

# DOMESTIC VIOLENCE LAWMAKING IN ASIA: SOME INNOVATIVE TRENDS IN FEMINIST LAWMAKING

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## ABSTRACT:

*Domestic violence lawmaking intersects global human rights norms and domestic women's movements. Domestic violence is both a global and local phenomenon. The World Bank argues that domestic violence accounts for one in five lost years in women aged 15-44. The costs range from direct expenses such as medical care and social services to productivity and labor market costs to the psychological toll imposed by the intergenerational transmission of violence. The international women's movement and the international human rights conventions have confirmed that violence in the home is neither a private issue nor a cultural practice. Domestic violence was placed on the global agenda as a global epidemic largely due to an explosion of activism by women's rights activists. Bolstered by increasing pressure from international women's human rights advocates, domestic movements demanded the governments make domestic violence lawmaking central to good governance. The explosion of lawmaking around the world on domestic violence makes this clear by establishing state accountability for violence*

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*in the home. The positive responsibility of the state inherent in human rights treaties therefore required states to take positive measures to end domestic violence. The concept of state responsibility to include accountability for acts of private individuals is an integral part of the definition of domestic violence as a human rights violation. The concept of state responsibility has expanded to not only direct state action but also a state's systematic failure to act.*

*Despite the weak enforcement of these laws, the law making processes provide women's movements an opportunity to network globally. The transformation of international human rights and transnational idea sharing into domestic violence lawmaking has been defined as one of the most important social movements of our times. Although much more must be done to realize the promise of these laws, countries that are in the process of lawmaking have much to learn from these experiences. In the last decade, many countries in the Asian region have either passed or are in the process of passing national domestic violence laws. Despite the fact that the laws in force are yet to be transformed fully into practice these laws are important benchmarks and integrate some novel elements in domestic violence lawmaking. Although there is little homogeneity in the Asian region in the field of political, economic, social, or cultural development, these laws have the transformative potential to create new standards in an area where women victims of violence are often silenced because of a culture of impunity. The existence of a law provides space for women to claim their right to bodily integrity and security. Many elements of these laws in different parts of Asia are also instructive to other jurisdictions and can resonate between and across the Asian region.*

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## INTRODUCTION

Domestic violence has been acknowledged as one of the most heinous threats against women's security. In 2005, the World Health Organization (WHO) established that violence against women caused more death and disabilities among women aged fifteen to forty-four than cancer, malaria, traffic accidents, and war combined.<sup>2</sup> Despite efforts such as the U.N. Convention on the Elimination of Discrimination against Women (CEDAW) Committee,<sup>3</sup> the United Nations Population Fund (UNFPA) argues that at the turn of the 21st Century violence killed and harmed as many women between the ages of 15 and 44 as Cancer.<sup>4</sup> The Vienna Declaration and Programme of Action on Human Rights has affirmed that gender based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person

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2. THE WORLD HEALTH ORGANIZATION, THE WORLD HEALTH REPORT 2005 11 (2005).

3. The Convention on the Elimination of All Forms of Discrimination Against Women, adopted Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW 1979] was originally adopted in 1979. In 30 articles, the CEDAW describes the definition of discrimination against women and the rights of women and the states responsibility to guarantee those rights. The CEDAW is supplemented by a number of General Recommendations that further detail the content and the use of CEDAW. Up to date, 189 countries, almost 90 percent of the members of the United Nations, have ratified the CEDAW. See Convention on the Elimination of All Forms of Discrimination against Women, UN TREATY COLLECTIONS, [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) (last visited Apr. 17, 2012). The promulgation of CEDAW was the culmination of the efforts of the global women's human rights movement to bring together in a single document a charter of women's rights. Despite its shortcomings, it gives voice to the notion that women's rights are human rights.

4. UNFPA, STATE OF WORLD POPULATION 2005 5 (2005).

and should forthwith be eliminated.<sup>5</sup> Unfortunately, in spite of international commitments, the lives of girls and women around the world are often marked by gendered discriminatory practices. However, domestic violence is now a critical public policy issue of transnational character and showcases how global forces coalesced with local women's groups and human rights movements can place it on national policy agendas.

This article sets out to map some new and emerging developments in lawmaking in several Asian countries. These new laws are the intellectual progeny of the CEDAW, the Declaration on the Elimination of Violence against Women (DEVAW), and the various international conferences and transnational movements that have spawned lawmaking based on international standard setting norms.

Through the prism of these laws, this paper identifies some novel and exciting trends in domestic violence lawmaking that can inform and shape lawmaking in different jurisdictions across the world. Despite existing challenges, the high watermark of these laws provides a blueprint with which to examine the ways that laws can address domestic violence as a human rights violation, identify multiple and intersecting forms of violence, acknowledge certain culturally specific forms of violence, seek to protect a broad category of direct and indirect victims of domestic violence, and create multi-agency responses to domestic violence. An important characteristic of these laws is that they focus on critical interventions as well as punishments.

This examination of select laws in Asia is not a comprehensive analysis; it is an exploration of some innovative elements that were found instructive to the advocacy work of national and regional level non-governmental organizations that the author has worked with in Asia. It discusses the New Zealand Domestic Violence Act of 1995, Malaysia's Domestic Violence Act of 1994, and the Singapore World Charter of 1996, which all came into force in the 1990s. The other laws examined are more recent, coming into force in the last decade. These laws include: Japan's Act on the Prevention of Spousal Violence and Protection Against Women of 2001, Cambodia's Domestic Violence Law of 2003, the Indonesian Law Regarding Elimination of Violence Against Household of 2004, the Lao PDR Law on Women's Development and Protection of 2004, the Pakistan Prevention of Domestic Violence Bill of 2005, the Philippines Republic Act 9262 - The Anti-Violence Against Women Act of 2004, the Sri

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5. World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, U.N. Doc. A/CONF.157/23 (July 12, 1993) [hereinafter *Vienna Declaration*].

Lankan Act to Provide for the Prevention of Any Act of Domestic Violence and for Matters Connected Therewith of 2005, Indian Protection from Domestic Violence Law of 2005, Pakistan's Domestic Violence Law of 2009, Vietnam's Law on Prevention of Domestic Violence of 2007, Nepal's Domestic Violence and Punishment Act of 2009, and the Bangladesh Domestic Violence (Resistance and Protection) Bill of 2010.

This analysis is also limited to an examination of laws on the books. This paper hopes to stimulate the comparative law and policy exchange that is so critical to national lawmaking efforts, and a transformation of these laws into practice. Although there is no homogeneity among the Asian domestic violence movements and discourses, the hope is that an examination of these laws can advance a cross-cultural dialogue to bolster the translation of these laws into action.

In the absence of a national domestic violence law, China's leading women's rights scholars and practitioners are calling for a national domestic violence law, and are using the law making processes of other Asian nations to bolster that call. Concrete anti-domestic violence laws have been drafted by the All China Women's Federation and other advocacy organizations. During the 2011 National People's Congress (NPC) plenary session, it was proposed that an anti-domestic violence law be adopted. The author has been invited to Burma to provide technical support to gender advocates engaged in drafting the first domestic violence law in a Burma that is going through political transition. A comparative examination of the laws in Asia such as this will help to boost the advocacy for laws, such as the draft law on anti-domestic violence in China and the drafting process in Burma, that are still in the incubation stage.

Part I of this paper identifies the multiple forms of domestic violence against women that often masquerade as custom and tradition in Asia. This is followed by an analysis of the local and global movements that were born out of a need to address these heinous crimes and were spawned to a large extent by engagements with transnational and global women's movements. This section explores the international legal framework on domestic violence and cases that have reshaped the landscape of domestic violence lawmaking to ensure state accountability. Part II will follow this analysis by discussing some selected hallmarks in domestic violence lawmaking in Asia. These emerging trends that are discussed include: the broadened definition of what constitutes the domestic realm, domestic violence as a direct and indirect threat to children, some expanded and intersecting categories of violence, gender specific lawmaking, and multi-pronged approaches to addressing domestic violence, which include

the right of a victim to reside in her home and the role of protection officers.

## PART I: EMERGING TRENDS IN DOMESTIC VIOLENCE LAWMAKING AND THE HUMAN RIGHTS MOVEMENT

### A. THE MANY FACES OF DOMESTIC VIOLENCE IN ASIA

The multiple faces of domestic violence are sometimes obscured in the name of culture and custom. Although domestic violence is a global epidemic, it has special significance in Asia, where crimes against women in the name of family honor, acid crimes,<sup>6</sup> kitchen crimes,<sup>7</sup> dowry deaths, and female infanticide are egregious forms of domestic violence. Discrimination and violence against women often starts in childhood and continues into adulthood. This life cycle approach to viewing violence against women addresses some of the harmful customary practices, which range from virginity testing, female foeticide, sex-selective abortion, harmful traditional practices related to menstruation and child birth, polygamy and polyandry, witch hunting, child marriage and forced marriage, marriage of girls to older men, ghost wives, honour killings, widow burning, dowry deaths, dedication of young girls to temples (*devadasi* in India and *deuki* in Nepal), bonded labour, human trafficking, and commercial sexual exploitation of girls and women.

The aforementioned and following forms of gender discrimination affect both women and girls. In terms of child marriage, the *Chaupadi* custom requires women and girl children to leave their homes and live in cowsheds during and after child birth and during menstrual periods.<sup>8</sup> The *Kumari* practice deifies a young girl in Nepal until she reaches puberty.<sup>9</sup> In *Sapana Malla v. Nepal* the Supreme Court of Nepal issued a directive order to ban

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6. Acid throwing is one of the most horrific forms of violence against women. Bangladesh has one of the highest incidents of acid violence against women. Salma Ali, *Addressing Violence Against Women in Bangladesh*, in WELLESLEY CENTERS FOR WOMEN, SPECIAL REPORT: WOMEN LEADING CHANGE 45, 47 (2010), available at <http://www.wcwonline.org/proj/muslimwomen/WomenLeadingChangeWeb.pdf>.

7. Stove burnings or kitchen crimes related to dowry are forms of violence against women that are common in India and Pakistan. Juliette Terzieff, *Pakistan's Fiery Shame: Women Die in Stove Deaths*, WOMEN'S ENEWS, Oct. 27, 2002, <http://www.womensenews.org/story/domestic-violence/021027/pakistans-fiery-shame-women-die-stove-deaths>.

8. Rangita de Silva de Alwis, *Legislative Reform on Selected Issues of Anti-Gender Discrimination and Anti-Domestic Violence: the Impact on Children*, United Nations Children's Fund (UNICEF), Gender, Rights and Civic Engagement Section, Division of Policy and Practice, New York, 2009 (Citing Writ no. 56/058, decided on May 2, 2002).

9. *Id.*

the *Chaupadi* custom.<sup>10</sup> Discriminatory, customary, and traditional practices affecting the health of women and girls constitute heinous forms of violence against women and girls and a serious violation of their human rights.<sup>11</sup>

Not only in Asia, but across the world, the preference for sons results in millions of missing girls.<sup>12</sup> Sex-selective abortions and infanticide or abandonment are means of controlling the birth and development of the female child. A study conducted by Amartya Sen on the 100 million women missing in Asia as a result of discrimination and son preference reinforced this view.<sup>13</sup> In India, China, South Korea, Singapore, and Taiwan where sex ratios are skewed, an overwhelming son preference collides with prenatal sex determination technology.<sup>14</sup> Son preference was the root cause of female infanticide, dowry related deaths, and the malnourishment of the girl child.<sup>15</sup> Thus both implicit and direct violence against women are personal security issues. Furthermore, such son preference manifests itself in discriminatory feeding, dowry, polygamy, devaluation of a woman's education, and lack of freedom of choice in marriage, which are all practices that are often both a continuation of and root cause of domestic violence, affecting both women and children.<sup>16</sup>

Honor killings constitute the murder of women and girls by family members on the grounds that their behavior, whether intentional or not, marred the family's honor and therefore entail the most egregious form of violence in the family.<sup>17</sup> *Swara* is another incarnation of an honor crime. Practiced predominantly in the North-West Frontier Province of Pakistan, *Swara* marriage is a community-sanctioned crime in which a minor girl is sacrificed to the family of a victim as retribution or compensation in a dis-

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10. *Id.*

11. The General Assembly Resolution 52/99, inter alia, reaffirmed that "traditional or customary practices affecting the health of women and girls constitute a definite form of violence against women and girls." G.A. Res. 52/99, U.N. GAOR, 52nd Sess., U.N. Doc. A/Res/52/99, at 3 (Feb. 9, 1998).

12. See generally Barbara R. Hauser, *Born a Eunuch? Harmful Inheritance Practices and Human Rights*, 21 LAW & INEQ. 1.

13. Amartya Sen, *More Than 100 Million Women Are Missing*. N.Y. REV. BOOKS (Dec. 20, 1990), [www.nybooks.com/articles/archives/1990/dec/20/more-than-100-million-women-are-missing](http://www.nybooks.com/articles/archives/1990/dec/20/more-than-100-million-women-are-missing).

14. See *Gendecide: The Worldwide War on Baby Girls*, THE ECONOMIST, March 6, 2010, at 77-80.

15. See generally L.L. Heise et al., *Violence Against Women: the Hidden Health Burden* (World Bank Discussion Paper, No. 255, 1994).

16. Lauren Hersh, *Giving up Harmful Practices, not Culture*, ADVOCATES FOR YOUTH (Fed., 1998), (<http://www.advocatesforyouth.org/publications/521#5>).

17. Adrien K. Wing & Peter P. Nadimi, *Women's Rights in the Muslim World and the Age of Obama*, 20 TRANSNAT'L L. & CONTEMP. PROBS 431, 442.

pute.<sup>18</sup> Acid burning and dowry deaths in Asia are other forms of gender-based violence that affect not only women, but also all children in the family.

## B. LOCAL TO GLOBAL MOVEMENTS ON DOMESTIC VIOLENCE

At a time when local and global events are becoming increasingly intertwined, transnational feminist engagement is often critical to national advocacy and lawmaking. These engagements open up new spaces for lawmaking and help bolster the call for national lawmaking initiatives. Women's transnational networks have played a pivotal role in a global feminist transformation that was catalyzed by a bottom-up engagement with international law. This same engagement led to the transformation of the CEDAW from a standard setting document to an emancipatory tool. Several lawmaking initiatives acknowledge the standard setting role that the CEDAW and transnational exchanges play in drafting national laws.

In introducing the Philippines' domestic violence law Philippines Republic Act of 9262, also known as the Anti-Violence Against Women and Their Children Act of 2004 (Promulgated March 08, 2004), Philippine's Senator Eloisa Estrada<sup>19</sup> acknowledged the value of transnational exchanges when she stated that the law is an "offshoot of several initiatives in other countries and the government's commitment to put an end to domestic abuse, as enshrined in various U.N. declarations, of which the Philippines is a signatory."<sup>20</sup> Senator Estrada's statement echoes a sentiment shared by many Asian women's movements that have been informed by domestic violence lawmaking in other countries and the international human rights framework.

The emergence of the international women's rights regime has had a tremendous impact on social movements locally. The inclusion of domestic violence directly into the United Nations agenda legitimized women's felt needs on the ground by informing local and grassroots movements. As a result of both top-down and bottom-up efforts, stronger local and national move-

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18. See Mariza S. Cianciarulo, *Batterers as Agents of the State: Challenging the Public/Private Distinction in Intimate Partner Violence-Based Asylum Claims*, 35 HARV. J.L. & GENDER 118, 131 n.73.

19. Senator Eloisa Estrada was the Chairperson of the Senate Committee on Women and Family in 2004.

20. See An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes, Rep. Act 9262, (March 08, 2004) (Phil.), available at <http://www.gov.ph/2004/03/08/rep-public-act-no-9262-s-2004/> [hereinafter Rep. Act No. 9262]. See generally ROWENA GUANZON & ARCIE SERCADO, ISSUES AND PROBLEMS IN THE ENFORCEMENT OF THE ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (2008) (on file with author).

ments grew and gained momentum in connection with the emerging global movements. The explosion of activism by global women's rights activists, global conferences, and global conventions helped to place domestic violence on the political agenda as a global epidemic, which threatens both women and children.

