 8, 1999) <http://www.panos.co.uk/news/acid/acid.html> (on file with author); Shafiqul Alam Kiron, Victims of Acid Throwers, (visited Sept. 29, 1999) <http://editing.fr/en/dyn/61843.htm>.


5 Id.
and Mukti slept in the same bed, Dano entered the room to confront Bina’s cousin.\textsuperscript{6} Instinctively, Bina jumped in front of her cousin, who was now awake and standing, when she felt what she thought was boiling water being splashed in her eyes;\textsuperscript{7} however, what Dano threw at her was sulfuric acid that melted her eyes to the sockets and left little of her face. Her nose and lips also disintegrated and one of her ears was severely disfigured.\textsuperscript{8} At the time, she was only fifteen, and her life would be changed forever.

Bina’s attack is neither unique nor even surprising to the members of her village because sulfuric acid is inexpensive, and rejected suitors or angry husbands often use it for its detrimental effects. The caustic acid used in such attacks is common in car batteries and available for as little as fifty cents a liter.\textsuperscript{9} It is sold in car garages by acid dealers and is so strong that it dissolves iron and bores holes in wood.\textsuperscript{10} Thus, the effects of the acid on the human body should be no surprise; it eats away flesh and cartilage and can even cause death in certain instances.\textsuperscript{11} In fact, many victims who survive lose their sight or hearing.\textsuperscript{12}

Other similar incidents reveal that Bina is not alone in suffering acid attacks by rejected suitors who have the ‘if-I-can-not-have-her-no-one-will’ mentality.\textsuperscript{13} It seems that violence against women has escalated in both Bangladesh and India as women exercise newly acquired rights, with men using “violence to oppress them into silence.”\textsuperscript{14} Although the statistics vary on the number of acid attack victims, in Bangladesh alone, approximately 495

\textsuperscript{6} See id.
\textsuperscript{7} See id.
\textsuperscript{8} See Black, supra note 4. The article describes the severity of Bina’s disfigurement, which was so great that she fainted when she first saw herself after the accident and, today, still has great difficulty looking at herself in the mirror. The acid thrower was charged but never arrested. See id. The villagers believe that it is because “he was a member of the Awami League [the political party in power],” which protected him from prosecution. Id.
\textsuperscript{9} See Welch, supra note 2, at 33.
\textsuperscript{10} See id.
\textsuperscript{11} See Chung, supra note 3.
\textsuperscript{12} See id.
\textsuperscript{13} See Ganguly & Hossain, supra note 2. According to one activist with Naripokkoho, a human rights group, “[t]he idea is to damage the face or the vagina, because that will hurt a woman—and her honor the—most.” Id.
\textsuperscript{14} Malladi Subbamma, The Status of Indian Women—Legal and Customary Aspects, in 59 WOMEN IN INDIA: STUDIES IN THIRD WORLD SOCIETIES 93, 94 (Marie Anne Jarochowska ed., 1996) (noting that the atrocities against Asian women have a direct relationship with the consciousness of women, so that as women become more conscious of their rights, they are subject to more violence).
acid attacks have been reported since 1996 according to certain estimates. In fact, acid attacks are not unique to Bangladesh and have been reported in Egypt, England, India, Italy, Jamaica, Malaysia, Nigeria, and Vietnam. Even the United States has seen similar attacks against women, though to a much lesser extent; in one case, the attackers, instead of attacking her with acid, slashed a New York model's face.

Upon hearing Bina's story, many questions immediately come to mind. If this is a growing trend, then why have there been no laws to adequately punish these attackers? If there are laws in place that deal with acid attacks, why have they not been used to punish violators? Is there another approach to limit unjustifiable acid attacks against women? Should these countries be employing restitutary damages to help these women through costly rehabilitative surgeries? Finally, why has the international community failed

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15 See Acid Attacks on Women on the Rise in Bangladesh, THE TIMES OF INDIA, Sept. 20, 2000. According to John Morrison, the Executive Director of the Acid Survivors' Foundation, there were about eighty cases in 1996, 117 cases in 1997, 130 cases in 1998, and 168 cases in 1999. On average, three to five women are attacked every week. See id. In India, the number of acid attacks against women is unknown. According to India's National Crime Records Bureau, the number of women who were the victims of cruelty by husbands or relatives in 1998 was 41,317 or 4.3 percent of all crimes; sexual harassment was 8,122 or .8% of all crimes; the number of dowry deaths was 6,917 or .7% of all crimes, and the number of hurt crimes was 235,513 or 24.3 percent of all crimes. The total number of crimes against women was 131,338, and the total number of crimes against children was 5,788. See National Crime Records Bureau, Crime and Related Information In India During 1998 (visited Oct. 31, 2000) (last modified Dec. 26, 2000) <http://www.ncrbindia.org/division6.htm>. Overall, there has been a 4.7 percent increase in crimes against women in India. See id.

16 See Welch, supra note 2, at 34.

17 See David Doege, Man Gets 38 Years in Acid Attack Case, THE MILWAUKEE J. SENTINEL, November 14, 1998, at B1 (discussing the sentence given to a man who hired a drug addict to throw acid on his ex-girlfriend, who sustained second and third-degree burns on her face, ears, leg, arm, back, feet, and chest); see also Molly Thompson, 25 Years: Woman Sentenced For Throwing Acid, Victim Says Apology Won't Take Scars Away (visited Aug. 25, 1999) <http://www.channel3000.com/news/stories/news-981124-150718.html> (on file with author) (detailing the events which culminated in victim suffering acid attack at her place of employment).

18 See Elizabeth McNeil & Marla Hanson, Slashed Model Marla Hanson Reclaims Her Life, PEOPLE MAGAZINE SPECIAL, Mar. 25, 1999, at 25 (recounting her attack where she was slashed in the face fifteen times with a razor blade).

19 See Black, supra note 4. In one survivor's account, her family had to sell everything it owned in order to pay for medical bills for seven surgeries, amounting to nearly nine thousand dollars. After this enormous investment in time and money, the surgeries were still not complete. See id. Further, Bangladesh has minimal medical resources; currently, it has eight hospital beds for female burn victims and eight plastic surgeons in a country whose population is one hundred and twenty-seven million. See Chung, supra note 3. To remedy this situation, the prime minister of Bangladesh ordered fifty additional beds in November 1999 to meet a
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to respond to the problem by censuring countries that implicitly tolerate acid attacks with weak or unenforced laws?

A close look at the laws of Bangladesh and India reveal that these countries have both outlawed acid attacks and created harsh punishment; however, criminalization has had little effect in Bangladesh and India because many men do not respect the legal rights of a woman once she has rejected an 'appropriate suitor.' In fact, many of the attackers are circumventing custom and positive law when they propose directly to the girl since most marriages in both countries are traditionally arranged by the parents.

A rejected suitor who throws acid does so as an act of revenge for his rejection by the girl or woman, who is often between the ages of eleven and twenty-four. In the context of acid attacks, it has been said that the suitors “usually aim for the face [because it] symbolizes beauty. Taking away beauty takes away the woman’s value.” The effect is to place women in a perpetual state of economic hardship since they are no longer suitable brides for future suitors and live in societies that discriminate against single women in the job market. To further complicate the situation, if these women are able to work independently, they must still overcome the trauma of the community’s unwillingness to hire those suffering from severe disfigurement. Thus, the victims are forced to either depend on their families or live alone as pariahs in the communities, depending on the charities of others.

Violence against women, of course, is not limited to the countries mentioned above or even to acid attacks. In fact, there have also been reports

portion of the demand. See id.

20 See Ganguly & Hossain, supra note 2, at 16. In 1995, Bangladesh passed the Women and Child Repression Control Act, which stipulates the death sentence as the maximum penalty for such assaults. See id.

21 See Welch, supra note 2, at 34.

22 See Stephen Golub, From the Village to the University: Legal Activism in Bangladesh, in MANY ROADS TO JUSTICE 130 (Mary McClymont & Stephen Golub eds., 2000).