Global events such as the Beijing Women's Conference in 1995 opened up new arenas of action and new spaces for legal reform.<sup>21</sup> Post-Beijing domestic violence lawmaking was sparked by the CEDAW and the Beijing Platform of Action.<sup>22</sup> Emerging from the Beijing Women's Conference were new categories of analysis, and even a new vernacular for things that thus far had been unnamed.<sup>23</sup> Again, these working vocabularies were hammered out on the anvil of global platforms of action. New forms of interaction forged at world conferences enabled the creation of this common dialogue around domestic violence and helped build strong local women's rights movements in connection with global and regional movements by composing new mandates and provisions that held the state itself responsible. As women's issues were integrated into the human rights agenda, the women's movement brought the issue of gender violence to the forefront of not only the global agenda, but more importantly, to national agendas where they are most needed. This influence will be examined throughout this paper vis-à-vis the examination of domestic laws internationally.

While the Beijing Women's Conference was a watershed event in the history of the global women's movement, the post-Beijing era saw the ferment of transnational networks and non-governmental organizations which worked closely with the United Nations to shape global agendas. While the global movements expanded to include new voices from the global South, local and national movements were informed by international standard setting agendas. International jurisprudence founded on the CEDAW promoted new theories and practices. Clearly the local and national movements were instrumental forces in pressing for national domestic violence laws, seizing political opportunities, and situating their demands and goals based on the local need; but, the global agenda was instrumental in helping

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21. Delegates at the Beijing Women's Conference, also known as the Fourth World Conference on Women, are responsible for the creation of the historic Beijing Platform for Action. Fourth World Conference on Women, Beijing 1995: Beijing and its Follow-up, U.N. WOMEN: UNITED NATIONS ENTITY FOR GENDER EQUALITY AND EMPOWERMENT OF WOMEN, <http://www.un.org/womenwatch/daw/beijing/> (last visited Apr. 4, 2012).

22. See generally Fourth World Conference on Women, Beijing, China, Sept. 4-15, 1995, *Beijing Declaration and Platform for Action*, U.N. Doc. A/CONF.177/20 (Oct. 17, 1995).

23. *Id.*

local movements achieve their goals by providing a universally accepted benchmark to help frame national laws and policies and helping monitor the implementation of those laws.

The international agenda not only helped local organizations, but also helped to mobilize governments to take action on domestic violence issues. In addition, it provided an analytic

terrain for such national lawmaking.<sup>24</sup> The global domestic violence efforts informed and motivated national domestic violence legislation and policies in several countries, including Bangladesh, where the CEDAW Committee's Concluding Observations to the Bangladeshi State Party Report called for a national domestic violence law.<sup>25</sup> An international platform and global flow of ideas have broadened the space for the transnational movement of ideas and strategies through the universal language of human rights norms.<sup>26</sup> The establishment of this common vernacular has enabled local movements to adopt a language that articulated a set of universal women's rights guarantees, thus strengthening both transnational as well as national women's movements.<sup>27</sup> This fidelity to a common vernacular of

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24. At the UN World Conference on Human Rights in Vienna in 1993, governments recognized violence against women as a serious human rights threat. *See generally Vienna Declaration*, *supra* note 5.

25. Salma Ali, *Recent Legal Initiatives in Bangladesh*, in 2 WOMEN LEADING CHANGE: RABAT ROUNDTABLE PAPERS 69, 71 (2011), available at [http://www.wcwwonline.org/pdf/free/WCW\\_Rabat\\_Publication.pdf](http://www.wcwwonline.org/pdf/free/WCW_Rabat_Publication.pdf) (Rabat Roundtable on Women leading Change in the Arab and Muslim World, May 2011 presentation made by the Bangladesh National Women Law Association (BNWLA)).

26. Just as the international and grassroots movements informed each other to create progress in the area of domestic violence, international norms enshrined in the Convention on the Elimination of Discrimination against Women (CEDAW) propelled both these movements into action. The norm setting process gained momentum through transnational action and attendance at UN conferences on global issues ranging from the Vienna conference in 1993, the population conference in Cairo in 1994, the sustainable development conference in Copenhagen in 1995, and the population conference in 1994. This standard setting power of the human rights framework including the CEDAW is an effective part of domestic violence lawmaking in Asia. The commitments made by governments at the U.N. and regional conferences were an important grounding for the feminist initiatives described above and also for local grassroots movements. Women's groups have used their international obligations as leverage to revise both international and national laws and create policies. *See generally* Heisoo Shin, *CEDAW and Violence against Women: Providing the "Missing Link" in THE CIRCLE OF EMPOWERMENT TWENTY-FIVE YEARS OF THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN* 223 (Hanna Beate Schopp-Schilling ed. 2007). *See also* preambles to Vietnam Domestic Violence Law, *infra* note 144, and Rep. Act No. 9262 (Phil.), *supra* note 20. Both reference the CEDAW as guiding principles.

27. *See generally* Shin, *supra* note 26. Examples of national movements that have been strengthened by international laws include the Bangladesh domestic violence lawmaking movement. The movement wrote a shadow report to the CEDAW Committee on the absence of a national domestic violence law. The CEDAW Committee's Concluding Observations to the State party report highlighted the need for

international legal norms, collaborative transnational advocacy, and a global feminist consciousness helped develop domestic violence laws and practices within a human rights framework.<sup>28</sup>

On the other hand, among the most notable global actors, national women's movements are now considered powerful international constituents. Women's movements around the world have helped drive the domestic violence lawmaking agenda. Radhika Coomaraswamy,<sup>29</sup> the first U.N. Special Rapporteur on violence against women, has stated that the violence against women movement is "perhaps the greatest success story of international mobilization around a specific human rights issue leading to the articulation of international norms and standards and the formulation of international programmes and policies."<sup>30</sup> These efforts helped catalyze the emergence of international norms and standards, and the development of monitoring and reporting mechanisms. At the World Human Rights Conference in Vienna in 1993, women's organizations galvanized for international recognition of all forms of violence against women as human rights violations.<sup>31</sup> As Saskia Sassen<sup>32</sup> rightly states of this phenomenon, "[s]tudying the global. . . [requires] also a focus on locally scaled practices and conditions."<sup>33</sup> Because these women's movements understand the cultural, social, and political setups on the ground, they are able to advocate effectively for context-specific measures in international law. The interaction between the global and the local movements has been well articulated through the domestic violence lawmaking processes.

Consistent with the notion that local knowledge can inform global movements, Asian women's movements have played an

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a national domestic violence law. This then bolstered the advocacy for a domestic violence law by the women's movement in Bangladesh resulting eventually in the passing of the law in 2010. The Indonesian women's movement invited Radhika Coomaraswamy, then Special Rapporteur for Violence against Women, to visit the country and speak to the need for a domestic violence law as a way to address heightened violence against women in Indonesia.

28. In several countries in Asia, including India, Bangladesh and China, the author has participated in international fora on national domestic violence lawmaking as a prelude to the law-drafting initiative.

29. Radhika Coomaraswamy is the Special Representative of the Secretary-General for Children and Armed Conflict. *Radhika Coomaraswamy*, CHILDREN AND ARMED CONFLICT, <http://childrenandarmedconflict.un.org/about-us/radhika-coomaraswamy/> (last visited July 27, 2012).

30. Radhika Coomaraswamy, *The Varied Contours of Violence Against Women in South Asia*, Paper Presented at the Fifth South Asia Regional Ministerial Conference in Islamabad, Pakistan (May 3, 2005).

31. See *Vienna Declaration*, *supra* note 5.

32. Professor Saskia Sassen, LSE SOCIOLOGY, <http://www2.lse.ac.uk/sociology/whoswho/academic/Sassen.aspx> (last visited Apr. 7, 2012) (Biography).

33. Saskia Sassen, *Chapter 7: Space and Power*, <http://www.columbia.edu/~sjs2/PDFs/Gane-Sassen.pdf> (last visited Apr. 7, 2012).

important role in domestic violence lawmaking.<sup>34</sup> These movements helped place gender equity issues on political agendas throughout the region. Currently there are domestic violence law reform efforts in nearly every country in the region. Mobilized by the global Beijing Platform of Action entered into at the Fourth World Conference on Women,<sup>35</sup> feminist and women's groups helped bring domestic violence to the fore. Meanwhile, the domestic violence lawmaking and implementation process in Asia has created new opportunities for local citizen participation.<sup>36</sup> Therefore, even if the movements did not achieve the level of coordination that the term "movement" connotes, the grassroots and urban mobilization efforts were instrumental in the actualization of domestic violence lawmaking. The human rights framework on violence against women was the organizing principle that animated these domestic violence movements.

### C. THE INTERNATIONAL LEGAL FRAMEWORK ON DOMESTIC VIOLENCE

The primacy of the international legal framework on domestic violence has had enormous transformative impact on national lawmaking. This framework has also been a barometer with which to evaluate the efficacy of the national law. Several international human rights instruments and norms address domestic violence.

The Vienna Declaration and Programme of Action on Human Rights<sup>37</sup> has affirmed that gender based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person

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34. The Mongolian Law on Domestic Violence, for instance, was drafted with the help of Mongolian women's rights groups. THE ASIA FOUNDATION, *Strengthening Mongolia's Nongovernmental Organizations*, Sept. 2011, <http://www.asiafoundation.org/pdf/mong.ngos.pdf>.

35. See generally Fourth World Conference on Women, *supra* note 22.

36. An NGO in the Philippines, Gabriella, provides legal services with counseling, home visits, and shelter. See generally GABRIELA WOMEN'S PARTY, <http://www.gabrielawomensparty.net/advocacy> (last visited Mar. 31, 2012). Nepal has national rapporteurs monitor anti-trafficking activities. See *Ending violence against women: from words to action*, UNITED NATIONS (October 9, 2006), available at <http://www.un.org/womenwatch/daw/vaw/launch/english/v.a.w-fightE-use.pdf>. See also Council of Europe Convention on Action against Trafficking in Human Beings art. 29, May 16, 2005, C.E.T.S. No. 197 ("Each party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of state institutions and the implementation of national legislative requirements").

37. *Vienna Declaration*, *supra* note 5, art. 18 ("Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated").

and should forthwith be eliminated.<sup>38</sup> Spurred by the Vienna Conference, in 1993, the UN General Assembly adopted the Declaration on the Elimination of

Violence against Women (DEVAW), which is the first international declaration to hold the State responsible and accountable for atrocities committed against women.<sup>39</sup> The DEVAW defines violence as:

Any 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 the family, such as battering, sexual abuse or female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.<sup>40</sup>

In 1994, the first Special Rapporteur was appointed by the Human Rights Commission to investigate the causes and consequences of violence against women over a three-year period.<sup>41</sup> A 1996 report authored by the Special Rapporteur on Violence against Women adopted an expansive definition of violence in the family and included, *inter alia*, “battering, marital rape, incest, forced prostitution, violence against domestic workers, violence against girls, sex selective abortions and female infanticide, traditional violent practices against women including forced marriage, son preference, female genital mutilation and honor crimes.”<sup>42</sup> The DEVAW and the different provisions of the CEDAW have been standard-setting blueprints for lawmaking initiatives and powerful organizational tools.<sup>43</sup>

38. *Id.*

39. See Comm. on the Elimination of Discrimination against Women, Gen. Recommendation No. 12, U.N. Doc. A/43/38, 8th Sess. (1989) (“Considering that articles 2, 5, 11, 12 and 16 of the Convention require the States parties to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life, Taking into account Economic and Social Council resolution 1988/27, Recommends to the States parties that they should include in their periodic reports to the Committee information about: 1. The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the work place etc)”).

40. Declaration on the Elimination of Violence Against Women, U.N. Doc. A/RES/48/104 (Dec. 20, 1993) [hereinafter 1993 Declaration].

41. *Special Rapporteur on violence against women, its causes and consequences*, UNITED NATIONS HUMAN RIGHTS, <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx> (last visited Aug. 24, 2012).

42. Special Rapporteur on Violence Against Women, Its Causes and Consequences, Comm’n on Human Rights, ¶ 82, U.N. Doc. E/CN.4/1996/53 (Feb. 5, 1996) (by Radhika Coomaraswamy), available at <http://www1.umn.edu/humanrts/commission/thematic52/53-wom.htm>.

43. See generally CEDAW 1979, *supra* note 3.

The CEDAW was one of the first human rights treaties to address private forms of violence and abuse.<sup>44</sup> The CEDAW was a legal blueprint that catalyzed national lawmaking. Since states are bound to eliminate discrimination as defined by Article 1, they are obligated to eliminate discrimination against women in all spheres of life, including the private sphere, and especially in the family.<sup>45</sup> Addressing the private sphere, Article 2 obligates states to take concrete steps to eliminate discrimination against women.<sup>46</sup> This provision also requires states to eliminate discrimination against women by any person, organization, or enterprise.<sup>47</sup> This provision makes the CEDAW unique since international human rights treaties are usually limited to the conduct of the state or its agencies.<sup>48</sup> In order to combat such discrimination in the public sphere, further recommendations are made to conduct gender-sensitive training of judicial and law enforcement officers and other public officials for the implementation of the CEDAW.<sup>49</sup> Article 16 of the CEDAW also obligates state parties to remove discriminatory laws and practices against women.<sup>50</sup> Article 16 (1) follows this provision by granting women and girl children equality in all matters relating to family and marriage.<sup>51</sup>

Although the CEDAW itself does not reference domestic violence, in 1993 the CEDAW adopted General Recommendation 19, which explicitly states that it prohibits gender-based violence.<sup>52</sup> General Recommendation 19 addresses violence against women (including sexual harassment) and emphasizes that discrimination under the CEDAW is not restricted to action by or on behalf of governments.<sup>53</sup> Regarding general international law and specific human rights covenants, the Recommendation emphasizes that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.<sup>54</sup> General Recommendation 19 seeks to combat violence against women by first eliminat-

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44. See generally Comm. on the Elimination of Discrimination against Women, Gen. Recommendation No. 21, U.N. Doc. A/49/38, 13th Sess., Supp. No. 38 (1994).

45. 1993 Declaration, *supra* note 40, art. 2(a).

46. *Id.*

47. CEDAW 1979, *supra* note 3, art. 2(e).

48. *Id.*

49. Comm. on the Elimination of Discrimination against Women, Gen. Recommendation No. 19, ¶ 24(b), U.N. Doc. A/47/38, 11th Sess. (1992) [hereinafter Gen. Recommendation No. 19].

50. CEDAW 1979, *supra* note 3, art. 16.

51. *Id.* arts. 16 (1)(a-h), (2).

52. Gen. Recommendation No. 19, *supra* note 49, ¶6.

53. *Id.* ¶ 9.

54. *Id.* ¶ 17.

ing all gender disparities within the private sphere.<sup>55</sup> In order to combat such violence, the convention also suggests that state parties establish support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refugee services, specially trained health workers, rehabilitation and counseling.<sup>56</sup> The CEDAW Committee, in compliance with General Recommendation 19, has also urged state parties to place high priority on implementing comprehensive measures to address violence against women and girls, and has called upon states to enact legislation on domestic violence to ensure that women and girls who are victims of violence have access to immediate means of redress.<sup>57</sup>

An important CEDAW provision which addresses domestic violence is General Recommendation 12, which requires that state parties act to protect women against violence of any kind occurring within the family at the workplace or any other area of social life, and recommends that periodic reports provide information on the legislation in force to protect women against violence in everyday life, including sexual violence, abuses in the family, sexual harassment at the workplace, etc.<sup>58</sup> The recommendation calls for measures to overcome family violence, including criminal penalties when necessary and civil remedies in cases of domestic violence.<sup>59</sup>

#### D. HUMAN RIGHTS LAWMAKING: STATE ACCOUNTABILITY FOR DOMESTIC VIOLENCE

One of the hallmarks of the new lawmaking efforts in Asia was a new social movement that challenged the structures of the post-Beijing Women's Conference world as part of a broad effort to transform social structures that tolerated violence against women. New opportunities opened in the newly created transnational political spaces, and a new lexicon of claims-making was pioneered. The following section of this paper will provide case studies showing how the mandates, which are informed by global conferences and global institutions actually managed to exert enough influence to hold state parties responsible for domestic violence. Though the cases discussed below are not from Asia, these two cases provided the framework for state accountability for inaction in the area of domestic violence for Asian countries.

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55. *Id.* ¶ 24(a).

56. *Id.* ¶ 24(k).

57. *See id.* ¶ 24(a-v).

58. Gen. Recommendation No. 12, *supra* note 39.

59. Gen. Recommendation No. 19, *supra* note 49, ¶ 14 (r)(i).

One of the high watermark of General Recommendation 19 of the CEDAW Convention was its explicit articulation of state responsibility “. . . for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”<sup>60</sup> This articulation has led to the acknowledgment in legislation that domestic violence is a violation of human rights. In fact, in the case of *A.T. v. Hungary*, the CEDAW Committee found that the lack of specific legislation in Hungary to combat domestic violence and sexual harassment amounted to a violation of human rights.<sup>61</sup>

A majority of the Asian countries’ domestic violence laws were passed in the post-Beijing Conference era, and these laws adopted the rhetoric of the international conferences and enshrined women’s rights as human rights guarantees, in line with both international standards and rhetoric. Domestic violence laws of the Philippines and Vietnam for example, assert that combating domestic violence is consistent with the spirit of the fundamental rights guarantees under the Universal Declaration of Human Rights (UDHR), the CEDAW, and the Convention on the Rights of the Child (CRC).<sup>62</sup> Similarly, Indonesian law states that the Elimination of Violence in the Household Clause (in Article 3) is based on a “respect for human rights.”<sup>63</sup> The Preamble of the Indonesian law states that elimination of violence in the home is to be in accordance with respect for human rights.<sup>64</sup> Pakistan’s Domestic Violence Act of 2012 establishes in its preamble that in accordance with the UN Convention on the Elimination of Discrimination against Women, it is obligated to adopt “zero tolerance for violence against women.”<sup>65</sup> In under-

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60. *Id.* ¶9.

61. Report of Comm. on the Elimination of Discrimination against Women, Jan. 10-Jan. 28, 2005, Annex III, U.N. Doc. A/60/38, 33d Sess. (views adopted Jan. 26, 2005).

62. Rep. Act. No. 9262, *supra* note 20, § 2 (“Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the convention on the Elimination of all forms of discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party”). See also IMMIGRATION AND REFUGEE BOARD OF CANADA, Viet Nam: Domestic Violence (VNM103322.E), (Jan. 8 2010), available at: <http://www.unhcr.org/refworld/docid/4b7cee8ec.html> [hereinafter VIET NAM: DOMESTIC VIOLENCE].

63. Law of Republic of Indonesia, No. 23/2004, Elimination of Violence in Household (2004), art. 3 (Indon.) [hereinafter Indonesian Law].

64. *Id.* Preamble.

65. Domestic Violence (Prevention and Protection) Act, Feb. 20, 2012, available at <http://www.af.org.pk/Important%20Courts'%20judgement/Women%20protection%20against%20domestic%20violence%20bil%2013pages.pdf> (Pak.) [hereinafter Pakistan Act].

taking this obligation, it defines violence as inclusive of physical, economic, sexual, emotional, verbal, and psychological abuse.<sup>66</sup> The coverage of the Bill extends to women, children, and family, as well as those in domestic relationships based on their domiciles.<sup>67</sup> This shift in language demonstrates an embrace of international human rights standards, including the standard of women's rights as synonymous with basic human rights.

State accountability is one of the critical hallmarks of the human rights framework. Defining domestic violence as a violation of a human right creates a paradigm shift in legal accountability. It can help hold the state accountable for inaction in protecting the victim from violence. Enshrining this language in the preamble of national laws will allow lawyers to claim the human rights framework as an interpretive tool to resolve a conflict of laws or fill in gaps in the domestic laws.

Domestic violence has had a long history throughout the world. Wife beating, for instance, has been sanctioned throughout history in varying cultures. Anglo-American law allowed a husband to be "master" of the household and subject his wife to corporal punishment or chastisement so long as he did not inflict permanent injury upon her.<sup>68</sup> In many countries around the world, including the United States, the under-enforcement of crimes involving family members up until the 1970s was of epidemic proportions. Not only were batterers exempt from the law, but there was hardly any public discussion of wife and child beating. Domestic violence was not named as a criminal offense until the 1970's.<sup>69</sup> Even when the right to beat one's family members was repudiated by the authorities, men who assaulted their wives were often granted formal and informal immunity from prosecution so as to preserve family harmony and privacy.<sup>70</sup> However, despite the pervasiveness of domestic violence it was

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66. *Id.* § 4. ("Domestic violence" means one or more of the following acts committed by the respondent against any person or persons with whom the respondent is in a domestic relationship: economic abuse; emotional, psychological and verbal abuse; entry into the victim's place of residence, without the victim's consent, where the parties do not share the same residence; harassment; sexual abuse; stalking).

67. *See id.* § 2 (stating that the Act is designed to protect vulnerable peoples, such as women, children, domestic workers, elders and disabled persons from violence in the context of personal relationships.)

68. Reva B. Siegal, "The Rule of Love": *Wife Beating as Prerogative and Privacy*, 105 *YALE L.J.* 2117, 2125 n. 25 (1996).

69. *See* Paula Finley Mangum, *Reconceptualizing Battered Woman Syndrome Evidence: Prosecution Use of Expert Testimony on Battering*, 19 *B.C. THIRD WORLD L.J.* 593, 596 (1999).

70. *See generally* Charles J. Ogletree & Rangita de Silva-de Alwis, *When Gender Differences Become a Trap: The Impact of China's Labor Law on Women*, 14 *YALE J.L. & FEMINISM* 69 (2002).

not considered an actionable offense by domestic legislation until the early 1990s.<sup>71</sup>

Because of domestic violence lawmaking and revisions to criminal procedure law that now cover domestic violence, cases on domestic violence that have historically been largely invisible in the public eye have become more visible in the 1990s. Despite a plethora of new laws and amendments, the problem of enforcement remains as these new laws are inadequately implemented. The lack of implementation of laws often translates to impunity on the part of the state and once again begs the question of adequate state responsibility for atrocities committed against women. Recognizing the necessity of state cooperation in combating the epidemic of violence, state accountability has become a cornerstone of the CEDAW's Concluding

Observations to State Party Reports.<sup>72</sup> The guarantees under the CEDAW Convention on State Responsibility for due diligence in protecting women from domestic violence have shaped groundbreaking case law.

The Honduran case of *Velasquez Rodriguez* most effectively illustrates this principle.<sup>73</sup> In this case, the Inter-American Court of Human Rights stated that it is the state's responsibility to take action to prevent human rights violations committed by non-state actors, thus dismantling the public/private dichotomy that had for long relegated domestic violence into the private sphere and had removed domestic violence from the ambit of state responsibility.<sup>74</sup> The standard that is used is not strict liability but due

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71. Rangita de Silva-de Alwis, *Opportunities and Challenges For Gender-Based Legal Reform In China*, 5 EAST ASIA L. REV. 197, 268 (2010).

72. The CEDAW Committee's review of the Sri Lankan State party report stated that the: "Committee is concerned that, despite the adoption of the Prevention of Domestic Violence Act, there are significant delays before cases are processed under this Act. It appears from the constructive dialogue that most cases are dealt with through police mediation, and that family relations prevail over protection of women and suppression of violence against women. . . . In accordance with its general recommendation No. 19, the Committee urges the State Party to: (a) Give priority attention to combating violence against women and girls and to adopt comprehensive legislation to criminalize all forms of violence against women." See Concluding Observations of the Comm. on the Elimination of Discrimination against Women: Sri Lanka, Comm. on the Elimination of Discrimination against Women on its 48th Sess., Jan. 17 – Feb. 4, 2011, U.N. Doc. CEDAW/C/LKA/CO/7 (Feb. 4, 2011).

73. See *Velásquez v. Honduras*, Merits, Inter-Am.Ct.H.R. (ser. C) No. 4 (Jul. 29, 1988) available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_04\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf).

74. *Id.* In this case, Angel Manfredo Velásquez Rodríguez, a 35-year-old graduate student, teacher, father of three and leader of a socialist national student union, was abducted Sept. 12, 1981 by what witnesses claimed were seven heavily armed men in civilian clothes, two of whom were identified as Sgt. José Isafías Vilorio and Lt. Flores Murillo. Velásquez was never seen again. Velásquez's father pursued the case to the Honduran courts in 1982, 1983 and 1984 and eventually to the IACHR,

diligence. As a result of the court's ruling in this case, domestic violence is now acknowledged broadly as a human rights abuse, and the state's impunity in the face of violence against women can be challenged.

The case of *Maria da Penha* in Brazil revolutionized the global landscape on domestic violence lawmaking and is a tragic example of the urgent need for state responsibility and accountability to victims of domestic violence.<sup>75</sup> Maria da Penha's book, *I Survived To Tell My Story*, recounts her husband's 1983 murder attempt on her life.<sup>76</sup> At the age of 38, da Penha, became a paraplegic as a result of the many acts of violence by her husband, including shots fired at her, attempts to electrocute her, and several other assaults.<sup>77</sup> In 1998, the Center for Justice and International Law and the Latin American and Caribbean Committee for the Defense of Women's Rights filed suit before the Inter-American Court of Human Rights (IACHR) claiming that the Brazilian State's impunity in the case was unjust.<sup>78</sup> In this case the court held the state responsible for the first time for inaction and taking effective steps to prevent violence against Maria da Penha.<sup>79</sup> The Inter American Commission on Human Rights asked that a victim of domestic violence receive:

appropriate symbolic and actual compensation for the violence that she had suffered at the hands of her husband and for the failure to provide rapid and effective remedies, for the impunity that has surrounded the case for more than 15 years, and for making it impossible, as a result of that delay, to institute timely proceedings for redress and compensation in the civil sphere.<sup>80</sup>

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suggesting the Honduran government conducted and tolerated a pattern of forced disappearance. Such evidence included testimony from victims of arbitrary detentions during the relevant period, interviews with family members whose relatives were disappeared, and general country reports produced by independent, non-governmental organizations. From this evidence, the IACHR concluded a pattern or practice of forced disappearance existed in Honduras.

75. *Maria da Penha v. Brazil*, Case 12.051, Inter-Am. Comm'n H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev. at 704 (2000).

76. See generally MARIA DA PENHA, *SOBREVIVI . . . POSSO CONTAR* (1991).

77. *Maria da Penha v. Brazil*, *supra* note 75 ¶9-11. Attacks against Maria da Penha by her husband include shots fired at her while asleep, several attempts to electrocute her, and many assaults suffered throughout her marriage, leaving her paraplegic by thirty-eight. Despite mounting evidence against him and even a verdict of guilty by local courts, her husband continued to enjoy his freedom just fifteen years after, made possible through multiple successive procedural appeals. The IACHR found the Brazilian state guilty of negligence and failure to take action against domestic violence.

78. *Id.* ¶1-3.

79. *Id.* Sec. VII.

80. *Id.* Sec. VIII.

The case of Maria da Penha spawned the adoption of the Maria da Penha Law of 2006.<sup>81</sup> The law defined domestic violence as a human rights violation,<sup>82</sup> and it incorporated a gender perspective by drawing from a consideration of the gendered aspect of violence and gender-specific reasons why women face violence.<sup>83</sup> The law also calls for a multi-disciplinary approach to domestic violence—it requires the cooperation of the federal, state, municipal and NGO sectors<sup>84</sup> and also integrates the judiciary, the prosecutor, and public defender services.<sup>85</sup>

Perhaps one of the most critical clauses of the Maria da Penha Law is its call for awareness-raising programs and education on international conventions on the prevention of violence.<sup>86</sup> The law enshrines the need to include issues of gender equality and human rights in school curriculums, thus allowing not only young women, but more importantly young men to become educated on issues of sexuality and violence.<sup>87</sup> The law also provides for ongoing training for police officers on gender, race, and ethnicity.<sup>88</sup> The effect of such mandates is yet to be seen as such provisions for education and awareness raising require the economic support of the Brazilian State. The provision on regular and proper data collection and an evaluation of all measures under the law is crucial to evaluating the extent of domestic violence and the necessary resources required to address such violence. The Maria da Penha Law also establishes a broader definition of family so as to provide protection for fami-

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81. Lei No. 11.340, de 7 de Agosto de 2006, DIÁRIO OFICIAL DA UNIÃO, 8 de Agosto de 2006 (Braz.).

82. *Id.* art. 6 (stating domestic and family violence against women constitutes one of the forms of human rights violation).

83. *Id.* arts. 2, 7(i-iv) (stating all women, regardless of class, race, ethnicity, sexual orientation, income, culture, educational level, age and religion, enjoy the basic rights inherent to the human person, and are ensured the opportunities and facilities to live without violence, preserve their physical and mental health and their moral, intellectual and social improvement).

84. *Id.* art. 8 (stating the public policy aimed at restraining domestic and family violence against women will be implemented by means of an integrated set of actions by the Federal Union, the States, the Federal District and the Municipalities and nongovernment actions).

85. *Id.* art. 8, §1 (describing operational integration of the Judiciary Branch, the Prosecutor's Office and the Public Defender with the areas of public security, social assistance, health, education, work and housing).

86. *Id.* art. 8 § 8 (describing promotion of educational programs that disseminate ethical values of unrestricted respect to the dignity of the human person with a gender and race or ethnicity perspective).

87. *Id.* art. 8 § 9 (noting emphasis, in the school syllabus of all levels of education, on contents related to human rights, gender and race or ethnicity equity and the problem of domestic and family violence against women).

88. *Id.* art. 8, § 7 (describing permanent training of the Civil and Military Police, Municipal Guard, Fire Brigade and of the professionals belonging to the agencies and areas listed in item, on gender and race or ethnicity issues).

lies with different sexual orientations.<sup>89</sup> Consistent with this measure, the law refers to gender equality irrespective of sexual orientation, age, class, race, and ethnicity.<sup>90</sup>

Not only is the law consistent with the standards set at the international level, but it is also a strategic outcome of the powerful force of the women's movement's dialogue with the state to drive policy. Despite the consolidation of international and local efforts, pushback and resistance are also evident. Passed in August 2006, the law created an intense debate on a range of issues including whether a law that only affects violence against women is discriminatory.<sup>91</sup> Others refuted this, stating that this view ignores the pervasive nature of violence against women in Brazil.<sup>92</sup> Judges playing on an argument of cultural relativism argued that the creation of civil and criminal courts was unconstitutional as it was not part of the Brazilian tradition.<sup>93</sup> While domestic violence laws have challenged gender assumptions and existing structures, the domestic violence laws themselves have met the challenge of constitutionality.<sup>94</sup>

Despite these ongoing debates, as stated above, the Brazilian women's movement has served as a bulwark of support for the law and effectively resisted challenges to it. This law dramatizes how launching a litigation initiative can mobilize much needed public attention and spark a range of unanticipated reformist initiatives in the fields of legal, political, and social reform. The law's passage is a significant victory to the women's movement of the country. It further demonstrates the way in which transnational NGOs can bolster national advocacy movements by a show of solidarity and support.

The concept of state responsibility has expanded to not only direct state action but also to the state's systematic failure to act.<sup>95</sup> This is vital because when states are held accountable to

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89. *Id.* art. 5 (stating that for the effect of this Law, domestic and family violence against women is defined as any action or omission based on gender that causes the woman's death, injury, physical, sexual or psychological suffering and moral or patrimonial damage: The personal relations listed in this article are independent of sexual orientation).