23 See Bristi Chowdhury, Surviving Their Faces, OFF OUR BACKS, May 1, 2000, at 4, available in 2000 WL 15948716.

24 Welch, supra note 2, at 33 (quoting Dr. S.L. Sen, a prominent plastic surgeon); see also Chowdhury, supra note 23, at 2.

25 See Chung, supra note 3. In Bangladesh, the average income is about twenty-five dollars a month. See id. Typically, since girls are less valued than boys, it is widely accepted that “marriage is key to a woman’s social and financial survival.” Id. Some people consider an acid attack “worse than a death sentence,” since the victim is left with limited options. Id.; see also Chowdhury, supra note 23, at 2.

26 See Welch, supra note 2, at 33. Acid attack survivors are subject to mocking epithets about their disfigurement and are reduced to virtual recluses in their homes. See id.; see also, Chowdhury, supra note 23, at 2.
of violent attacks and rapes against women during civil wars; female genital
mutilation is a serious problem in African countries; and bride burnings occur in some communities in India. The laws addressing violence against women often fail to adequately solve the problem. Fortunately, feminist groups that have developed in Bangladesh and India help aid victims and campaign for laws to protect women. Considering the vast history and variety of violent acts against women throughout the world, this note will only focus on acid attacks against women in Bangladesh and India.

More specifically, this note will discuss the subject of acid attacks in the context of the common law legal systems of Bangladesh and India. The paper will explore the origins of the crime, the concept of suitorship, the modern societal and legal implications, and the response of the societies, legislatures,

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27 See AMNESTY INTERNATIONAL, Against Their Will: Rape and Sexual Abuse in Custody, AMNESTY ACTION (Jan./Feb. 1992) (stating that "in remote areas under military control, where rape frequently becomes a form of recreation for bored soldiers, all women are vulnerable"); see also Declan Walsh, Burundi Refugees Suffering Mass Rape, THE INDEPENDENT, Sept. 27, 2000, available in 2000 WL 26278463 (reporting that Burundian women who fled civil war in their own country faced widespread rape and violent abuse in neighboring country’s refugee camps);


29 See generally Angela K. Carlson-Whitley, Comment, Dowry Death: A Violation of the Right to Life Under Article Six of the International Covenant on Civil and Political Rights, 17 U. PUGET SOUND L. REV. 637 (1994) (arguing that bride burnings in India should be recognized as a violation of international human rights law). Bride burning involves dousing a bride with kerosene and setting her on fire as a means of punishment, often for not bringing enough dowry. See id.


31 See AVIVA Women’s Groups (visited Oct. 10. 1999) <http://www.aviva.org/asia.htm>. In Bangladesh, there are several women’s advocacy groups such as Naripokkho, National Women Lawyer’s Association, and Women for Women. India also has a large number of women’s groups including Legal Aid and Consultancy Center (LACC), Joint Women’s Programme, Forum Against Oppression of Women, and Gender Equity and Justice; see also Building a Place for Women, THE HINDU, Dec. 20, 1998, available in 1998 WL 22057715 (discussing web sites devoted to Indian women).
and judicial systems of these nations. It will also examine efforts in both
countries to change the current situations as well as the changes the interna-
tional community has sought and what positive results women can expect in
the future.

II. BACKGROUND

According to one feminist legal theorist, feminism is defined as "the range
of committed inquiry and activity dedicated first, to describing women’s
subordination—exploring its nature and extent; ...[and] asking how—through
what mechanisms, and why for what complex and interwoven
reasons—woman continue to occupy that position." Feminists seek to end
the oppression of women in all of its forms. This note will invoke feminist
legal analysis in analyzing the acid attacks against women.

In order to properly understand the motive of acid attacks against women,
it is first necessary to look to the tradition of courtship and marriage in
Bangladesh and India. Specifically, it is necessary to review women’s social
status in Bangladeshi and Indian society vis-a-vis marriage.

A. Marriage in Bangladesh

Beginning with early childhood, girls are trained to fit into the traditional
role of wife and mother. In rural areas, few girls are sent to school and those
who attend school eventually leave in the sixth or seventh grade to assist their
mothers and be trained in household chores. Parents normally arrange
marriages at the age of fourteen or fifteen for their girls. In part, parents
arrange the marriage of their daughter so early because they fear that she will
come into sexual activity, forcibly or not, which would ruin a young woman’s

32 Clare Dalton, Where We Stand: Observations on the Situations of Feminist Legal
Thought, 3 BERKELEY WOMEN’S L.J. 1, 2 (1988-89).
33 See Rounaq Jahan, Bangladesh, in WOMEN IN ASIA 12 (Rounaq Jahan ed., 1980). While
dropping out of school prepares girls for marriage, it does so at the expense of obtaining an
education, while "boys have a greater opportunity to learn." Dorothy Nelson, Address Given
at the Fourth Annual International Law Symposium, 9 WHITTIER L. REV. 393, 394 (1987). See
also Golub, supra note 22, at 127 (noting that three-quarters of the country’s women are
illiterate).
34 See Jahan, supra note 33, at 12.
marriage prospects and honor. Upon marriage, the girl moves to her husband’s household where she must abide by that household’s rules.

In addition to viewing marriage from an economic and cultural perspective, marriages in Bangladesh are important in the context of Islamic law. While there is a tremendous focus on marriage for young women in Bangladesh, the Muslim faith identifies marriage solely as a secular pursuit used for comfort and happiness.

As a part of the agreement to marry, a woman must enter into the betrothal or Khutba, “which is the request by the man for the hand of a certain woman in marriage, and the approach to her, or to her kin, with the view of describing his status, and negotiating with them the subject of the [marriage] contract and their respective demands . . . .” Once the woman accepts the offer, the betrothal is complete, and no other man may approach her with “a view to betrothal.”

B. Marriage in India

Most Indians are either Hindu or Muslim. Regardless of faith, it is socially undesirable for a woman to postpone marriage beyond her late teens or early twenties in India.

According to the Hindu religion, marriage is considered a sacred act, as well as a rite of passage to a better life achieved through “Dharma, Artha, Karma, and Moksha (duty, wealth and purpose, sex, and liberation).” Despite the Hindu Marriage Act of 1955 and the Child Marriage Restraint Act

35 See Golub, supra note 22, at 131.
36 See Jahan, supra note 33, at 12.
37 See Subbamma, supra note 14, at 98.
39 Id.
40 See BARBARA N. RAMUSACK & SHARON SIEVERS, WOMEN IN ASIA: RESTORING WOMEN TO HISTORY 65 (Cheryl Johnson-Odium & Margaret Strobel eds., 1999). This division in religions results in different legal treatment of women based on their religion. See id. at 66. For example, under the “Muslim Women’s (Protection of Rights on Divorce) Act,... Muslim women [are prevented] from utilizing the Indian Penal Code to redress a marital issue.” Id.
42 Subbamma, supra note 14, at 98. See also, PRABHATI MUKHERJEE, HINDU WOMEN: NORMATIVE MODELS 55 (1978) (stating that some marriages were not approved by families so that they could avoid the cost of dowry. Instead, the marriage occurred as a result of “active participation of both boy and girl” with the tacit approval of the girl’s parents.). For a discussion of marriage under Islamic law, see discussion infra Section II.A.
(which prescribes legal age of marriage for women at age 18), often girls as young as fifteen are married with no legal penalty.43 Such encouragement to marry early undermines any goals that women may have for education and economic self sufficiency. Most often, women are encouraged to use their education only to further the "social strata of men who may be likely candidates for marriage."44 Women who attempt to challenge such traditional notions in search of economic and social independence are considered as licentious or arrogant.45 Once Hindu women marry, the "husband is the supreme master of the wife's body, mind, wealth, and even life."46

According to the Center for Women's Development and the Humanistic Institute for Cooperation with Developing Countries (hereinafter CWDS-HIVOS), the:

basic problem seems to be that the girl child or the woman, is seen neither by her relatives nor by herself as an individual, as a citizen of [India] with certain fundamental rights. Rather, she is viewed as an appendage, as property to be treated and disposed of according to the wishes of the owner.47

After they are married, many Indian women become the objects of violence.48 When a local women's assistance organization asked why one Indian woman did not leave a violent marriage, she responded, "I'm earning okay, and I am running the family, and my family is surviving on my income.