90. *Id.* art. 2 (stating all women, regardless of class, race, ethnicity, sexual orientation, income, culture, educational level, age and religion, enjoy the basic rights inherent to the human person, and are ensured the opportunities and facilities to live without violence, preserve their physical and mental health and their moral, intellectual and social improvement).

91. JANE S. JAQUETTE, *FEMINIST AGENDAS AND DEMOCRACY IN LATIN AMERICA* 124 (2009).

92. *Id.*

93. *Id.*

94. *Id.*

95. In the United States, in *Thurman v. City of Torrington*, the victim of domestic violence was awarded a 2.3 million dollar award as damages on the basis that the

international conventions it can broaden the space for reformist initiatives and alter the way in which non-state actors interact with the state. Most of all, state action can only be expected where there exists the drafting of strong domestic violence law and the effective implementation of those laws.

## PART II: SOME NOVEL FEATURES OF DOMESTIC VIOLENCE LAWMAKING

### A. EXPANDING THE CONCEPT OF THE DOMESTIC REALM: RETHINKING THE FAMILY

In order to effectively fight domestic violence, the law must cover an expanded notion of the domestic realm. In 1996, the United Nations Special Rapporteur on Violence against Women, developed a framework for model legislation on domestic violence, which urged states to draft legislation that contained the broadest possible definition of not only acts of domestic violence but of the relationships within which domestic violence occurs.<sup>96</sup>

In order to capture the reality of a modern family, the law must undertake this task by first composing a broader definition of what constitutes a family, as the term family has undergone numerous changes.<sup>97</sup> A more dynamic definition must include members beyond a traditional family. For example, all children, whether they are victims of the perpetrator or children of relatives and house helpers can be protected under this analysis. In recent years there has been an expansion of the categories of those protected under the law, as some of the Asian laws have abandoned idealized notions of what should constitute a family. It is nonetheless important to note that these definitions have only changed on paper and may therefore have yet to be established as societal norms.

Several countries in Asia have re-conceptualized the notion of the family. These include

Indonesia, Sri Lanka, Japan, Cambodia, Pakistan, and India. Although New Zealand is not part of Asia, New Zealand's law has informed the Asian region's law making efforts.<sup>98</sup> While Ja-

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police had breached their duty to protect her from her violent husband. *See Thurman v. City of Torrington*, 595 F. Supp. 1521 (D. Conn.1984). At the international level, the *Velasquez Rodriguez* case has established state responsibility where the state has abdicated its responsibility to protect and has been thus found guilty of inaction. *See Velasquez-Rodriguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, (July 29, 1988).

96. *See generally* Special Rapporteur on Violence Against Women, *supra* note 42.

97. *Id.*

98. At various conferences that the author has spoken at New Zealand's law is often referred to as an important model.

pan's law only allows a party in a marriage to seek protection of the law, new laws cover a large number of persons living in the household whether or not they may be related by marriage or blood.<sup>99</sup> Singapore's law similarly expands the definition of family and also provides explicit protection to an incapacitated person in the home who in the opinion of the court can be regarded as a member of the family.<sup>100</sup> The Cambodian domestic violence law takes into account the historical realities of a post-genocidal and post-conflict society in its expansion of the definition of family, to cover "persons living under the roof of the house and who are dependent of the households."<sup>101</sup> The only criterion is that the children be dependent on either party.<sup>102</sup> In the case where a re-conceptualized family has been envisioned in a post conflict situation where families are stitched together and might have no blood relationship to each other, this law has become the brainchild of a post conflict community where families were restricted. In Pakistan, the domestic violence law seeks to protect children and women, as well as domestic workers in a household.<sup>103</sup> In effect, such a newly conceived notion of the family as a result of historical realities acknowledges the disproportionate effect of the toils of war on women and the family.

The interpretation of the "Shared Household" acquires a more complex reading in India. Cultural Indian customs, including a wife's residence with extended families and in-laws in the family home of the husband, complicates cases where the spouse is seeking a residence order. In *P. Babu Venkatesh and Others v. Rani*,<sup>104</sup> for instance, the magistrate granted a residence order and permitted the police to break open the lock of the shared household.<sup>105</sup> The husband contended that the house was not a

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99. See Act on the Prevention of Spousal Violence and Protection Against Women, Law No. 31 of 2001, art. 1, ¶ 3 (Japan).

100. Women's Charter (Amendment) Act 1996, Act No. 30 of 1996, Pt. VII (Sing.). The Singapore law provides protection to a broader swath of people but does not provide protection for same sex couples. The New Zealand domestic violence law provides protection for existing and former cohabitants in same sex relations.

101. Law on the Prevention of Domestic Violence and the Protection of Victims (NS/RPM 1005/031) 2005, art. 2, available at [http://old.iknowpolitics.org/files/cambodia\\_dv\\_victims2005.pdf](http://old.iknowpolitics.org/files/cambodia_dv_victims2005.pdf) [hereinafter Cambodia Law].

102. *Id.*

103. Khurram Shahzad, *Pakistan moves to outlaw domestic violence*, GOOGLE (August 4, 2009), <http://www.google.com/hostednews/afp/article/ALeqM5iJNFXOya6TpyQh71K9wtXs-f4EDA>.

104. *P. Babu Venkatesh vs. Rani*, CrI. R.C Nos. 48 and 148 of 2008 and M.P. Nos. 1 of 2008, <http://indiankanoon.org/doc/1359181/>.

105. *Id.* § 4 ("The Learned Judicial Magistrate having adverted to the aforesaid allegations found in the affidavit in the background of the materials produced along with the main petition passed the residence order in absentia of the petitioners herein. The said order is under challenge in CrI.R.C. No. 48 of 2008").

shared household as it was owned by his mother and not by him and therefore the residence could not be passed in favor of the wife.<sup>106</sup> The High Court of Madras dismissed the husband's contention on the basis that the husband had transferred the rights to his mother with the sole purpose of dispossessing the rights of his wife.<sup>107</sup> The case of *Narinder Pal Kaur Chawla v. Manjeet Singh Chawla* involved protection of a second wife.<sup>108</sup> In this case a second wife claimed under the Hindu Adoptions and Maintenance Act that she did not know of the existence of the first wife. In its ruling the Court, citing the 2005 domestic violence law, ruled that the law covers relationships in the nature of marriage and that the legislature never intended to exclude women like the appellant. They ruled that she was to be treated as a wife for the purpose of Section 18 of the Hindu Adoptions and Maintenance Act.<sup>109</sup> The Philippines Act of 2004 also protects numerous wives, as it clearly covers domestic violence against a broad category of family members.<sup>110</sup> The act protects those who are a "wife, former wife, or woman with whom a person has or had a sexual or dating relationship with;" as for children, ones both within and outside the family home are covered.<sup>111</sup>

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106. *Id.* § 8 ("The Supreme Court in *S.R. Batra and Anr. v. Taruna Batra* . . . has held that 'shared household' means only the house belonging to or taken on rent by the husband or house which belongs to the joint family in which the husband is one of the members").

107. *Id.* § 9 ("But, in this case even before the litigation started, it is reported that both of them had resided in the subject house, which is now in the name of the second petitioner. Further, it is brought to the notice of this Court that after the dispute had arisen between the parties, the first petitioner, who was the original owner of the property alienated the same in favour of his mother, the second petitioner herein. Therefore, factually, the aforesaid ratio laid down by the Supreme Court can be distinguished. If the contention of the petitioners is accepted, every husband will simply alienate his property in favour of somebody else after the dispute has arisen and would take a stand that the house where they last resided is not a shared household and therefore the wife is not entitled to seek for residence right in the shared household").

108. *Narinder Pal Kaur Chawla V. Manjeet Singh Chawla* AIR 2008 Delhi 7, available at <http://indiankanoon.org/doc/534776/>.

109. Hindu Adoptions and Maintenance Act, No. 78 of 1956, INDIA CODE ("A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance . . . (e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere").

110. Rep. Act No. 9262, *supra* note 20, § 3 ("Violence against women and their children" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty").

111. Similarly, the Anti-Trafficking Act also makes specific note of women and children in the very title of the Act. The Anti-Trafficking Act of 2003 states that it is

In addition to the protection of women in the private sphere, it is also necessary that domestic violence laws protect other members of the household. For instance, the Sri Lankan Act of 2005 to Provide for the Prevention of Any Act of Domestic Violence and for Matters Connected Therewith takes into account violence against grandparents and grandchildren and covers a wide range of family members including: "a victim as a spouse, ex-spouse, cohabiting partners, the father, mother, grandfather, sons, daughters, grandsons, granddaughters, step-sons, step-daughters, the brothers, sisters, half-brothers, half-sisters, siblings of a parent; the child of a sibling; or the child of a sibling of a parent off an aggrieved person or of the spouse, former spouse or cohabiting partner of the aggrieved person."<sup>112</sup> The Taiwan law also covers family members including not only the spouse, but also the ex-wife or ex-husband, those who have ongoing marital or de facto marital relationships, those in parental or dependent relationships, those who are or have been related through lineal blood or lineal blood by marriage, and those who have been related as a lateral blood or a lateral-blood-by-marriage.<sup>113</sup>

Domestic violence laws increasingly cover a broad category of persons. Perhaps the most inclusive and all-encompassing laws are the ones in New Zealand and Indonesia. The Indonesian law Regarding the Elimination of Violence in the Household of 2004 covers the "husband, wife and children and people whose family relationship with the individual referred is due to a blood relationship, marriage, suckling at the same breast, care and guardianship, and/or the individual working to assist the household and living in the household."<sup>114</sup> This group of domestic workers is amongst the most vulnerable to sexual and physical abuse.<sup>115</sup> This guarantee covering domestic violence against domestic workers makes this provision of the Indonesian law especially unique. In New Zealand, the law includes intimate partners and children who are only indirectly affected by domestic violence such as children who are witnesses to domestic violence.<sup>116</sup> These children are also among the most vulnerable and neglected victims of abusive households.

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an Act to institute policies to Eliminate Trafficking in Persons Especially Women and Children, establishing the necessary institutional mechanisms for the protection and support of trafficked persons, providing penalties for its violations and for other purposes. Anti-Trafficking in Persons Act of 2003, Rep. Act No. 9208 (May 26, 2003) (Phil.).

112. Prevention of Domestic Violence Act, No. 34 (2005) (Sri Lanka), § 23.

113. Domestic Violence Prevention Act, No. 8600077370, June 24, 1998, art. 3 (Taiwan) [hereinafter Taiwan Act].

114. Indonesian Law, *supra* note 63, art. 21.

115. *Id.*

116. Domestic Violence Act 1995, §§ 2, 3. (N.Z.).

## B. DOMESTIC VIOLENCE AS DIRECT OR INDIRECT VIOLENCE AGAINST CHILDREN

A hallmark of domestic violence laws drafted in Asia is the expanded category of victims that are covered in the law.<sup>117</sup> The recognition that domestic violence affects many more than those in the direct line of violence has aided not only in the formulation of more inclusive laws but also in the creation of services for family members who are both directly and indirectly threatened by domestic violence. The creation of such services and provisions emphasizing the family showcases that domestic violence is both a crime against the family as well as the individual.

Although children are not always the direct target of violence, violence against any member of the family has a negative impact on the children in the family, including violence as both a learned behavior and as a normalized and acceptable part of family life.(citation?) Although the focus of domestic violence research has been on the battered women, it can be said that children raised in homes where women are abused are also victims based on evidence that violence negatively affects them at various levels because these children often go unacknowledged. For example, the children who have been exposed to marital violence have been referred to by scholars as “forgotten,” “hidden,” “unintended,” and “silent” victims.<sup>118</sup> George Holden argued that depending on the study, anywhere from 25 percent to 75 percent of these children may have problems that warrant clinical intervention.<sup>119</sup> Scholars working in this area claim that in addition to modeling aggressive behavior, children may have behavioral problems relating to the violence experienced.<sup>120</sup>

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117. There are some laws such as the Japanese law which only covers women. See, e.g., Act on the Prevention of Spousal Violence and Protection Against Women, *supra* note 99, arts. 1, 2. (“The term spousal violence as used in this law refers to illegal attacks from one spouse (including persons who are in a de facto state of marriage even if it has not been legally registered; same below) that threaten the spouse’s life or physical conditions. The term victim as used in this law refers to a person (including a person who has been divorced from a spouse subsequent to spousal violence and continues to be) threatened with harm to life or physical conditions from the former spouse in question who has been subjected to spousal violence . . . [t]he State and local governments have a responsibility to prevent spousal violence and protect victims”).

118. See George Holden, *Introduction, in THE DEVELOPMENT OF RESEARCH INTO ANOTHER CONSEQUENCES OF FAMILY VIOLENCE; CHILDREN EXPOSED TO MARITAL VIOLENCE: THEORY RESEARCH AND APPLIED ISSUES* 1, 6-11 (George Holden et al. eds., 2000).

119. *Id.* at 7.

120. See Sandra A. Graham-Berman, *The Impact of Woman Abuse on Children’s Social Development: Research and Theoretical Perspectives, in CHILDREN EXPOSED TO MARITAL VIOLENCE: THEORY, RESEARCH AND APPLIED ISSUES* 21, 32-45 (George Holden et al. eds., 2000).

In addition to the severely adverse effects on children, domestic violence has enormous negative economic and social consequences for society as a whole, including child abandonment, institutionalization, substance abuse, and juvenile delinquency.<sup>121</sup> Girls who face domestic violence hold negative perceptions of themselves which leads to lifelong vulnerability.<sup>122</sup> While it is undeniable that domestic violence is gender specific and renders women and girls in the family the most vulnerable, this vulnerability extends to boys as well. Boys are diminished by violence in the family as they model behavior based on the violence they witness at home.<sup>123</sup> Adolescent boys are sometimes forced to commit honor crimes against female members of the family in exchange for a lighter sentence in court.<sup>124</sup> This learned violence has been indoctrinated by the family and supported by national law through lack of punishment by the state.

In addition to direct participation in acts of violence, it has been shown that experiencing or even witnessing violence shapes spectators', or in this case, children's views of the world and themselves. For instance, Margolin and Gordis argued that domestic violence alters a child's ideas "about the meaning and purpose of life, their expectations for future happiness and moral development."<sup>125</sup> Furthermore, the observation or experience of violence may result in the exhibition of "psychological and emotional disturbances" which leads to the perpetration and continuation of the cycle of violence.<sup>126</sup> It is undeniable that violence is therefore learned behaviour that diminishes numerous facets of childhood as well as adulthood. Research clearly establishes that children who live in violent homes are at risk of behavioral and

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121. In relation to the family, domestic violence can be defined as a pattern of behavior that one intimate partner or spouse exerts over another as a means of control. Domestic violence may include physical violence, coercion, threats, intimidation, isolation and emotional, sexual or economic abuse to maintain power and control over the intimate partner or spouse. Frequently, perpetrators manipulate victims by threatening to, or actually harm or abduct children or by using children to participate in the abuse of the victim. See Special Rapporteur on Violence Against Women, Its Causes and Consequences, *supra* note 42.

122. See Graham-Berman, *supra* note 120.

123. Peter Jaffe *et. al.*, Family violence and child adjustment: a comparative analysis of girls' and boys' behavioral symptoms, 143 *AM. J. PSYCHIATRY*, 73, 75 (1986).

124. Special Rapporteur on Violence Against Women, Its causes and Consequences, *Policies and Practices That Impact Women's Reproductive Rights and Contribute to, Cause or Constitute Violence Against Women*, Comm'n on Human Rights, U.N. Doc. E/CN.4/1999/68 (Mar. 10, 1999) (by Radhika Coomaraswamy), available at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/72e640b38c51653b8025675300566722?Opendocument>.