43 See Nangia, supra note 41, at 648. There is no Muslim Marriage Act because the government, under the leadership of Jawaharlal Nehru, allowed "Muslims to follow their personal [religious] law in an effort to reconcile the 10 percent Muslim minority that stayed within India after the creation of Pakistan." RAMUSACK & SIEVERS, supra note 40, at 66.

44 Nangia, supra note 41 (citing Rani Jethmalani & Shally Prasad, Internalizing Patriarchy, in KALI'S YUG: EMPOWERMENT, LAW AND DowRY DEATHS 138, 142 (1995)).

45 See id. This is a conclusion made by the Delhi-based Women's Action Research and Legal Action for Women (WARLAW) from recent studies it conducted. See id.

46 Subbamma, supra note 14, at 103.

47 HUMANISTIC INSTITUTION FOR CO-OPERATION WITH DEVELOPING COUNTRIES, NETHERLANDS,WOMEN IN INDIA: REFLECTING ON OUR HISTORY AND SHAPING OUR FUTURE 27 (Jamuna Ramakrishna ed., 1993) [hereinafter Ramakrishna].

48 See Nelson, supra note 33, at 393 (1987) (explaining that an Indian social worker confronted seven bride burnings resulting from disputes over dowry amounts usually demanded by the brides' mother-in-law). See also Barbara Crossette, India Studies 'Accidental' Death of Hindu Wives, N.Y. TIMES, Jan. 15, 1989, at A10 (reporting on the increasing occurrence of dowry deaths and relating them to the devaluation of women in Indian society).
But since he is my husband, I don’t mind if he beats me up or I don’t mind giving my whole money to him."  

Even Indian mythology depicts women as “economically and emotionally dependent on men as wives, mothers, sisters, and daughters . . . Myths that portray women with intelligence, vision, and wisdom simultaneously exhibit the desire of women to be protected and sheltered.” Accordingly, men develop an expectation of women to embody this definition of womanhood, and women struggle to meet these standards.

III. LEGAL BACKGROUND

A. Bangladeshi Law

Conservative and predominantly Muslim Bangladeshi society expects women to conform to stereotypes of submissiveness and obedience. Beginning at an early age, girls are treated like a liability, deserving less than their brothers. They are told that “getting less of everything and not complaining about it is the ideal behaviour of good women.” Once married, a woman must “obey her husband. She should not exhibit her learning nor her talent in conversation before her husband . . . she must never give a retort to her husband . . . She must feel pleasure or pain depending upon the mood of her husband.” Throughout their lives, women are viewed as property and are not “supposed to have opinions,” particularly about who they want to marry. Thus, when a woman declines marriage, she declines the stereotype; and, sometimes her punishment is a lifelong scar to remind her of her transgression.

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49 Ramakrishna, supra note 47, at 3 (citing examples such as this, where women attest to physical abuse by their husbands abound).
50 Nangia, supra note 41, at 647 (citing RANI JETHMALANI, INTRODUCTION TO KALI'S YUG: EMPOWERMENT, LAW AND DowRY DEATHS 13, 14 (1995)).
51 See id.
53 See Jahan, supra note 33, at 12.
54 Id.
55 Malladi Subbamma, WOMEN IN CHANGING SOCIETY 4 (1994) (quoting a verse from Kasi Khandam, a literary work).
56 See Chung, supra note 3.
57 See Shil, supra note 52.
The majority of Bangladeshi women are Muslim, and "their legal status is largely determined by Shari'a (Islamic laws)."\(^{58}\) Shari'a is a body of man-made law reflecting God’s divine revelation, which is subject to different interpretations over time.\(^{59}\) Under Islamic law, women possess three notable rights—the rights to marry, to seek a divorce, and to inherit. Like the women in India, though, the women of Bangladesh rarely take advantage of their legal rights.\(^{60}\) In fact, a woman’s marriage is usually arranged by her father or other male guardian, and she usually consents to the arrangement rather than exercising her right to marry independently.\(^{61}\) Even though the Muslim Family Laws Ordinance of 1961 places many restrictions on the man’s marriage rights; in actuality, men continue to exercise polygamy and initiate divorce.\(^{62}\) A similar disparity exists between a woman’s legal rights and social reality with regards to inheritance.\(^{63}\) Although widows demand their inheritance, it is normally used by their sons.\(^{64}\) In other instances, women give their inheritance to their brothers in order to ensure that their brothers will protect them in case of divorce or widowhood.\(^{65}\) Such practice feeds a "social system, where a woman always needs a male guardian, [and] she can never fully exploit her legal rights."\(^{66}\)

1. Islamic Law

Although Bangladesh’s constitution does not explicitly identify Bangladesh as an Islamic nation, like other states with majority Muslim populations, Bangladesh considers itself to be Islamic.\(^{67}\) Thus, it is important to examine Islamic law on marriage and women’s rights. According to Islamic Law, when there is a question as to the interpretation of the Koran, “it is the duty of the courts to see how the text has been interpreted by the Muslim jurists of

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\(^{58}\) Id.

\(^{59}\) See Vohra, supra note 1, at 17; see also B.R. Verma, Islamic Law-Personal: Being Commentaries on Mohammedan Law (In India, Pakistan and Bangladesh) 15 (6th ed., 1986).

\(^{60}\) See Jahan, supra note 33, at 12.

\(^{61}\) See id.

\(^{62}\) See id.

\(^{63}\) See id.

\(^{64}\) See id.

\(^{65}\) See id.

\(^{66}\) Jahan, supra note 33, at 12-13.

recognized merit and authority..." The jurists may not express rulings that are contrary to the Koran or the teachings of the prophet Mohammad. Thus, the Islamic law system is not "a common law system where judges develop precedent," but a system where judges merely apply the rules articulated by jurists without judicial interpretation.

As Muslim law has developed, many of its rules seem to subordinate women, supposedly in accordance with the teachings of the Koran. For instance, in some schools of Islamic law, men are free to divorce their wives by oral pronouncement, while women must show that their eligibility for divorce by meeting one of the enumerated requirements under the Dissolution of Muslim Marriages Act. Further, although Islamic law allows for a woman to accept the proposal of marriage from her suitor, the law strongly encourages the woman to "entrust the negotiations of her marriage to a wali [guardian] in whom she trusts" because it is only proper, though not obligatory, to obtain the

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68 VERMA, supra note 59, at xii. In addition to its influence in Bangladeshi law, Islamic law was administered in India beginning with the British colonization and has been a subject of great importance for Indian Muslims. See id. at 42. Although the Shari’a is applied only to the extent authorized by certain statutes, and in some instances in a very limited nature, it is important. See id. at 42, 44-45. For a list of statutes incorporating Shari’a rules, see id. at 44-45. Traditions play an integral role in Muslim jurisprudence and continue to have legislative effect through their incorporation in domestic law. See id. at 16.

69 See id. at xii (citing Agha Mohammad Jaffer Bindani v. Koolsoom Beebee, I.L.R. 25 Cal. 9 at 18, 24 (P.C.)). The Koran is a holy book of Islam “believed by Muslims to have been revealed by God to his Prophet Muhammad. There are a number of verses that comment on women’s and men’s position in society and their relationship with each other... the verses are open to minor interpretation and can be used to support arguments for equality for women as well as restrict women’s rights.” Vohra, supra note 1, at 17. See also FARHAD MALEKIAN, THE CONCEPT OF ISLAMIC INTERNATIONAL CRIMINAL LAW, A COMPARATIVE STUDY 30 (1994); see generally Ken Adelman, Islam Unveiled, THE WASHINGTONIAN, November 1999, at 31 (discussing the negative stereotypes associated with Islam).


71 See VERMA, supra note 59, at lvii. The Dissolution of Muslim Marriage Act is domestic Indian law effectuating what the legislators deemed to be the consensus in Islamic jurisprudence. The Dissolution of Muslim Marriage Act provides that a Muslim woman may successfully divorce her husband if she meets certain requirements such as proving (1) that her husband has been absent for period of four years and his location is unknown; (2) a pattern of neglect for two years or more; (3) that the husband has been incarcerated for more than seven years; (4) that the husband has “failed to perform” his marital duties without “reasonable cause” for three years; (5) that the husband was impotent at time of marriage and remains so; (6) insanity of husband for a period of two years; (7) habitual cruel treatment; or (8) that the wife repudiated the marriage upon attaining eighteen years of age or any other reason that is recognized under Muslim law. Id. at lvii-lviii.
guardian’s consent. The right to repudiate marriage belongs only to a minor, or an adult woman who gave her consent as a result of fraud or conversion.

Additionally, if there is physical harm to a person, Islamic law specifies punishment for certain crimes called quesas or “retaliation.” Essentially, quesas calls for punishment of a person “by the same means that he used in harming another person.” In cases where the victim dies, the family may substitute punishment for diyat or “blood money,” as compensation for the victim’s death. In many Muslim countries, however, men who murder their wives have an absolute defense of honor and are acquitted.

B. Indian Law

From as early as 4000 BC, the Indian subcontinent has been home to various civilizations. As a result of different inhabitants, successive dynasties “brought their own cultures, but interfered little with local custom.” This cultural mix is evident in today’s Indian society, which is composed of different religions and ethnic groups. Between 1757 and 1947, India was united under British rule, which led to codification of religious and customary

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72 VERMA, supra note 59, at 81 (citing SYED ALL, MOHAMMEDAN LAW, Vol. 2, 343-44). A wali is usually the woman's father, brother, maternal uncle, or paternal uncle. See Nasir, supra note 38, at 10. See also Subbamma, supra note 14, at 100.

73 See VERMA, supra note 59, at 331, 102.

74 See Spatz, supra note 30, at 599. The five crimes to which quesas applies are “murder, voluntary killing, involuntary killing, intentional physical injury or maiming and unintentional physical injury or maiming.” Id.

75 See Bassiouni, supra note 67, at 203.

76 Spatz, supra note 30, at 599-600. This notion of monetary compensation is based on the following passage from the Koran:

O believers, retaliation is decreed for you in bloodshed: a free man for a free man, a slave for a slave, and a female for a female. He who is pardoned by his aggrieved brother shall be prosecuted according to usage and shall pay him a liberal fine. This is an alleviation from your Lord ...

Id. at 600 (citing KORAN 2: 178 (M. Zayid trans., 1980) (emphasis added)).

77 See Spatz, supra note 30, at 598-99. Despite the fact that this defense exists in almost all Muslim states, its origins are from nineteenth century French Penal Code and not Islamic law. See id. at 600. These laws give safe harbor to men who kill their wives because the women violated the family honor with crimes such as adultery and loss of virginity before marriage. See id.

78 See Flavia Agnes, Legal Strategies for Women's Empowerment: Evolving Feminist Jurisprudence, in VOHRA, supra note 1, at 13. This includes nomadic tribes, Hindu dynasties, Buddhist kings and Mughal emperors. See id.

79 Id.

80 See id.
During the nineteenth century, social reforms addressing the unequal treatment of women began. Examples of such reforms include legislation that outlawed *sati* and legislation that permitted widows to remarry.

In 1947, India became an independent democracy. Three years later, a 500 page constitution was adopted that "attempted to address the aims of universal equality and unity in diversity." The new Indian laws combined "British colonial law, customary law, and modern reform law." Additionally, India sanctioned different laws that were tailored to several communities. For example, India retained the Dissolution of Muslim Marriages Act of 1939, giving Muslim women the right to divorce, and the Hindu Marriage Act of 1955, allowing both men and women to sue for divorce. After adopting many of the laws that existed under English rule, India then began to develop its own laws growing out of its new democracy. In 1971, India created the Committee on the Status of Women, which was tasked with reporting the level of independence and progress attained by women.

### I. Hindu Law

A primary source of law for the Indian Constitution is Hindu law. As discussed in the section above, the Indian constitution reflects the fundamental values of the Indian people, who are primarily Hindu. A secondary source of law is the Hindu Code, a set of statutes created in the 1950's, shortly after the

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81 See id.
82 Id. *Sati* is "the “suicide” of a woman whose husband has died." Id. Legislation that prohibited *sati* was enacted in 1829, and the Widow Remarriage Act was enacted in 1856. See id.
83 See id.
84 Agnes, *supra* note 78, at 13.
85 Id.
86 See id. at 14.
87 Id. In 1974, the Committee published *Towards Equality*, which addressed all of the economic and legal progress that bypassed women. See id.
88 India has two major legal systems based on Hinduism and Islam. Hindu law applies to Hindus in all areas of their lives, while Islamic family law applies to Muslims in the areas of divorce, marriage, and inheritance. See Sampak P. Garg, *Law and Religion: The Divorce Systems of India*, 6 *TULSA J. COMP. & INT’L L.* 1, 5 (1998). In this article, the discussion of Hindu law is a subsection of Indian Law because Hindus comprise an overwhelming majority See id. (citing WORLD ALMANAC BOOKS, *THE WORLD ALMANAC AND BOOK OF FACTS* 773 (Robert Famighetti ed., 1997)).
89 See Garg, *supra* note 88, at 4 (detailing the background of Hindu law vis à vis the Indian Constitution).
end of the British rule.90 Thus, much of the Hindu Code was borrowed from the British empire in order to ensure uniformity of laws.91 What resulted was Anglo-Hindu law modeled after a common law system;92 it required a stare decisis approach to Hindu law in which the Indian Constitution, the Hindu Code, and the courts provide precedents.93

Yet another source of Hindu law is dharmasastra, "a system the Brahmin class founded upon religious perceptions of righteousness."94 Dharmasastra originated in the sixth century B.C., and is considered a valuable resource of Hindu law because it uses both law and religion.95 Hence, many modern attorneys employ dharmasastra for its moral commentaries on law when an issue is not covered by the Hindu Code or judiciary.96

Because Hinduism is the religion of the majority, it has substantial impacts on the legal system.97 Under the law, Indian women, like their Bangladeshi counterparts, do not inherit property because their society believes that men bear a greater financial burden especially to support parents in old age.98 Further, when the husband dies during a marriage, his son may take half of the personal property, leaving his mother and sisters to share the other half.99 Another example of the disparity of treatment between men and women is found in the marriage laws.100 Hinduism allows men unrestricted polygamy while women are commanded to be monogamous.101

IV. CEAFDAW

The Convention of the Elimination of All forms of Discrimination Against Women (hereinafter "CEAFDAW") was organized by the United Nations.
General Assembly in an attempt to recognize the debilitating effect of discrimination against women. By developing CEAFAW, the U.N. General Assembly condemned gender discrimination. The treaty went into effect in 1981, and by 1999, a majority of the U.N. Members had ratified the Convention. In its preamble, CEAFAW states that:

discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers their growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.

CEAFAW is comprised of sixteen substantive articles that target certain areas for governments to focus the elimination of gender discrimination. Article 29 establishes a committee to monitor the progression of the signatory states and provides for dispute resolution and reporting requirements.