125. Gayla Margolin & Elana B. Gordis, *The Effects of Family and Community Violence on Children*, 51 *Ann. Rev. Psychol.* 445, 446 (2000).

126. PAULO SÉRGIO PINHEIRO, UNITED NATIONS, *WORLD REPORT ON VIOLENCE AGAINST CHILDREN* 70 (2006).

psychological problems.<sup>127</sup> Evidence is emerging that a range of health, school, and social interaction problems follow from exposure to violence in the home.<sup>128</sup>

Laws are evolving with the intention of providing protections and services to children who witness or merely run the risk of witnessing violence in the home. Here again, New Zealand takes the lead in both inclusivity and the protection of young victims. The New Zealand Domestic Violence Act of 1995 covers psychological abuse of a child by relating abuse to anything that “causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship; or puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring . . .”<sup>129</sup> India’s 2005 Protection of Women From Domestic Violence Act also allows for an *ex parte* restraining order which might include an order for the perpetrator to vacate the family home in the interest of the safety of not only the victim or likely victim of violence, but also children who may or may not be threatened by violence but would be considered harmed.<sup>130</sup> For example, the law provides for a “protection order in favour of the aggrieved person and prohibits the respondent from committing any act of domestic violence;<sup>131</sup> aiding or abetting the commission of acts of domestic violence;<sup>132</sup> entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;<sup>133</sup> attempting to communicate in any form whatsoever with the aggrieved person;<sup>134</sup> alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both parties, jointly by the

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127. See generally Bahador Esfandyari et. al., *Background of Inter-Parental Conflicts and Internalizing Behaviour Problems Among Adolescents*, EUROPEAN JOURNAL OF SCIENTIFIC RESEARCH 599 (2009).

128. HOLDEN, *supra* note 118, at 8-9 (presenting a check list of children’s problems associated with exposure to marital conflict, including: aggression; alcohol and/or drug use; anger, destructiveness, cruelty to animals, non-compliance, oppositional, anxiety, depression, excessive clinging, fears, low self-esteem; sadness, self-blame, shyness, suicidality, belief in violence in relationship, low empathy, poor problem solving skills, school problems, temperamentally difficult).

129. Domestic Violence Act 1995, *supra* note 116, § 3.

130. Protection of Women From Domestic Violence Act, No. 43 of 2005, INDIA CODE (2005), § 21 [hereinafter Indian Act] (“Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent”).

131. *Id.* § 18(a).

132. *Id.* § 18(b).

133. *Id.* § 18(c).

134. *Id.* § 18(d).

aggrieved person and the respondent or singly by the respondent, including her *stridhan* (dowry) or any other property held jointly by the parties or separately by them without the leave of the Magistrate."<sup>135</sup> The protection order includes a residence order "directing the respondent to remove himself from the shared household;<sup>136</sup> restraining the respondent or any of his relatives from entering the shared household in which the aggrieved person resides;<sup>137</sup> restraining the respondent from alienating or disposing off the shared household."<sup>138</sup> The occupancy orders provided for in the law can be made to remain in the family home and often one of the legal considerations in making such an order is the best interest of the child.<sup>139</sup>

### C. EXPANDING CATEGORIES OF VIOLENCE

Yet another novel element of new developments in domestic violence lawmaking in Asia is that new laws have covered expanded categories of violence including physical, psychological, sexual, economic, and verbal violence. The laws in countries including New Zealand and Bangladesh are modeled by the framework prepared by the first U.N. Special Rapporteur on Violence against Women.<sup>140</sup> This international framework urges States to adopt the broadest possible definition of domestic violence, which makes clear that domestic violence can be either physical, sexual, or psychological and can include threats, intimidation, coercion, stalking, and humiliating verbal abuse.<sup>141</sup> This dialogue allows national laws to be highly expansive, thus protecting victims from all forms of domestic violence by creating a common vernacular going beyond domestic abuse as constituting simply physical abuse.

Bangladesh's bill for instance covers physical, sexual, psychological, and economic abuse.<sup>142</sup> In both the Indian and Bangladeshi laws, economic abuse covers customary practices including the demand for dowry.<sup>143</sup> The Vietnamese law defines

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135. *Id.* § 18(e).

136. *Id.* § 19(1)(b).

137. *Id.* § 19(1)(c).

138. *Id.* § 19(1)(d).

139. *Id.* § 19(2).

140. *See generally* Special Rapporteur on Violence Against Women, *supra* note 42.

141. *Id.*

142. The Domestic Violence (Prevention & Protection) Bill, Ch. 1, § 3, 2008 (Draft) (Bangl.).

143. *Id.*; Indian Act, *supra* note 130, § 3 ("Definition of domestic violence. . . (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security").

violence as a tool of power and control that a spouse or family member may exert in the form of customary practices such as: forced child marriage, forcing other family members to overwork or to contribute more earning than they can afford, and controlling other family members. Among the cultural practices, for instance, Article 2 includes:

Insulting or other intended acts meant to offend one's human pride, honour and dignity; c) Isolating, shunning or creating constant psychological pressure on other family members, causing serious consequences; d) Preventing the exercise of the legal rights and obligations in the relationship between grandparents and grandchildren, between parents and children, between husbands and wives as well as among brothers and sisters. e) Forced sex; f) Forced child marriage; h) Forcing other family members to overwork or to contribute more earning than they can afford; controlling other family members' incomes to make them financially dependent; i) Conducting unlawful acts to turn other family members out of their domicile.<sup>144</sup>

The Malaysian domestic violence law also carries a relatively expansive definition of domestic abuse. The law defines domestic violence mainly in terms of physical harm, sexual harm, and property damage with the intent to cause distress. Economic damage is defined as:

Where a victim of domestic violence suffers personal injuries or damage to property or financial loss as a result of the domestic violence, the court hearing for a claim for compensation may award such compensation in respect of the injury or damage or loss as it deems just and reasonable.<sup>145</sup>

The Philippine law also defines specificities in order to prevent ambiguity and arbitrary interpretation by judges. This law covers physical and bodily harm including: sexual violence,<sup>146</sup> rape,<sup>147</sup> sexual harassment,<sup>148</sup> acts of lasciviousness,<sup>149</sup> treating of women as sex objects,<sup>150</sup> making demeaning remarks,<sup>151</sup> forcing the watching of obscene publications,<sup>152</sup> coercing sexual activity,<sup>153</sup> and prostituting the woman and child.<sup>154</sup> Psychological and eco-

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144. Law on Domestic Violence Prevention and Control, Law No.2/2007/QH12 of Nov.21, 2007, Ch.1, art. 2 [hereinafter Vietnam Law] (Viet.).

145. Domestic Violence Act 1994, (Act 521/1994), Pt. III, §10(1) [hereinafter Malaysia Act] (Malay).

146. Rep. Act. No. 9262, *supra* note 20, § 3(b).

147. *Id.* § 3 (B)(a).

148. *Id.* § 5 (h)(5).

149. *Id.* § 3 (B)(a).

150. *Id.* § 3 (D)(1).

151. *Id.* § 3 (B)(a).

152. *Id.*

153. *Id.* § 3 (B)(b).

154. *Id.* § 3 (B)(c).

conomic harms are also outlined extensively.<sup>155</sup> Psychological harm includes public ridicule and the forcing the witnessing of pornography.<sup>156</sup> The Philippine law defines economic abuse as: "An act that makes a woman financially dependent which includes but is not limited to: withdrawal of financial support or prevention of the victim from engaging in any legitimate profession, occupation, business or activity, except in cases where in the other spouse/partner objections are valid."<sup>157</sup> Consistent with defending economic freedoms, the law clearly addresses and prohibits controlling and restricting movement.<sup>158</sup>

Negligence of household duties and withdrawal of support is considered a category of violence. The Indonesian law on domestic violence in Article 5 prohibits negligence of household duties.<sup>159</sup> In this law, economic abuse is defined as: withdrawal of financial support or preventing the victim from engaging in any economic activity. The Vietnamese law in Article 2 also defines economic abuse as a form of domestic violence. For example, the law states that a domestic violence act includes "forcing family members to overwork or to contribute more earning than they can afford: controlling other family members incomes to make them financially dependent."<sup>160</sup>

Despite these improvements, the implementation of many national laws remain confined to traditional standards of domestic violence and lack a more nuanced understanding of the nature of domestic violence. Cambodia for instance, continues to define violence more narrowly as only physical violence and sexual aggression.<sup>161</sup> Cruel acts are defined to include only mental and

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155. *See id.*, § 3 ("Violence against women and their children" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty."). Other sections that outline form of both economic and psychological abuse include: *id.* § 3 (C); § 5 (h); § 31 (a); § 3 (D); § 13.

156. *Id.* § 3 (C).

157. *Id.* § 3 (D) (1) (referring to Article 73 of the Family Code).

158. *Id.* § 5 (e) ("Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct").

159. Indonesia Law, *supra* note 63, art. 5.

160. Vietnam Law, *supra* note 144, art. 2.

161. Cambodia Law, *supra* note 101, art. 3.

psychological harms exceeding morality and the boundaries of law. In turn, torture is defined as mental, psychological, and physical harm “exceeding morality and the boundaries of law.”<sup>162</sup> Though a good faith effort has been made to include mental and psychological harm under torture, the phrase “exceeding morality and the boundaries of the law” does not suffice as this is simply too vague and ambiguous and therefore is subjected to the capricious interpretation of judges. As a consequence of these vague laws, child protection is also severely compromised. For instance, this law does not disallow the chastisement of the child if carried out in accordance with the “nation’s good custom and tradition; the teaching of Noble nature and the principles of the United Nations Convention on Human Rights and Child Rights.”<sup>163</sup> Article 8 of the Cambodian law allows for “disciplining and teaching . . . with the noble nature and in accordance with the Principles of the United Nations Convention on Human Rights.” This language is amorphous and can be subjected to capricious interpretation to allow for chastisement of family members.<sup>164</sup>

Of all the laws passed in Asia discussed above, India’s 2005 Protection of Women from Domestic Violence Act is particularly interesting as it is the most recent domestic violence act to be passed in Asia.<sup>165</sup> The Indian definition of domestic violence covers physical, sexual, and psychological violence occurring in the family including dowry related violence,<sup>166</sup> injuries, and endangerment to the health, safety, life, limb or well-being (whether mental or physical), sexual abuse, verbal, emotional, and economic abuse.<sup>167</sup> The law provides concrete mechanisms through which victims and other family members, including children, can be protected. For instance, the law allots the victim a share of the abuser’s property and salary, medical damages, and further allows her to remain in the family household.<sup>168</sup>

The Indian domestic violence law makes significant strides in addressing and attempting to dismantle negative cultural practices, which are abusive towards women. This is significant because customary practices that devalue girls and create son preference are often the root cause of discrimination against girls and women in Asia. The law explains that “verbal and emotional” abuse under the Act includes “. . .insults or ridicule espe-

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162. *Id.* art. 6.

163. *Id.* art. 8.

164. *Id.*

165. Indian Act, *supra* note 130.

166. *Id.* § 2.

167. *Id.* § 3(a).

168. *Id.* §§ 15-17.

cially with regard to not having a child or a male child.”<sup>169</sup> Economic protections provided for in the Indian law include alienating any assets, operating bank accounts or lockers, including her *stridhan* (dowry),<sup>170</sup> which constitutes violence.<sup>171</sup> Violence in the law also includes causing violence to dependents or other relatives.<sup>172</sup>

In practice, definitions of domestic violence that include psychological and economic violence can be problematic. These types of violence are often difficult to prove to a judiciary that has little gender sensitivity training. In these cases the support of psychologists, counselors, and advocates must be marshaled and the law must provide for these resources.

Pakistan’s new Bill on Domestic Violence similarly lays out a broad definition of domestic violence including emotional abuse, stalking, and wrongful confinement.<sup>173</sup> The Pakistani law classified domestic violence as acts of physical, sexual or mental assault, force, criminal intimidation, harassment, hurt, confinement, and deprivation of economic or financial resources.<sup>174</sup>

Under the law, depriving a spouse of money or other necessary resources is also considered a violation of national law.<sup>175</sup> Despite these developments in the new Indian and Pakistani bills, there remains a gap in the acknowledgment of the atrocities against women, which are uniquely and specifically attributed to their subordinate position in the community. Indian and Pakistani women are all too often the victims of having been burned and doused with acid, and the crime of stove burning is all too common in Pakistan.<sup>176</sup> Stove and acid burning are topics that are subject to debate with regards to how they can be included in

169. *Id.* § 3.

170. *Id.*

171. *Id.* § 18 (“Protection Orders . . . (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her *stridhan* or any other property held either jointly by the parties or separately by them without the leave of the Magistrate”).

172. *Id.* § 18(f) (“[C]ausing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence”).

173. Pakistan Act, *supra* note 65, § 2.

174. Khurram Shahzad, *Pakistan passes bill against domestic violence* ONE-WORLD SOUTH ASIA (Aug. 07, 2009), <http://southasia.oneworld.net/todayshadlines/pakistan-passes-bill-against-domestic-violence/?searchterm=passes%20bill%20against%20domestic%20violence>.

175. *Id.* § 2 (“Economic Abuse Means: The unreasonable deprivation of economic or financial resources to which a victim is entitled under law or which the victim requires out of necessity, including household necessities for the victim, and any payments required by law in respect of the shared residence”).

176. Manar Waheed, *Domestic Violence in Pakistan: The Tension Between Intervention & Sovereign Autonomy in Human Rights Law*, 29 BROOK. J. INT’L L. 937, 941, (2004).

domestic violence laws. Acid attacks can be linked to male perpetrated domestic violence.<sup>177</sup> Although acid attacks have been a common form of violence in many parts of the East and South Asian subcontinent, it is now emerging as an actionable offense that is being criminalized.

Legal reform must be viewed in the context of the entire legal system and not as an isolated effort. In 2004 Pakistan amended its penal code, where new provisions were introduced to address honor crimes.<sup>178</sup> Honor crimes are some of the most egregious crimes against women and girls, and Pakistan for the first time recognized it as a crime. However, the criminal legal system in Pakistan still retains the concepts of *Qisas*<sup>179</sup> and *Diyat*,<sup>180</sup> which are customary processes by which legal heirs can enter into a compromise with the perpetrator. Therefore, although the law attempts to address honor crimes against women and girls, which are most often committed by male family members, under *Qisas* and *Diyat*, legal heirs have the right to accept compensation for the crime and in effect nullify the crime against the woman or girl. Unless *Qisas* and *Diyat* provisions are acknowledged and dealt with in the domestic violence law, the provisions dealing with honor crimes would remain largely ineffective. There is currently no attempt to address *Qisas* and *Diyat* in domestic violence laws. Although the law purports to borrow concepts from other jurisdictions including provisions relating to protective orders and shelters, there is no mention of inapplicability of *Qisas* and *Diyat* in that bill. It is unfortunate that cases of violence against women continue to be dealt through customary or religious law procedures.

Given that under the Pakistani Constitution no law can violate the Islamic law, all legal reforms, particularly in relation to women, must be reconciled with Islamic principles. Although the women's movement of Pakistan took the decision very early on not to confront the complicated question of law and religion, there is a need for scholarship to examine law and Islamic provisions because legal reform ends in commissions led by Islamic scholars. It is important that legal reform be based on the reconciliation of both the CEDAW and on Islamic law.

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177. *Id.* at 942-44.

178. Asian Centre for Human Rights, *Confronting Honour Killings*, COUNTERCURRENTS.ORG, Oct. 29, 2004, <http://www.countercurrents.org/hr-achr291004.htm>.

179. See generally Evaluation- Qisas and Diyat Ordinance 1990, THE UN SECRETARY-GENERAL'S DATABASE ON VIOLENCE AGAINST WOMEN, <http://webapps01.un.org/vawdatabase/searchDetail.action?measureId=18083&baseHREF=country&baseHREFId=997> (last visited Mar. 31, 2012).