Nine years after CEAFAW, in its 34th Session in 1990, the U.N. Commission on the Status of Women passed a resolution entitled Physical Violence Against Detained Women That Is Specific to Their Sex. This resolution was later adopted by the Economic and Social Committee

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103 CEAFAW, supra note 102. See also United Nations Office at Vienna Centre for Social Development and Humanitarian Affairs, Compendium of International Conventions Concerning the Status of Women 19 (1988).

104 See Andrew Byrnes & Jane Connors, Enforcing the Human Rights of Women: A Complaints Procedure For Women's Convention, 21 BROOK. J. INT'L L. 679, 688 (1996). Even though Article 29 is included in CEAFAW, it has been the subject of a large number of reservations and has never been utilized. The only other mechanism for monitoring violations exists under Article 18, which requires States Parties to submit regular reports to the Committee detailing steps taken by States Parties to implement the Convention. See id.

ACID ATTACK LAWS

(ECOSOC) of the General Assembly. Under this resolution, "all Member States of the U.N. [must] submit a report to the Secretary-General on legislative measures taken in their respective countries to protect women in state custody from such violence."  

After the adoption of the resolution, the Commission created a "Draft Declaration on the Elimination of Violence Against Women" in 1992, which was adopted by ECOSOC in 1993; in the same year, the General Assembly adopted the resolution without a vote as the United Nations Declaration on the Elimination of Violence Against Women.  

The Declaration was a welcomed change since it was the United Nations' first attempt to eliminate violence against women. Its preamble affirms that "violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms . . . ." The preamble further states that "violence against women is a manifestation of historically unequal power relations between men and women, which have led to the domination over and discrimination against women by men and to the prevention of the full advancement of women . . . ."

Article 2 of the resolution defines violence against women as "[p]hysical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women . . . ." Article 4 posits that states should condemn violence against

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106 See id.  
111 Id.  
112 Id.  
113 Id.
women and should not employ "custom, tradition or religious consideration" to avoid their duty to end violence against women.\textsuperscript{14} Thus, while the CEAFDAW does not directly address gender-based violence, the Commission and the Committee have addressed the issue of violence against women.

V. ANALYSIS

While some recognition of the equal rights of women in the Indian and Bangladeshi criminal justice systems has decreased certain forms of violence against women, serious discrepancies exist between the ideal standard of legal enforcement and the actual enforcement of laws. Further, existing laws fail to provide adequate means of reparations for victims of acid attacks. This section will examine the current status of laws punishing acid attacks in both of these nations.

A. Bangladesh

"Conservative, predominately Muslim Bangladesh expects women to fit into age-old stereotypes," using acid to scar Bangladeshi women who say no.\textsuperscript{15} The legislature has responded to the spread of acid attacks with the Women and Child Repression Control Act of 1995, which sets the death penalty as the maximum penalty for acid attackers. In an effort to deter acid throwers, the Ministry of Information also created a short film re-enacting an acid attack with a clear message that "men who throw acid can be sentenced to death."\textsuperscript{16} The reality, however, is that "no one has ever been hanged [sic] for acid-throwing since it became a capital offense in 1983."\textsuperscript{17}

With a population in excess of 120 million people, Bangladesh is one of the most densely populated countries in the developing world, has limited resources, and is dependent on foreign aid for its sustenance.\textsuperscript{18} Hence, it has

\textsuperscript{14} Id. at 218. Article 4 is replete with methods for ending gender based violence. Some of these actions include (1) adopting CEAFDAW, (2) exercising due diligence to prevent, investigate, and punish gender based crimes, (3) developing penal, civil, labor and administrative sanctions in domestic legislation, and (4) developing national plans of action promoted to protect women. See id.

\textsuperscript{15} Shil, supra note 52.

\textsuperscript{16} Chung, supra note 3, at 11.

\textsuperscript{17} Id. According to Chung's report, in 1998, 87 cases were filed, with just fourteen men being sentenced to life in prison. There were one hundred forty-five incidents reported. See id.

\textsuperscript{18} See Reza Quazi-Ul Hoque, Social Values Through Litigation: The Case of Bangladesh, in EDUCATING FOR JUSTICE: SOCIAL VALUES AND LEGAL EDUCATION 218, 218 (Jeremy Cooper & Louise G. Trubek eds., 1997).
a minimum number of attorneys, and many attorneys who could devote their efforts to social concerns, including acid attacks, emigrate from Bangladesh once they complete law school.\textsuperscript{119} Frequently, during times of political unrest, Bangladesh has suspended its Constitution, thereby making public interest litigation difficult. Also, until recently, Bangladesh imposed a strict standing doctrine, known as \textit{locus standi}, under which “only a person with sufficient interest in the outcome of the case could bring the action.”\textsuperscript{120} This doctrine precluded many women from asserting claims against the government for failure to enforce the acid throwing criminal laws.

However, the Appellate Division of the Supreme Court of Bangladesh cleared this hurdle when it “agreed to allow a petition to be heard for the first time on a representative basis, on behalf of one million people . . . ,” in one of Bangladesh’s districts.\textsuperscript{121} It is now possible for women survivors to form a class and sue the government for failure to uphold their constitutional right to protection from acid attacks.

In a 1974 case, \textit{Kazi Makhlesur Rahman v. Bangladesh}, dealing with a dispute over an international treaty between Bangladesh and India, the Court articulated two fundamental principles of \textit{locus standi}:

\begin{enumerate}
\item When there is a threat to a fundamental right guaranteed through the Constitution to the citizen then any one of them can invoke the jurisdiction under Article 102 to the Constitution and any citizen can be a petitioner; and
\item If a constitutional issue of grave importance is raised, any citizen qualifies himself to be a person aggrieved and can be a petitioner.\textsuperscript{122}
\end{enumerate}

The court’s holding is important because it reinforces, and perhaps expands, the citizen’s constitutional rights under Article 44. Under the title of “Fundamental Rights,” Article 44 guarantees the right of aggrieved parties to adjudication.\textsuperscript{123} Thus, the court in \textit{Kazi Makhlesur} stands for the proposition that the definition of ‘aggrieved party’ can include any citizen, who includes

\begin{footnotes}
\footnotetext[119]{See id.}
\footnotetext[120]{Id. at 219.}
\footnotetext[121]{Id. (referring to \textit{Dr. Mohiuddin Farooque v. Bangladesh}, Civil Appeal No. 24/19995. The case involved a suit against the government because of a substantial environmental project on flood control that threatened the lives of a million people and to turn the district into a barren land. There, the named plaintiff claimed to represent the poor as Secretary General of an environmental group, but the High Court rejected the plaintiff’s petition because he did not satisfy the test of \textit{locus standi}.)}
\footnotetext[122]{See id. at 220-21 (referring to the holding in \textit{Kazi Mukhesur Rahman v. Bangladesh}, 26 D.L.R. 1974 SC 44). Author also notes that there are other means outside the Bangladeshi constitution to assert actions in the representative capacity.}
\footnotetext[123]{Bangladesh CONST., art. 44(1).}
\end{footnotes}
a citizen who is not an actual injured party, when there is a grave constitutional issue.

Many who propose broadening the scope of *locus standi* argue that:

[i]t could have never been the intention of the framers of the Constitution to outclass [the disenfranchised] . . . In such harrowing conditions of our people in general of socially conscious and public-spirited persons are not allowed to approach the court on behalf of the public . . . [the people's right to enforcement] will be frustrated.\(^\text{124}\)

Therefore, supporters of an even broader scope assert that the result of restrictive constructions of *locus standi* is that the wrong done by the government escapes judicial scrutiny and accountability for failing to meet its statutory obligations.