180. *Id.*

#### D. INTERSECTING FORMS OF VIOLENCE

As mentioned above, deep-seated traditional mores, such as son preference and devaluation of girls are inextricably interrelated to violence against women and must therefore be captured in any narrative on women's rights legal reform and practice. The correlation between the devaluing of girls and son preference impacts the underlying causes of domestic violence. Across the world, the preference for sons results in millions of missing girls.<sup>181</sup> Sex-selective abortions, infanticide, and abandonment are means of controlling the birth and development of girls. Furthermore, such preference manifests itself in discriminatory feeding, dowry, polygamy, the devaluing of a woman's education, and the lack of freedom of choice in marriage, all practices which are often both a continuum of and root cause of domestic violence, which in turn affects both women and children. According to the U.N. Secretary General's Report:

Female infanticide and prenatal sex selection, early marriage, dowry related violence, female genital mutilation/cutting, and crimes against women in the name of "honour," and maltreatment of widows, including inciting widows to commit suicide, are forms of violence against women that are considered harmful traditional practices. . .

Under-documented forms of violence against women include femicide; sexual violence against women in armed conflict and post-conflict situations; trafficking in women for sexual and other exploitation, traditional harmful practices (other than female genital mutilation/cutting); prenatal sex selection and neglect of infant girls; forced marriage; early marriage; acid throwing. . .<sup>182</sup>

Other harmful practices include marriage of girls to older men, ghost wives, honour killings, widow burning, dowry deaths, and the dedication of young girls to temples (*devadasi*<sup>183</sup> in India and *deuki*<sup>184</sup> in Nepal), all of which constitute forms of domestic violence.

As mentioned above, in several countries in Asia, acid attacks are rampant and laws are now beginning to address this atrocity. Bangladesh was one of the first countries to outlaw acid attacks and women's groups in Nepal, Pakistan, and India are

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181. See generally Monica Sharma, *Twenty-first Century Pink or Blue: How Sex Selection Technology Facilitates Gendercide and What We Can Do About It*, 46 FAM. CT. REV. 198 (2008).

182. *Ending Violence Against Women: From Words to Action*, REP. OF THE SECRETARY GENERAL, 45-46 (2006).

183. William Dalry, *Serving the Goddess*, THE NEW YORKER (Aug. 4, 2008), available at [http://www.newyorker.com/reporting/2008/08/04/080804fa\\_fact\\_dalry](http://www.newyorker.com/reporting/2008/08/04/080804fa_fact_dalry) mple.

184. *Fallen Angels*, FOTYART.ORG [http://www.fotyart.org/travel/maleta/tomkelly/Fallen\\_Angels-2.pdf](http://www.fotyart.org/travel/maleta/tomkelly/Fallen_Angels-2.pdf) (last visited March 11, 2012).

also amplifying their call for a similar law. In 2002, Bangladesh passed two milestone laws to combat acid violence: the Acid Control Act and the Acid Crime Control Act.<sup>185</sup> Non-governmental organizations have also been behind this crackdown by advocating for both awareness and lawmaking.<sup>186</sup> Just as in all the above stated cultural offenses, it is necessary that the law be used to combat domestic violence and that legislation be modeled after the Bangladeshi laws mentioned above.

The goal of Bangladesh's Acid Crime Control Act is to monitor the import, production, transportation, storage, sale, and use of acid.<sup>187</sup> The Acid Control Act also contains provisions to provide treatment, rehabilitation, and legal assistance to acid burning victims.<sup>188</sup> The act created the Acid Crime Control Council, an organization chaired by Bangladesh's Minister for Home Affairs that works primarily in conjunction with other social service organizations to prevent acid violence.<sup>189</sup> Bangladesh is the only country, which has a law to control the acid business. The passage of both the Acid Crime Prevention Act and the Acid Control Act 2002 restricts the import and sale of acid in open markets and makes acid throwing a serious crime. It is necessary that that law and policy makers begin to address domestic violence in the form of different acts of violence against women and girls in order to adequately provide protection to women of Asia who endure particularly brutal crimes. More importantly, it is necessary that these laws contain preventative measure such as the controlling of the sale and marketing of acid itself.

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185. Hooma Shah, *Brutality by Acid: Utilizing Bangladesh As A Model to Fight Acid Violence in Pakistan*, 26 WIS. INT'L. L.J. 1172, 1191 (2009). In 2002, Bangladesh passed two landmark laws to combat acid violence: The Acid Control Act and the Acid Crime Control Act. The purpose Acid Crime Control Act is to prosecute acid crimes. "Under the Acid Crimes Control Act, a perpetrator can receive a number of punishments, including (1) capital punishment, (2) imprisonment (sentences can range from a life term to as little as three years), and (3) substantial financial penalties that are proportionate to the injury sustained by the victim. Another important provision of the Acid Crime Control Act is its establishment of the Acid Crime Control Tribunal." The Acid Crime Control Tribunal can investigate police officers who have prevented an acid attack from occurring or did not investigate a crime correctly. The aim of the Acid Control Act is to monitor the import, production, transportation, storage, sale, and use of acid.

186. See generally Aziza Parvin, *Violence Against Women*, UNESCAP.ORG, [http://www.unescap.org/sdd/meetings/SDD\\_SD\\_10/Bangladesh.pdf](http://www.unescap.org/sdd/meetings/SDD_SD_10/Bangladesh.pdf) (last visited March 31, 2012); Salma Ali, *Legal Approaches, Reforms, Different Areas of Laws, Assessment of the Effectiveness of Particular Legal Framework/Provisions, Lesson Learned, Good Practices & highlighted promising practices in Bangladesh*, U.N. Doc. EGM/GPLHP/2009/EP.16 (May 11 2009).

187. Shah, *supra* note 185, at 1192.

188. *Id.*

189. *Id.*

Other significant laws seeking to change or abolish harmful cultural practices include the reform of Pakistan's *Hudood* Ordinance of *Shariah* Law.<sup>190</sup> This provided for the elimination of the

four-witnesses requirement in cases relating to rape.<sup>191</sup> It also permits a judge to have discretion in trying rape cases in criminal, rather than religious courts, and in introducing DNA evidence. In addition, it drops the death penalty and flogging for those convicted of consensual sex outside marriage.<sup>192</sup> Other discriminatory customs of Islamic law, however, have yet to be combated by the law. This includes *Qisas*,<sup>193</sup> a crime that is one of retaliation under Sharia law. Punishment can come in several forms and also may include "[d]iyat which is a form of compensation, or blood money, which is to be paid to the victim or the family as reparation for an injury or murder."<sup>194</sup> Other abusive practice includes *Vinni*,<sup>195</sup> which comes from the Pashtun word for blood, *vanay*.<sup>196</sup> This is a centuries-old practice in Pakistan and in parts of Afghanistan of giving women into marriage as compensation in cases of murder and territorial disputes.<sup>197</sup> Unsurprisingly, women given in *vinni* live their lives in perpetual bondage. A 1990 amendment to the Pakistan Penal Code,<sup>198</sup>

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190. See generally Pakistan Penal Code, Act 45 of 1860, 6 October 1860, amended by The Protection of Women (Criminal Laws Amendment) Act, No. 6 of 2006.

191. *Id.* (Stating that rape cases would be tried in criminal rather than Islamic Courts, thus dismantling the need for four witnesses and calling for forensic evidence).

192. *Id.* § 496B(2). This law placed a lesser sentence on those who have consensual sex outside of marriage. "Whoever commits fornication shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten thousand rupees."

193. AMNESTY INTERNATIONAL, EXECUTIONS UNDER THE QISAS AND DIYAT ORDINANCE (May 1, 1995), available at <http://www.unhcr.org/refworld/docid/3ae6a9a10.html>.

194. Craig Silverman, *An Appeal to the United Nations: Terrorism Must Come Within the Jurisdictions of An International Criminal Court*, COALITION FOR THE INTERNATIONAL CRIMINAL COURT (1997), <http://www.iccnw.org/documents/TerrorismCraigSilverman.pdf>.

195. See Juliette Terzieff, *Legislator Fights Pakistan's 'Blood' Marriages*, WOMEN'S ENEWS, <http://oldsite.womensenews.org/article.cfm/dyn/aid/1569/context/archive> (last visited Apr. 15, 2012).

196. The custom is also known as *swara* in the northern areas of Pakistan. It is common in three of the four Pakistan provinces, including the Northwest Frontier, Sindh and Punjab. See Shahab-ur-Rehman, *Pakistan Young Girls Forced to Marry to Resolve Feuds Between Clans*, ASIA CALLING (Feb. 5, 2011), <http://www.asiacalling.org/en/news/pakistan/1843-pakistan-young-girls-forced-to-marry-to-resolve-feuds-between-clans>.

197. See *Marriage Without Consent: Girl's and Women's Human Rights*, WOMEN'S UN REPORT NETWORK, [www.wunrn.com/powerpoint/forced\\_marriage.pps](http://www.wunrn.com/powerpoint/forced_marriage.pps) (last visited March 31, 2012).

198. See EXECUTIONS UNDER THE QISAS AND DIYAT ORDINANCE, *supra* note 193.

which incorporated the *Qisas* and *Diyat* (blood money), was widely interpreted by tribal elders as official sanction for *Vinni* practices.<sup>199</sup> In such cases, a tribal *Jirga*, or council, will sacrifice women at the altar to save family honor while guilty parties—almost exclusively male—escape further punishment.<sup>200</sup> A bill outlawing this practice is now before the Pakistani legislature. Amendments to Pakistan's Criminal Act, proposed in early 2005, include: the rejection of the forgiveness option for honor crimes available under *Qisas* and *Diyat* ordinances, no concessions in punishment, and the determination of government as wali or guardian.<sup>201</sup> Punishments were also suggested for those who abet, encourage, conspire in, or validate the commissioning of honor killing.<sup>202</sup> These amendments have yet to be passed.

Local governments in Pakistan have passed legislation to reduce acid violence. In August 2003, the Punjab provincial assembly passed a resolution making an acid attack the equivalent of attempted murder and proposed a licensing system on the production, import, transportation, storage, and sale of any type of acid.<sup>203</sup> The bill also proposed mandatory prosecution by the government for the perpetrators of acid crimes.<sup>204</sup> The Supreme Court of Pakistan, which took the case of Naila Farhat *suo motto*, asked the Pakistani government to make an exclusive Acid Crime Prevention Act for dealing with acid attack cases.<sup>205</sup> It also asked for an Acid Control Act to regulate the sale and purchase of acid, much like Bangladesh's Acid Act of 2002.<sup>206</sup> The Pakistani apex court also asked the government to provide free medical treatment to all acid burn victims and provide them with legal aid and rehabilitation.<sup>207</sup> In response to the case, a national law on acid crimes is being drafted.<sup>208</sup>

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199. Pakistan Penal Code, *supra* note 191, § 302.

200. Marie D. Castetter, *Taking Law into Their Own Hands: Unofficial and Illegal Sanctions by the Pakistani Tribal Councils*, 13 IND. INT'L & COMP. L. REV. 543, 560 (2003).

201. Raja Asghar, *MMA Joins Government Against Bill*, DAWN: THE INTERNET EDITION (Mar. 2, 2005), <http://www.dawn.com/2005/03/02/top1.htm>.

202. Pakistan Penal Code, *supra* note 190, § 302.

203. *Action urged on Pakistan acid attacks*, BBC NEWS (Aug. 7, 2003), [http://news.bbc.co.uk/2/hi/south\\_asia/3129887.stm](http://news.bbc.co.uk/2/hi/south_asia/3129887.stm) (Discussing how MPs in Pakistan's Punjab Province have urged tougher sentencing for people convicted of acid attacks on women).

204. *See* Shah, *supra* note 185.

205. *History of Acid Crimes and Need for Legislation on the Subject*, NATIONAL COMMISSION ON THE STATUS OF WOMEN, <http://www.ncsw.gov.pk/laws/DraftNewBillAcidCrimes.pdf> (last visited Sept. 2, 2012).

206. *Id.*

207. *Id.*

208. *Id.*

Alternatively, some progress has been made in the area of honor crimes. The first piece of legislation to be passed against honor crimes in Pakistan was the 2004 amendment to the Criminal Law.<sup>209</sup> The law included the death penalty as the maximum punishment in extreme cases.<sup>210</sup> However, as stated above, the bill did not address the challenges in the *Qisas* and *Diyat* laws, which provides for the possibility of forgiveness in the hands of the victim or her family. The penalties introduced by the bill are ineffective in the face of the *Qisas* and *Diyat* ordinances. The death penalty has always been available for criminals convicted of honor crimes; however, “the problem was never just the sentence, but the absence of actual convictions.”<sup>211</sup>

Domestic violence laws cannot exist in a vacuum. Apart from stand-alone domestic violence laws, other laws that relate to domestic violence and violence against women such as acid crimes and honor crimes that are tied to traditional norms of gender hierarchies must be passed. Domestic violence laws alone are not effective to combat forms of family and intimate partner-led violence such as honor crimes and acid attacks. Although the broad ambit of domestic violence lawmaking can be used to cover such criminal acts, separate laws must be drafted in countries where such acts are rampant.

Women face violence not only due to their gender, but because of their gender coupled with other identities such as disability, ethnicity, and religion. Anti-essentialism is key in repudiating the monolithic of a single woman. Feminist practices such as domestic violence movements must be alert to shifting forms of double or multiple grounds of discrimination. Gender often intersects with a range of identities and the way they intersect affects women’s unique vulnerabilities. Individuals are not composed of a single set of identity traits with stable attributes. Human characteristics are constantly shifting in value; they may be more or less salient, celebrated or ignored. This theory highlights the ways in which marginalized individuals and particularly women suffer compound oppressions, particularly in cultural settings that neither embrace nor allow for contradiction and ambiguity.

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209. See Pakistan Penal Code, *supra* note 190.

210. *Id.* § 54.

211. BBC NEWS, *supra* note 203. MPs in Pakistan’s Punjab Province have urged tougher sentencing for people convicted of acid attacks on women. See also Mazna Hussain, *Take My Riches, Give Me Justice: A Contextual Analysis of Pakistan’s Honor Crimes Legislation*, 29 HARV. J.L. & GENDER 223 (2006).

### E. SHOULD DOMESTIC VIOLENCE LAW BE GENDER SPECIFIC?

An important consideration that comes up over and over again in domestic violence lawmaking is whether the law should be gender specific, i.e. coverage would be confined to women, or gender neutral to cover all persons whether male or female in intimate relationships. The Indian and Philippine laws are gender specific and cover only women.<sup>212</sup> This is based on a postulate that women are disproportionately vulnerable to violence due to their position of inequality. The Constitution of India, under Article 15(3), allows the state to take special measures for women and children in furtherance of the goal of substantive equality.<sup>213</sup>

In Asia, Lao PDR, India, and the Philippines have gender-specific anti-domestic violence laws, which acknowledge the primary fact that domestic violence is in fact gender-based violence.<sup>214</sup> Nonetheless this acknowledgment simply does not extend itself enough, as the question arises as to whether this constitutes a violation of equal protection.

A petition for review of the Philippines Domestic Violence Law was filed in August 2007 by a husband against whom a Temporary Restraining Order (TRO) was issued, challenging the constitutionality of the Philippine law.<sup>215</sup> In this case, women's rights advocates argued that the domestic violence law does not violate the equal protection clause of the constitution.<sup>216</sup> Here too the global movement helped strengthen national movements,

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212. India advocates argue that men too face violence in intimate relationships and they could use the general laws of the land. See Asmita Basu, *Legislating on Domestic Violence*, SEMINAR WED-EDITION (2008), [http://www.india-seminar.com/2008/583/583\\_asmita\\_basu.htm](http://www.india-seminar.com/2008/583/583_asmita_basu.htm).