Apparently, the Supreme Court agreed with the Plaintiffs in *Dr. Mohiuddin Farooque v. Bangladesh*, for it ruled that the plaintiff's attorney sufficiently satisfied the standards set forth under the doctrine of *locus standi*. In its opinion, the court stated that the "[C]onstitution envisages a socialist society free from all kinds of exploitation . . . [and] contemplates a society based on securing all possible benefits to its people, namely, democratic, social, political, and equality of justice in accordance with the law."\(^\text{125}\)

Despite the opening up of the court's doors to a more expansive group of possible litigants, the court has recognized some limitations on who may bring a cause of action. Showing that liberation from *locus standi* was not total, the court acknowledged that a barrier of sufficient interest\(^\text{126}\) remained under

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\(^\text{125}\) Id. at 225 (quoting Latifur Rahman, J.).

\(^\text{126}\) Id. at 227. "Sufficient interest" was further explained in seven principals by Justice Mustafa Kamal in *Kazi Mukhlesur*, 26 D.L.R. 1974 SC 44:

(1) the High Court Division does not suffer from any lack of jurisdiction under Article 102 to hear a person; (2) The High Court division will grant *locus standi* to a person who agitates a question affecting a constitutional issue of grave importance, posing a threat to his fundamental rights which pervade and extend to the entire territory of Bangladesh; (3) If a fundamental right of the applicant is involved, the impugned matter need not affect a purely personal right of the applicant touching him alone. It is enough that he shares that right in common with others; (4) in interpreting the words 'any person aggrieved,' consideration of 'Fundamental Rights' in Part III of the Constitution is a relevant one; (5) it is the competency of the person to claim a hearing which is at the heart of the interpretation of the words 'any person
which the plaintiff who espouses an "individual cause" must prove his or her affected interests. But, more latitude is given to the plaintiff if she asserts a cause of action for a public wrong or injury because the requirement of being "personally affected" vanishes.

Because the notion of the general counsel suing on behalf of the aggrieved party passed muster in Dr. Mohiuddin Farooque v. Bangladesh, the advocates supporting the acid attack survivors may become a class of plaintiffs who, presumably, could sue the Bangladeshi government as the 'aggrieved parties.'

In addition to Article 44 and the Women and Child Repression Act, acid attack survivors have other constitutional avenues to vindicate their suffering. Under Part III of the Constitution, Article 27 posits that "all citizens are equal before the law and entitled to equal protection of law." Article 31 provides that citizens have a right to "enjoy the protection of the law and to be treated in accordance with law." Along those lines, Article 31 also "guarantee[s] that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with the law."

In addition to the obstacle of locus standi, many female plaintiffs avoid adjudication because of the lengthy judicial process and inability to obtain adequate counsel. Between 1995 and February 1999, there were only ten 'acid attack' convictions. Adding insult to injury, acid attackers were typically released on bail while the case was before the appellate courts, and often, victims were harassed into dropping the charges. The judicial process is also overwhelming to victims who often "find court appearances traumatic." Further, defense lawyers frequently blame the victims by depicting them as "flirts who drove the assailants to an extreme form of revenge."

aggrieved'"; (6) it is a question of exercise of discretion by the High Court Division as to whether it will treat that person as a person aggrieved; and (7) The High Court Division will exercise that jurisdiction upon due consideration of the facts and circumstances of each case.

Id. at 227-28.
See id.
See id. at 229.
BANGLADESH CONST., art. 27.
BANGLADESH CONST., art. 31.
Hoque, supra note 118, at 228-29.
See Ganguly & Hossain, supra note 2.
See id.
See id.
Id.
Ganguly & Hossain, supra note 2.
B. India

Currently, many women's groups consider the Indian Constitution "a revolutionary document" because "it envisions an equitable society quite removed from the stratifications of traditional society," yet, many still see only an unrealized vision. According to the Indian Constitution, men and women are equal, but the challenge in India is that the Constitution is a "radical departure from the inherited social system and the inherited cultural values." Women often do not see themselves as citizens; instead, they see themselves strictly as wives, daughters, and mothers, and as followers of particular faiths. Further, while India seems to pass laws that target crimes pertaining to violence against women, the laws are ineffective partly because the government fails to enforce them and partly because the society is unable to accept the radical ideas embodied in these laws.

Through the Indian Constitution and progressive legislation, women's legal status has been fortified; however, the impact of Indian law has been diminished as a result of "society's opposition to the practice of some of the laws and women's lack of awareness of their legal rights." The principles embodied in the Constitution's preamble arguably support complete equality of treatment among citizens regardless of gender. Further, the Indian Constitution's Article 14 is devoted to the subject of equality. Similar to the U.S. Constitution, Article 14 of the Indian Constitution guarantees "equality before the law" and "equal protections of the laws."

In addition, Indian courts have slowly worked to qualify the meaning of Article 14 equality in a number of cases. In State of West Bengal v. Anwar Ali,

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137 Ramakrishna, supra note 47, at 6-7.
138 See id.
139 Id. at 8.
140 See id.
141 See Ramakrishna, supra note 47, at 17.
142 See Jahan, supra note 33, at 8 (explaining the legal status of women in India).
143 Id. "Many men, used to the presence of submissive wives, daughters and sisters, have been resorting to violence to oppress them into silence." Subbamma, supra note 14, at 94.
144 See INDIA CONST. See also RATNA G. REVANKAR, THE INDIAN CONSTITUTION: A CASE STUDY OF BACKWARD CLASSES 44 (1970).
145 See REVANKAR, supra note 144, at 44. Interestingly, the Indian constitution contains influence from both the American and French Constitutions adjusted to address issues unique to a newly formed government. The president, for example, has a number of emergency powers which include the power to suspend parts of the constitution, including the portions of the constitution that guarantees fundamental rights to citizens. See PHILLIPS' TALBOT, INDIA IN THE 1980'S 14-15 (Foreign Policy Association, Headline Series No. 262, 1983).
the court posited that even though "the same rule must exist for all in similar circumstances," that "does not mean that every law must have universal application for all persons who are not by nature, attainment, or circumstance in the same position."\textsuperscript{146} Therefore, some judges have defined Article 14 to mean that the Article prohibits "the unequal treatment of persons similarly situated."\textsuperscript{147}

In addition to Article 14, Article 15 of the Constitution provides that the state shall not discriminate against any citizens on the basis of religion, race, or gender.\textsuperscript{148} Further, this Article states that "Nothing in this article . . . shall prevent the State from making any special provision for the advancement of any socially and educationally \textit{backward classes} of citizens or for the Scheduled castes and the Scheduled Tribes."\textsuperscript{149} Some scholars argue that such a reservation for 'backward classes' is itself discrimination.\textsuperscript{150} Further, since the constitution fails to define the term 'backward classes,' the term’s vagueness enables the states to employ discretionary power on classifying communities as 'backwards' or 'forwards.'\textsuperscript{151} However, once a closer look is taken, clause four is consistent with the Resolution of the Constituent Assembly, which provides that "adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes."\textsuperscript{152} Thus, although the Indian Constitution has ample provisions for the protection of women, its effectiveness has been diluted because of culture, religion, and tradition.

Yet, with its definition of legal rights such as the right to possess personal property, the Indian government perpetuates an economic discrimination that prevents women from achieving economic independence. For example, India’s laws on ownership of both real and personal property result in women maintaining little control over "land use, retention, and sale."\textsuperscript{153} Therefore,


\textsuperscript{147} Id. (citing Kishan Singh v. State of Rajasthan, 42 A.P.R. para. 3 1955 P.S.C. 797 (Venkalarama Ayyar, J.)).

\textsuperscript{148} See \textit{INDIA CONST.}, art. 15.

\textsuperscript{149} See \textit{INDIAN CONST.} art. 15 (emphasis added).

\textsuperscript{150} See REVANKAR, supra note 144, at 49.

\textsuperscript{151} See id.

\textsuperscript{152} Id. at 49-50 (quoting Constituent Assembly Debates, Vol. 1, No.5, Dec. 13, 1946, at 57).