213. INDIA CONST., art. 15 (3).

214. Law on Women's Development and Protection, No. 8/NA, art. 1 (Oct. 22, 2004) (Laos) ("The Law on the Development and Protection of Women is issued to guarantee and promote the roles of women, to define the fundamental contents of, and measures for developing and protecting, the legitimate rights and interests of women, and to define the responsibility of the State, society and family towards women with the [following] aims. . ."); Indian Act, *supra* note 130, § 10 ("Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means"); Rep. Act No. 9262, *supra* note 20, § 2 ("It is hereby declared that the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security").

215. Rowena Amelia V. Guanzon, Marie Arcie Anne M. Sercado, *Issues and Problems in the Enforcement of the Anti-Violence Against Women and Their Children Act of 2004*, 83 PHIL. L.J. 312, 342 (2008).

216. *Id.* at 344.

as the arguments of these female advocates were based on the CEDAW's substantive equality guarantees, which advanced not just sameness in treatment but more significantly equality of result.

Substantive equality is defined by the CEDAW Committee as that which:

[R]equires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences.<sup>217</sup>

The CEDAW further elaborated that equality of results is the logical corollary of *de facto* or substantive equality. The Committee stated that:

These results may be quantitative and/or qualitative in nature, that is, women enjoying their rights in various fields in fairly equal numbers with men, enjoying the same income levels, equality in decision-making and political influence, and women enjoying freedom from violence.<sup>218</sup>

The formal equality model on the other hand regards men and women as being the same, thus advocates of this model argue that men and women should be treated in the same manner.<sup>219</sup> Such a perspective simply does not suffice in the debate about international legislation against domestic violence because domestic violence has been defined by the U.N. as gender specific. This is supported by a vast array of data. For example, a National Crime Survey conducted in 1984 by the UN found that women were victims of family violence by their husbands or ex-husbands at a rate three times that of men.<sup>220</sup> In a WHO study done in Bangladesh, fifty percent of women reported personal experiences with violence against women in the private sphere.<sup>221</sup> In Colombia, the Forensic Institute has also determined that 94 percent of persons hospitalized in bodily injury cases were battered women.<sup>222</sup> Given the overwhelming evidence to the fact

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217. Comm. on the Elimination of Discrimination against Women, Gen. Recommendation No.25, 30th Sess., art. 4, ¶ 8 (2004).

218. *Id.* ¶ 9.

219. See generally Po-Jen Yap, *Four Models of Equality*, 27 LOY. L.A. INT'L & COMP. L. REV. 63 (2005).

220. See UNITED NATIONS OFFICE ON DRUGS AND CRIME, MANUAL ON VICTIMIZATION SURVEYS (2010).

221. See WORLD HEALTH ORGANIZATION DISABILITY/INJURY PREVENTION AND REHABILITATION UNIT, VIOLENCE PREVENTION IN SOUTH-EAST ASIA 21 (2003).

222. Dorothy Q. Thomas & Michele E. Beasley, *Domestic Violence as a Human Rights Issue*, 15 HUM. RTS. Q. 36, 45 (1993).

that the victims of domestic violence are vastly and disproportionately women, a case for a gender-specific domestic violence law comes within the ambit of the equal protection of the law.

#### F. DEVELOPING MULTI-PRONGED ADVOCACY APPROACHES

Although the state is primarily responsible for combating violence in the private and public spheres, engagement with civil society partners is imperative for effective implementation of the law. Just as global standards inform local movements and vice versa, so too must community-based approaches compliment multi-faceted advocacy approaches in combating domestic violence. Several countries, such as the Philippines and Cambodia, have integrated such an approach to address family violence.

In the Philippines, innovative provisions of the domestic violence law include the *Barangay* Protection Order, a protection order issued by the local government.<sup>223</sup> The *Barangay* order is an alternative to a court issued protection order, and the Permanent Protection Orders refer to a protection order issued by the court after notice and hearing.<sup>224</sup> The *Barangay* protection order was issued by the *Punong Barangay* (or the local government agency) and requires that the perpetrator stops committing violent acts.<sup>225</sup> The bill also established an inter-agency Council on Violence against Women and Their Children, which is composed of several agencies including the National Commission on the Role of Filipino Women (NCRFW), the Department of Social Welfare and Development, the Council for the Welfare of Children, the Department of Justice, and the Health and Education Department.<sup>226</sup> This bill is notable not only because it is strengthened by its multi-faceted approach to enforcement, but also because of its provision, which states that the parties may be accompanied by a non-lawyer advocate in any proceeding before the *Punong Barangay*.<sup>227</sup> In addition to the Philippines, Hong Kong also has created multi-disciplinary task forces. These task forces work through the Committee on Child Abuse, the Working Group on Combating Violence, and the Working Group on Elder Abuse.<sup>228</sup> Through these groups, victims receive support from social workers, counselors, police, and lawyers.

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223. Rep. Act No. 9262, *supra* note 20, § 14.

224. *Id.* § 16.

225. *Id.* § 14.

226. *Id.* § 39.

227. *Id.* § 14.

228. VICKI LEE, LEGISLATIVE COUNCIL SECRETARIAT, STRATEGIES AND MEASURES IN TACKLING DOMESTIC VIOLENCE IN SELECTED PLACES, (June 16, 2008) (RP09/07-08).

Korea has one of the most advanced social safety and multi-agency network approaches in Asia. In Korea, the Special Act for the Punishment of Domestic Violence and the Prevention of Domestic Violence and Victim Protection Act, which was passed in 1997, established not only mandatory investigations by police but also counseling centers, protective facilities, and medical facilities to provide treatment for physical and mental injuries.<sup>229</sup> In addition, police are required to take emergency protection measures for victims by restraining a perpetrator from violent behavior or referring victims to domestic violence counseling centers, protective centers, or hospitals.<sup>230</sup> An important characteristic of the law is that counseling centers are asked to receive reports and provide counseling.<sup>231</sup> These persons can include teachers, doctors, and social workers. Furthermore, a new department has been established within the police department to deal with crimes against women, and counseling centers are required to provide temporary protection to women and children.<sup>232</sup> Additionally, domestic violence legal aid services must be coordinated if necessary.<sup>233</sup>

The Vietnamese law in Article 13 also provides for procedures by which to reconcile conflicts and disputes among family members.<sup>234</sup> In the event that the family cannot reconcile an issue, the clan or the prestigious member in the clan may actively conduct the reconciliation.<sup>235</sup> Perhaps more significantly though, the act allows and provides for grassroots reconciliation teams to operate freely in conducting reconciliation of conflicts and disputes among family members.<sup>236</sup> Here again, we see that this multi-agency approach to addressing domestic violence has emerged as an important characteristic of new domestic violence lawmaking in Asia. Article 16 of the law reinforces this concept

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229. Prevention of Domestic Violence and Victim Protection Act, Law No. 5487, Dec. 17, 1998 (S. Kor.).

230. *Id.* art. 4(4) ("The State and local autonomous bodies shall develop and support domestic violence counseling centers and protective facilities to be established and operated in accordance with Article 5, Paragraph 2 and Article 7, Paragraph 2, of this Act, through such measures as funding assistance").

231. *Id.* art. 6(1). "The Counseling Center shall receive reports on domestic violence and / or provide counseling in regards to domestic violence").

232. *Id.* art. 6(2) ("The Counseling Center shall provide temporary protection to the victims who, as a result of domestic violence, are not able to lead a normal family and social life and / or are in need of urgent protection; or it shall deliver the victims to medical institutions or protective facilities").

233. *Id.* art. 6(3) ("For the purpose of obtaining legal advice on such issues as the reporting of domestic violence to the police, the Counseling Center shall seek cooperation and support of the Korean Bar Association / Local Bar association and the Korea Legal Aid Corporation as necessary").

234. VIETNAM LAW, *supra* note 144, art. 13.

235. *Id.*

236. *Id.* art. 15.

as it requires government support for these social safety networks, stating that “the State shall facilitate and encourage organizations and individuals to provide counseling services.”<sup>237</sup> It further states that “The Commune People’s Committee shall play the lead role and collaborate with the Committee of Viet Nam Fatherland Front at the same level as its members in providing counseling services on family issues.”<sup>238</sup> Article 15 of the law calls for reconciliation by these grassroots reconciling teams which are defined to include: “The People’s Committees of communes, wards and townships (referred to as Commune People’s Committee) [which] shall be responsible for cooperating with the Committee of Viet Nam Fatherland Front at the same level and its members in giving guidance, assistance and good conditions to the grassroots reconciling teams to reconcile conflicts and disputes among family members.”<sup>239</sup>

According to this Act, these organizations and grassroots efforts must have and be able to provide:

- a) Provision of information, knowledge, laws and regulations about marriage, family and domestic violence prevention and control; b) Guidance on behavioral skills in the family and on dealing with conflicts and disputes among family members. 3. Counseling on family issues shall target at the following cases:
  - a) Persons committing domestic violence acts; b) Victims of domestic violence;
  - c) Alcoholic and drug addicts, gamblers; d) Finances.<sup>240</sup>

The law also protects those who report injustices to grassroots organizations, tribal elders, etc., by requiring that the person who discovers domestic violence report the violence to the police station, the commune people’s committee, or community leaders.<sup>241</sup> According to the law, these groups shall be responsible for timely dealing with the case or requesting that relevant authorities or individuals do it, and most importantly, keep the identity of the reporter confidential and provide protection to the individual if necessary.<sup>242</sup> Although the Vietnamese law allowing for community level conflict resolution processes is a positive one, it must be monitored as some of these alternative procedures might reinforce hierarchies and patriarchy. Community level procedures are important strategies to engage the community in addressing

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237. *Id.* art. 16.

238. *Id.*

239. *Id.* art. 15(2).

240. *Id.* art. 16(2a-d).

241. *Id.* art. 18(1) (“The person who discovers domestic violence acts shall report these to the nearest police station or to the commune People’s Committee or the community leader at the scene of violence, except for the cases referred to in paragraph 3 of Article 23 and paragraph 4 of Article 29”).

242. *Id.* art. 18(2).

domestic violence. Nonetheless, these stakeholders may try to resolve conflicts rather than protect the rights of women. As a result, it is necessary that a set of regulations on community monitoring be developed.

Article 1 and 2 of Vietnam's Law on Domestic Violence Prevention and Control of 2007 enshrine an expanded definition of domestic violence, which includes physical violence, sexual violence, psychological/emotional violence, and economic abuse.<sup>243</sup> This includes forced marriage, child marriage and the obstruction of the free will to a marriage, marital rape, isolating a family member from other family members, and preventing the free exercise of relationship between grandparents and grandchildren.<sup>244</sup> Despite this broad definition of the offense, given that no new criminal offenses or administrative violations are created, this definition mainly entitles victims to special protection orders. Similarly, legal aid officers tend to investigate cases that are considered to constitute serious physical injuries.<sup>245</sup>

The domestic violence measures have a protection order which include a no-contact order.<sup>246</sup> This order disallows the perpetrator of violence from contacting the victim for anywhere from three days to four months.<sup>247</sup> The protection order can be requested by the victim for causing or threatening to cause serious physical injury to health or life of the victim.<sup>248</sup> Although the law also describes the principles of reconciliation,<sup>249</sup> it also mandates that reconciliation should not be an option in cases of serious or persistent violence.<sup>250</sup> Although the law provides for this strict qualification, the reality is very different. As a result of these mandates, legal aid officers are reluctant to interfere and the courts are hesitant to prosecute crimes, as they believe that these cases should be handled through reconciliation. Reconciliation is therefore generally conducted by the Women's Union, the family of the victim or the head of the village.<sup>251</sup> Other parties to the reconciliation could include the Fatherland Front or the Farmers Association.<sup>252</sup>

Further impediments to the law include the sad reality that the collection of evidence is often also riddled with problems.

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243. *See id.* arts. 1-2.

244. GEN. STAT. OFF. VIET., NATIONAL STUDY ON DOMESTIC VIOLENCE AGAINST WOMEN IN VIETNAM 32 (2010).

245. *Id.*

246. *See* Vietnam Law, *supra* note 144, art. 19-22.

247. *Id.*

248. *Id.*

249. *Id.* art.12-15.

250. *Id.* art. 20.

251. *Id.* art 21.

252. *Id.*

This is despite the fact that the law imposes an obligation on those who discover such violence to report it to law enforcement agencies.<sup>253</sup> This includes medical staff who attend to the victim.<sup>254</sup> In addition, a medical certificate needs to be obtained to determine the level of the injury.<sup>255</sup> Despite this, little is done in terms of actual collection of evidence of the injury.<sup>256</sup>

Despite these serious disadvantages, the law creates Judicial Officers who are employees of the provincial Departments of Justice.<sup>257</sup> These officers are tasked with raising awareness on domestic violence and for advising and guiding the People's Committees on the implementation of the law.<sup>258</sup> Legal aid officers are attached to over sixty legal aid centers in provinces and cities where they provide free legal assistance at the district and commune levels.<sup>259</sup>

The law is also strong in that it places a focus on education. In Article 32, the law places responsibility on families to educate family members and urge them to comply with the Laws on Domestic Violence Prevention and Control, Marriage and Family, and Gender Equality.<sup>260</sup> In keeping with new trends involving engagement and the education of male members of the community, Article 33 calls upon the Viet Nam Fatherland Front Committee and its member organizations to conduct communication and education activities, and to encourage the members and people to comply with the Laws on Domestic Violence Prevention and Control.<sup>261</sup> In addition, Article 43 of the law addresses applying re-education measures in communes, wards, and townships.<sup>262</sup> It states that “[p]ersons frequently committing domestic violence, having been warned, reprimanded and criticized by the community and within 6 months from the date of those measures taken still committing domestic violence. . . shall be re-educated at their communes, townships or wards.”<sup>263</sup> The law further states that:

The domestic violence committing persons, having been re-educated in communes, wards and townships and still commit-

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253. *See id.* art 18, 23.

254. *Id.* art 23 (3).

255. *Id.* art 23 (1).

256. *See id.*

257. *Research on law enforcement practices and legal support to female victims of domestic violence in Vietnam 24* (U.N. Office on Drugs and Crime, Working Paper, 2011).

258. *Id.*

259. *Id.*

260. Vietnam Law, *supra* note 144, art. 32 (1).

261. *Id.* art. 33.

262. *Id.* art. 43.

263. *Id.*

ting domestic violence that is not serious enough for criminal liability shall be sent to compulsory re-education schools. Persons under 18 years of age shall be sent to the youth custody school in accordance with the regulations on civil violations.<sup>264</sup>

These provisions provide concrete measures by which to educate men, a necessity in the struggle to combat domestic violence. Yet another hallmark of Vietnam's law is the engagement of the Women's Union in monitoring the law.<sup>265</sup> This is a progressive trend that can be traced in other parts of Asia including the Philippines and India.<sup>266</sup>

In addition to community-level and women's organizations empowerment and education to both young girls and boys, inter-agency efforts and coordination have also been acknowledged as important measures. Such an inter-agency effort is seen in Article 35, where the Ministry of Culture, Sports and Tourism is noted to be responsible to the government for exercising the state management of domestic violence prevention and control.<sup>267</sup> The article states that "ministries and ministerial-level agencies, within their designated functions and authority, shall be obliged to cooperate with the Ministry of Culture, Sports and Tourism, in exercising state management of domestic violence prevention and control."<sup>268</sup> The implementation of the domestic violence law in Vietnam depends on sub-decrees that have yet to be drafted.

The Malaysian laws of 1994 set up a one-stop crisis center in every state to deal with cases of violence against women and children.<sup>269</sup> The first center was established at the University Hospital in Kuala Lumpur in 1986 as the result of campaigns by women's organizations.<sup>270</sup> It took eight years for another center to open.<sup>271</sup> Since 1989, a Special Sexual Assault unit has been working out of the police headquarters in Bukit Aman, to deal with cases of violence against women and children.<sup>272</sup> A commit-

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264. *Id.*

265. *Advancing Women's Leadership in Vietnam*, THE ASIA FOUNDATION, <http://asiafoundation.org/pdf/viet.women.pdf> (last visited Sept. 2, 2012).