\textsuperscript{153} U.S. DEPT. OF STATE, \textit{COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES} 1992, 1144. Inheritance laws prohibit women from heading households and inheriting ancestral property, and only allows women to inherit personal property through testation. See Spatz, supra note 30, at 615-16; Subbamma, supra note 14, at 122.
changes in such Indian laws could be an effective first step towards financially empowering women.

Another way to help improve reinforcement is to ensure that women are aware of their rights. Each country should provide widely disseminated, understandable legal literature, written in local languages, on laws relating to acid attacks and the best ways to minimize the resulting harm.154 This would help to destroy the myth that "if men and women are unequal in society, that they cannot be equal in court."155

A challenge many women face involves their inability to intervene at the judicial level, particularly with the criminal legal system.156 One reason for this is lack of criminal lawyers who appreciate a 'feminist perspective."157 Often, public prosecutors handle cases involving violence against women; while they may argue a case for the victim, they show little interest or concern. Even when the judicial system favors the woman plaintiff, she must still confront political leaders who circumscribe women's rights in the name of religion.158 Thus, the legislative goals aimed at eradicating the violence against women are never realized.159

C. CEAFDAW

CEAFDAW makes no specific mention of violence against women.160 The Committee on the Elimination of Discrimination Against Women defends the omission and avers that Article 1 of the convention addresses gender based

154 See Ramakrishna, supra note 47, at 17.
155 Id. The problem in many rural areas is that "family courts have given an illusion that lawyers are not necessary... If a woman has to argue her own case without even knowing the law, and the judges already have an ingrained social bias against women, there is no way [women] can win. Family courts provide social workers who also do not know the law.... Lawyers may not be necessary but that does not mean that legal awareness is not necessary." Id.
156 Id. at 18.
157 See id.
158 For examples of the Indian judicial system working against women plaintiffs, see RAMUSACK & SIEVERS, supra note 40, at 66, 72 (detailing the case of Shah Bano, a "Muslim woman who sued for support from her former husband under the Indian Penal Code... [and] received a positive verdict from a Hindu Judge [which triggered a proposed bill that]... essentially prevents Muslim women from utilizing the Indian Penal Code..." for disputes relating to marriage issues. Id. at 66).
159 See Ramakrishna, supra note 47, at 18.
violence. Article 1 defines the meaning of discrimination within CEAFDWA as:

any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights or fundamental freedoms in the political, social, cultural, civil and any other field.

However, such an averment is without substance since it is not explicitly expressed. Nonetheless, a reading that supports the eradication of violence is evident when reviewing several articles of CEAFDWA together.

In addition to Article 1 of CEAFDWA, Articles 2 and 16 can also be construed to condemn violence against women and obligate the state parties to act. Article 2 provides that the signatory members of the U.N. should (1) "Embody the principle of the equality of men and women in their constitutions" and legislation; (2) adopt appropriate legislative measures and sanctions prohibiting discrimination against women; (3) establish legal protection for women equivalent to that accorded to men and ensure through competent tribunals that women are protected; (4) refrain from discrimination by public institutions and authorities; (5) take all appropriate measures to eliminate discrimination; and (6) "repeal all national penal provisions which constitute discrimination against women."

Article 16 purports to eliminate discrimination against women in all matters relating to marriage and family. Specifically, this part of the treaty asserts that women should have the "same right [as men] to enter into marriage [and] ... [t]he same right freely to choose a spouse and to enter into marriage only with their free and full consent." However, both Articles 2 and 16, which address equality of family life, have encountered great opposition.

161 See Goldberg, supra note 108, at 580.
162 See CEAFDWA, supra note 102, at art. 1.
163 See id.
164 Id. at art. 2(a).
165 See id. at art. 2(b).
166 See id. at art. 2(c).
167 See id. at art. 2(f).
168 CEAFDWA, supra note 102, at art. 2(g).
169 Id.
170 See Deen, supra note 102; see generally Rebecca J. Cook, Reservations to the Convention
While these two articles could be interpreted as addressing concerns regarding the elimination of violence against women, CEAFDAW’s weakness is in its lack of an enforcement mechanism. Throughout the drafting of CEAFDAW “there was little discussion of whether it should provide for a procedure under which individuals or States Parties could lodge [a complaint] with the body responsible for monitoring implementation [and the violations] of the Convention ...” Despite demands for an enforcement mechanism from many signatory states, no procedure outside of Article 29 was implemented.

In addition to the omission of an enforcement procedure in CEAFDAW, the greatest weakness of the Declaration for the Elimination of Violence Against Women is “that the parties may have lacked the requisite intent to make the document binding.” Unlike CEAFDAW, none of the states, including Bangladesh and India, voted to adopt the Elimination of Violence Against Women. Therefore, while the Elimination of Violence Against Women would be a more appropriate treaty to use in a discussion of acid attacks, CEAFDAW may be more applicable since both Bangladesh and India voted and accepted it as a treaty.

Forty-four of the one hundred and sixty-one countries that ratified CEAFDAW stated that they “will not implement certain provisions of the treaty on political, constitutional, cultural, or religious grounds.” In particular, some countries expressed reservations concerning Article 2, which

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on the Elimination of All Forms of Discrimination Against Women, 30 VA. J. INT’L L. 643 (1990) (explaining each article of the Convention and detailing the reservations made to it).

171 See Bymes & Connors, supra note 104, at 684-85.


174 Deen, supra note 102. Among these countries is India. Other countries include Algeria, Argentina, Australia, Austria, Belgium, Brazil, China, Canadian, Egypt, France, Germany, Italy, Malaysia, New Zealand, the Netherlands, South Korea, Singapore, Spain, United Kingdom and Venezuela. See id.
requires a contractual obligation with the United Nations "to take all necessary measures to ensure equality of women."\textsuperscript{175}

In response to the criticism, Britain, speaking on behalf of the European Union, stated that "reservations are not permitted and should be withdrawn."\textsuperscript{176}

If reservations are allowed, they should be expressed narrowly in compliance with international treaty law.\textsuperscript{177}

Every state member of the U.N., however, maintains the right to govern itself without interference from other states. Under Article 2, paragraph 7 of the United Nations Charter, "[n]othing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . . ."\textsuperscript{178} Thus, while CEAFDAW is arguably binding on both India and Bangladesh, the idea of each country's sovereign equality cuts against the convention's status as binding international law.\textsuperscript{179}

\textsuperscript{175} Id. The Islamic countries said they are only willing to comply with Article 2 provided it does not undermine Islamic Shari'a Laws. See id.

\textsuperscript{176} See id.

\textsuperscript{177} See id.


VI. USING THE LAW TO PROTECT THE VICTIMS

When analyzing the laws of different countries, particularly Asian states, it is vital to acknowledge the tradition and culture of that country and to avoid imposing a Westernized viewpoint. Thus, this note will propose legal remedies and laws that are amenable to the cultural and religious standards of Bangladesh and India.

One method of lessening the frequency of acid attacks is to make the local laws more stringent so that it is harder for purchasers to acquire acid. Since acid is easily available for the equivalent of fifty cents at hardware stores, tanneries, and battery repair shops, many men can afford enough acid to

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180 This article will only employ a legal approach to the problem of acid attacks recognizing that some criticize this approach since any eradication of gender oppression must originate with a change in cultural norms. See, e.g., Subbamma, supra note 14, at 96 (noting that a legal approach to violence against women “forget[s] that it is in the homes that children are reared and taught ethical forms of conduct.” Id. at 96). This article does not suggest that the legal approach to the problem of acid attacks is the only approach.

181 See generally Judith A. Resnik, Dependent Sovereigns: Indian Tribes, States and the Federal Courts, 56 U. CHI. L. REV. 671, 727 (1989) (recognizing the need for sensitivity to the dangers of imposing her own cultural values onto the membership rules chosen by the American Indian tribe); Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 STAN. L. REV. 581, 594 (arguing that the struggle for the eradication of gender oppression must include the social historical circumstances of women from the different cultural backgrounds). But see CATHERINE A. MACKINNON, FEMINISM UNMODIFIED 67-69 (Harvard University Press, 1987) (arguing that equality for women should be universal and not be limited by cultural boundaries). In her book, MacKinnon states:

[I]f you think equality means what the white man has made it mean—being the same as him—it definitely is a white idea. But the aspiration of women to be no less than men—not to be punished where a man is glorified, not to be considered damaged or disloyal where a man is rewarded or left in peace... is an aspiration indigenous to women across place and across time. Id. at 68; see also Pardee, supra note 173, at 511 (stating “cultural autonomy is essential for national sovereignty but countries resistant to universal human rights have often used cultural relativism as a shield against compliance.”).

182 Though not considered in this discussion, it should be noted that some feminist scholars attempt to rationalize the religion by deconstructing the Qur’an. In discussions regarding oppressive doctrines of the religion, such as the right of a husband to beat his wife when she is not obedient, Muslim women try to rationalize by deconstructing the words in the Koran to find hidden meanings rather than condemning the entire religion. RAMUSACK & SIEVERS, supra note 40, at 74 (quoting Naila Kabeer, The Quest for National Identity: Women, Islam and the State in Bangladesh, 37 FEMINIST REV. 38, 44 (Spring 1991)). However, it has also been proposed that Bangladesh be a more secular state because “secular states allow more negotiable frameworks for the politics of gender than imaginable in states where legitimacy is ultimately derived from religious texts which codify the principle of gender equality.” See id. In fact, the first president of Bangladesh, Sheikh Mujib, was “firmly committed to secularism.” Id.
permanently disfigure women. Currenty, Bangladesh has proposed a law that would impute liability to those who sell acid to acid throwers. This law has not been passed, however, and history reveals that legislative efforts have done little to deter or punish acid throwing.

Additionally, these countries must seriously address widespread corruption in their enforcement agencies. Though Bangladesh sets the death penalty as punishment for acid attacks, it is not seriously enforced and, thus, is ineffective in curbing acid attacks. Since 1983, when the death penalty was set as a punishment for this crime and after hundreds of women have suffered from these attacks, there have only been four acid attackers sentenced to death.

Further, victims should be allowed to seek compensatory and punitive damages from their attackers. Both Bangladesh and India should enact legislation aimed at protecting the rights of victims of gender motivated violence. A model could be the United States’ Violence Against Women Act, which states as its cause of action:

A person . . . who commits a crime of violence motivated by gender and thus deprives another of the right to be free from crimes of violence shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.

Monetary compensation such as diyat under Islamic Law, as discussed earlier, is allowed for intentional killing. The counterpart of diyat is arash, payable because of physical injury or maiming, which could conceivably include acid

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183 See Chung, supra note 3.
184 Id.
185 See Black, supra note 4 (blaming the high number of attacks on the “widespread corruption within the legal system . . . [in which] most men pay off the police or go into hiding for awhile.” Black also states that while Bangladesh does use the death penalty on convicted acid throwers, most men caught are given a life sentence, which amounts to a fourteen-year prison term. See id.)
186 See Four Get Death for Throwing Acid on Bangladesh Newlyweds, NANDOTIMES (visited Aug. 25, 1999) <http://www.nandotimes.com> (retelling the story of an acid attack where the attacker sought revenge on his paramour who had rejected him and had married someone else (also injured in the attack)).
188 See MOHAMED S. EL-AWA, PUNISHMENT IN ISLAMIC LAW: A COMPARATIVE STUDY 71 (1982).
attacks. However, states using *diyat* normally pay a woman victim half the amount given to male victims, despite the fact that such a disparity is not found in the Koran.

It seems logical that these countries should take a more active role in educating the young men who commit these crimes about the emotional and physical effects acid attacks have on women. They should also be educated about the serious punitive measures that will be taken by the local authorities. Further, both men and women should be educated on the medical emergency response needed to minimize the effects of acid. In particular, much of the effect of acid is neutralized with the application of water immediately after the attack. There have been some reported cases where women sustained minimal injuries, if any, when they immediately doused their faces with water.

### A. The International Community

In the international community, there is growing concern that the member states who have ratified the Convention on the Elimination of All Forms of Discriminations against Women are not adopting the treaty in its entirety. Out of the one hundred and sixty-one countries that ratified the Convention, forty-four have said "that they will not implement certain provisions of the treaty on political, constitutional, cultural, or religious grounds." Many of the objections originate from concern over Articles 2 and 16. As established earlier, Article 2 states that the signatory states should adopt measures to eliminate discrimination against women, and Article 16 involves measures to eradicate discrimination in marriage and the family.

The head of the U.N. Committee on the Elimination of Discrimination against Women, Bangladeshi Salma Khan, states that it is problematic when countries have reservations about the Article that guarantees the principle of equality. Many states have placed a greater value in ending racial discrimination rather than gender discrimination, arguing that "discrimination against women is not as grave as other forms of rights violations."

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189 *See* id.
189 *See* id. at 76. The disparity in *diyat* has been attributed to the inheritance laws which allow men to inherit twice the portions of women heirs presumably because men must endure a greater economic burden. *See* BASSIOUNI, *supra* note 67, at 208.
190 *See* id. *supra* note 4.
191 *See* Black, *supra* note 4.
192 *See* Deen, *supra* note 102.
193 *See* id.
194 *See* id.
195 *Byrnes & Connors, supra* note 104, at 687. Note that another explanation for the
Finally, while there is a "wide variety of enforcement mechanism[s] within the U.N. human rights system," \textsuperscript{1} calls have been made to strengthen the enforcement mechanisms of CEAFDAW by allowing women to submit complaints before the Committee on the Elimination of Discrimination Against Women because so many countries have failed to meet their obligations. \textsuperscript{2}

**VII. CONCLUSION**

It is important that the international community does more than provide "formal protection" for women's rights. \textsuperscript{3} The Convention on the Elimination of All Forms of Discrimination Against Women may be used as an effective tool if the state parties begin to take seriously the commitments they have made to the women in their own countries and the women of the other signatory countries.

Many legal scholars, sociologists, and activists often speculate on the reason women are subjected to acid attacks. Sociologists sometimes explain the phenomenon as a "reaction against the new-found independence of women in the subcontinent." \textsuperscript{4} Others attribute these attacks to the "breakdown of an older order, where women were rarely seen . . ." and "less likely to be objects of lust and violence." \textsuperscript{5} Still others suggest that acid attacks are so prevalent in these societies because "most men actually look at women as property" and do not easily accept rejections since they amount to rejections from members of a sub-class. \textsuperscript{6}


\textsuperscript{1} \textit{Id.} at 683. These enforcement mechanisms have been divided into two classes: the Charter-based mechanisms and the treaty-based procedures. \textit{See id.} Included in the Charter-based mechanisms is the Resolution 1503 procedure, thematic working groups and special rapporteurs, country and situation rapportuers, and public debates by human rights proponents. Under the treaty-based procedures, major U.N. treaties include reporting procedures, individual complaint procedures, and interstate complaints and inquiry procedures. \textit{See id.}

\textsuperscript{2} \textit{See id.} at 684 (noting that a complaint procedure would not only put CEAFDAW on equal footing with other human rights treaty, but it will also be more effective in the implementation of rights).

\textsuperscript{3} \textit{Id.} at 682.

\textsuperscript{4} Ganguly & Hossain, \textit{supra} note 2, at 16.

\textsuperscript{5} \textit{Id.}

\textsuperscript{6} \textit{See Chung, supra} note 3.
Once the reasons for the violence are identified, possible solutions may be entertained. Some suggest that governments need to make greater efforts in changing societal attitudes toward women by confronting the biases of the court and criminal justice system. However, such efforts to change negative attitudes about women are unlikely given the strong historical, religious, and traditional components of both Bangladesh and India. The challenge that lies ahead is transforming the ideal into the actual so that women like Bina can realize justice against their acid attackers.