266. *See Women's Committees in Trade Unions*, ASIA MONITOR RESOURCE CENTRE (July 7, 2010), <http://www.amrc.org.hk/node/978>.

267. Vietnam Law, *supra* note 144, art. 35.

268. *Id.*

269. *See Malaysia Act, supra* note 145; Manuela Colombini et al., *One stop crisis centres: A policy analysis of the Malaysian response to intimate partner violence*, HEALTH RESEARCH POLICY AND SYSTEMS (June 21, 2011), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3141786/pdf/1478-4505-9-25.pdf>.

270. *Organizations Addressing VAW*, UNIFEM: EAST AND SOUTHEAST ASIA REGION (Nov. 22, 2011), <http://www.unwomen-eseasia.org/projects/evaw/vawngo/vammys.htm>.

271. *See id.*

272. *Id.*

tee was established by the Ministry of Women and Family Development to review the Domestic Violence Act of 1994 and its implementation procedures to ensure that adequate protection is provided for survivors of domestic violence.<sup>273</sup> Finally, once women's organizations lobbied the Ministry of Health to make the services more widespread in 1996, the Ministry directed all state hospitals to set up One-Stop Crisis Centers.<sup>274</sup> By 1997, these centers were established in 90 percent of state hospitals.<sup>275</sup>

The Malaysian law was one of the first laws to set up one-stop crisis centers at the community level.<sup>276</sup> These crisis centers have now become pivotal ways to coordinate a holistic approach in addressing domestic violence. Other countries have begun to coordinate such centers. The Bangladeshi law, for instance, calls for one-stop crisis centers at the Thana (district) level.<sup>277</sup>

Community dispute resolution mechanisms are also important mechanisms to address violence against women including domestic violence. The Cambodian law, for instance, states that in the case of the absence of officials who intervene in domestic violence, village chiefs shall be empowered to make submissions to the court.<sup>278</sup> Article 8 of the Cambodian Family law also states that disciplining persons in accordance with Khmer culture is allowed so long as it is accordance with the United Nations Conventions on Human Rights and Child Rights.<sup>279</sup> Even though this article is compatible with standards set forth at the global level, it nonetheless lends itself to ambiguity since it implies that discipline could allow corporal punishment. In cases of

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273. Press Release, United Nations Committee on Elimination of Discrimination Against Women, Malaysia needs new laws aimed specifically at ending discrimination on basis of sex, gender, say committee's expert members (May 24, 2006) (*available at* <http://www.un.org/News/Press/docs/2006/wom1562.doc.htm>).

274. *Id.*

275. *Organizations Addressing VAW*, *supra* note 270.

276. *See generally* Malaysia Act, *supra* note 145.

277. *See* Parliament of Bangladesh Act No. VIII of 2000, Prevention of Oppression Against Women and Children, § 24 (Bangl.). The Bangladesh law emphasizes prevention and protection over punishment. Moreover, following the promulgation of the Act, the government created two one stop crisis centers where victims can access medical health, legal aid, counseling and rehabilitation (the author was invited to visit the Chittagong Hospital one-stop crisis center). These crisis centers are marked by the fact that these are public/private partnerships and that NGO's work together with the government to provide necessary services.

278. Cambodia Law, *supra* note 101, art. 11 ("In case of the absence of the officials who have already earned the legal qualification as the judiciary police, other officials in charge including police officials, police agents, Royal Gendarmerie, local authorities in commune/*Sangkak*, officials of the Ministry of Women's Affairs as well as village chiefs who have intervened to prevent domestic violence and protect the victims shall be empowered under this law to make a record to the court. This record has also the same value as the record made by judiciary police officials").

279. *Id.* art. 8.

minor misdemeanors or petty crimes, mediation “can be conducted with the agreement from both parties.”<sup>280</sup> Householders are given the choice to select amongst “parents, relatives, Buddhist monks, elders, village chiefs, and commune councilors to act as arbitrators.”<sup>281</sup> The courts are also authorized to mediate on the condition that this is the wish of both parties.<sup>282</sup> As vital as community involvement is in defeating domestic violence, here again, as in the case of the Vietnamese case study, it is necessary to ensure that hierarchies based on tradition and patriarchy do not supersede the need to effectively address domestic violence. Village chiefs and commune councilors, unless trained in gender sensitivity, might do more harm than good by trivializing or ignoring the violence and trying to bring about reconciliation of parties when it might endanger the lives of the victims involved. Strict processes according to the law must be followed in community based domestic violence dispute resolution.

Other significant domestic violence laws employing multifaceted and community engagement approaches include those laws in Singapore, Korea, and Taiwan. In Singapore, Section 64 of the Women’s Charter protects family members—spouses, ex-spouses, children (including step and adopted children), parents, parents-in-law, siblings, relatives, or incapacitated persons whom the Court deems as relatives—from family violence.<sup>283</sup> The court can issue a protection order to restrain the perpetrator from using family violence, as well as an exclusion order to bar the perpetrator from entering the shared place of residence.<sup>284</sup> Where the court finds that there is imminent danger of family violence being perpetrated, the court may also issue an Expedited Order, a protection order granted on an expedited basis.<sup>285</sup> In addition, Section 65(5)(b) of the Women’s Charter empowers the Court to mandate that perpetrators, victims, and children receive counseling.<sup>286</sup> The Mandatory Counseling Program, administered and funded by the Ministry of Community Development and Sports (MCDS), aims to rehabilitate the perpetrator and to give support to victims and their children.<sup>287</sup> In addition, to enhance network-

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280. *Id.* art. 26.

281. *Id.*

282. *Id.* art. 17 (“To participate in the implementation of the penal procedures in effect, the authorities in charge cannot intervene to reconcile or mediate the criminal offences that are characterized as felonies or severe misdemeanors”).

283. Women’s Charter Ch. 353, § 64 (as amended by the Women’s Charter (Amendment) Act No. 30) (1996) (Sing.).

284. *Id.* § 65.

285. *Id.* § 66.

286. *Id.* § 65(5)(b).

287. *Mandatory Counseling Program*, THE UN SECRETARY-GENERAL’S DATABASE ON VIOLENCE AGAINST WOMEN (Mar. 22, 2012), <http://sgdatabase.unwomen>.

ing among relevant agencies, regional networking meetings are held regularly. The agencies in the National Family Violence Networking System meet annually to review and enhance the service delivery system.<sup>288</sup> Finally, MCDS has put in place a three level training framework to ensure a high standard of trained family violence workers.<sup>289</sup> Training is targeted at social workers in community and hospital settings. The three levels cover basic training for frontline workers, and more advanced training in counseling and specialized courses in dealing with child victims of violence and cases involving alcoholics.<sup>290</sup>

In Korea, the Prevention of Domestic Violence and Victim Protection Act and the Special Act for the Punishment of Domestic Violence, both of which cover domestic violence, were introduced in 1997.<sup>291</sup> The main features of the laws include mandatory investigation by police of domestic violence calls, establishment of counseling centers or protective facilities, and medical facilities to provide treatment for physical and mental injuries.<sup>292</sup>

The Taiwanese Domestic Violence Law also attempts to adopt an integrated approach in its tackling of domestic violence in the Domestic Violence Prevention Act of 1998.<sup>293</sup> The law provides civil, criminal, and administrative measures to prevent the recurrence of domestic violence as well as to protect victims.<sup>294</sup> Under this approach, courts may be empowered to issue a variety of orders, including counseling orders.<sup>295</sup> Contravention of an order is punishable by imprisonment or fine.<sup>296</sup> The Taiwanese Act also calls for all local governments to create a domestic violence prevention committee, to maintain a domestic violence prevention center, and to establish a 24-hour hotline which aids in leading victims to proper psychological support, housing, and counseling.<sup>297</sup> The engagement of local communities in combating domestic violence is also a thread that runs through this law.

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org/searchDetail.action?measureId=54503&baseHREF=country&baseHREFId=1172.

288. MINISTRY OF COMMUNITY DEVELOPMENT, YOUTH AND SPORTS, PROTECTING FAMILIES FROM VIOLENCE: THE SINGAPORE EXPERIENCE 6 (2009).

289. *Id.* at 10.

290. *Id.*

291. Prevention of Domestic Violence and Victim Protection Act, *supra* note 229.

292. *Id.*

293. Taiwan Act, *supra* note 113, art. 5.

294. *See id.*

295. *Id.* art. 8.

296. *Id.* art. 50-51.

297. *Id.* art. 8.

Lastly, Indonesia's and China's social services laws are similar to other countries' laws examined above.<sup>298</sup> They provide services for the purpose of recovery. The victim may obtain the service of a health worker, a social worker, a companion volunteer, and/or a spiritual mentor.<sup>299</sup> The proposed Chinese Law (in Article 4) places responsibility on multi-agency cooperation with government exercising unified leadership.<sup>300</sup>

In China, the draft Law of the People's Republic of China on the Prevention and Punishment of Domestic Violence developed by the Anti-Domestic Violence Network of the China Law Society calls for the establishment of anti-domestic violence committees to be responsible for coordinating a multi agency cooperation mechanism.<sup>301</sup> The China Applied Law Institute of the Supreme People's Court issued Guidelines for Hearing Marriage Law Cases Involving Domestic Violence as an interpretive tool for judges in handling domestic violence cases.<sup>302</sup> The Guideline was piloted in nine people's courts and has now been expanded across China.<sup>303</sup>

#### G. THE RIGHT OF A VICTIM TO RESIDE IN HER HOME

There is a strong correlation between women's ownership and possession of property and domestic violence.<sup>304</sup> Although women from all economic strata experience violence in the home, women who have economic security are less vulnerable to continued violence in the home. Economic vulnerability often has a cause and effect relationship with domestic violence and lack of economic security is sometimes a determinant of domestic violence.

One of the most difficult decisions female victims of domestic violence face is the fear of dispossession of their marital

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298. See generally Indonesian Law, *supra* note 63.

299. See, e.g., *id.* art. 39.

300. Law of the People's Republic of China on the Prevention and Punishment of Domestic Violence: A Draft Proposed by Anti-Domestic Violence Experts, art. 4 (Proposed Draft, 2010) (China).

301. See generally *id.*

302. See *Explanations on the Law of the People's Republic of China on the Prevention and Punishment of Domestic Violence (A Draft Proposed by Experts)*, CHINA LEGAL SCIENCE (Feb. 2010), <http://www.iolaw.org.cn/showLaws.asp?id=22730>.

303. *Id.*

304. Bina Agarwal argues that women's ability to own and inherit land acts as a deterrent against marital violence. See generally Pradeep Panda & Bina Agarwal, *Marital Violence, Human Development, and Women's Property Status in India*, 33 *WORLD DEV.* 823 (2005). Agarwal again stresses the importance of land and ownership in India, arguing "the single most important factor affecting women's situation is the gender gap in command over property."

home.<sup>305</sup> This impacts the decision to leave the site of violence. Most often, victims of domestic violence choose to remain with an abuser because of the real threat of losing their homes and the lack of alternative safe homes for them and their families.<sup>306</sup> In a patriarchal family, in most cases, it is the male members of the family who are in possession of the premises, as it is their names that appear on the legal deeds. This means that it is easier to dispossess a dependent female, such as a wife or a daughter, than it is to evict a defaulting tenant. This plays a significant role in increasing the vulnerability of women, who continue to remain in violent relationships for fear of dispossession and destitution. In fact, it was observed in many cases that the first thing that happened to women filing complaints under criminal law was that they were thrown out of their own home.<sup>307</sup> In the context of the lack of familial support or state-funded shelter or support services, many victims of domestic violence were dispossessed of their homes.

Indian domestic violence law creates a right to reside; however, this has to be distinguished from property rights themselves. Current residence law only creates a “procedural safeguard” against dispossession to women and therefore fails to create any substantive right over the property.<sup>308</sup> What this means is that a woman cannot be dispossessed from the household that she shares with the perpetrator of violence as a result of violence.

#### H. PROTECTIVE OFFICERS: A NOVEL FEATURE OF THE INDIAN DOMESTIC VIOLENCE LAW

Many of the new laws, such as the Indian and Bangladeshi domestic violence laws, provide a mix of criminal and civil sanctions. Around the world, protective orders have proven to be some of the most important tools for protecting women and children from domestic violence. Many new laws in Asia have developed different protective orders to safeguard women and children. These orders include *ex parte* restraining orders. *Ex parte* temporary restraining orders can include a preliminary injunction against further violence and/or prevent the abuser/defendant from disturbing the victim/plaintiff’s use of property, including the common home and orders to vacate.<sup>309</sup>

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305. See *id.*

306. *Id.* at 307.

307. *Id.*

308. See Basu, *supra* note 173.

309. An *ex parte* temporary restraining order may order the offender to vacate the family home; limit offender’s access to dependent children; Restrain the offender from contacting the victim at work or other places frequented by the victim;

In India, the law provides for a protection order prohibiting the respondent from committing any act of domestic violence, aiding or abetting the commission of acts of domestic violence, entering the place of employment of the aggrieved person or any other place frequented by the aggrieved person, attempting to communicate in any form whatsoever, alienating any assets, operating bank lockers or bank accounts used or held or enjoyed jointly by the aggrieved person and the respondent or singly by the respondent any property held jointly or separately by them.<sup>310</sup> The protection order also includes a residence order directing the respondent from removing himself from the shared household,<sup>311</sup> restraining the respondent or any of his relatives from entering the shared household,<sup>312</sup> and restraining the respondent from alienating the shared household.<sup>313</sup>

A novel element of the Indian law is the provision on protection officers. These protection officers were appointed to assist the Magistrate in the discharge of his functions.<sup>314</sup> Under the law, protection officers shall “make available a safe shelter home. . . [and] maintain a list of all service providers providing legal aid or counseling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate.”<sup>315</sup> Protection officers are appointed by the state government and may be members of the government or members of the non-governmental organizations (e.g., the law claims that NGOs can also be appointed as protection officers).<sup>316</sup> The guidelines require that the protection officers should have at least three years of work expe-

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Compel the offender to pay the victim’s medical bills; Restrict the unilateral disposal of joint assets; Inform the victim and the offender that if the offender violates the restraining order, he may be arrested and criminal charges brought against him; Inform the victim that, notwithstanding the use of a restraining order under domestic violence legislation, she can request the prosecutor to file a criminal complaint against the offender; Inform the victim that, notwithstanding the use of a restraining order under domestic violence legislation and application for criminal prosecution, she can initiate a civil process and sue for divorce, separation, damages or compensation; Require each party to fulfill his/her continuing duty to inform the court at each proceeding for an order of protection at any civil litigation, proceeding in juvenile court and/or criminal proceedings involving either party. *See* Indian Act, *supra* note 130.

310. *Id.* § 3.

311. *Id.* § 19(b).

312. *Id.* § 19(c).

313. *Id.* § 19(d).

314. *Id.* § 9.

315. *Id.* § 9(1)(f).

316. *Id.* § 8. A protection officer must have at least three years of experience in the social sector; be appointed for a minimum tenure of three years and be provided with necessary assistance for the discharge of their functions. *See* LAWYER’S COLLECTIVE, *Staying Alive: Third Monitoring and Evaluation Report 2009 on the Protection of Women from Domestic Violence Act 2005 (2009)* [hereinafter *STAYING ALIVE*].

rience in the social sector, that appointments should be for a minimum tenure of three years, and that protection officers should be provided with the necessary assistance to carry out their work.<sup>317</sup> Perhaps most importantly, the law states that preference should be given to women.<sup>318</sup> Protection officers are often called upon to prepare a safety plan including measures to prevent further domestic violence to the aggrieved person.<sup>319</sup> They can also restore the possession of personal effects, conduct home visits, and monitor protection orders.<sup>320</sup> Protection officers are a key feature of the Indian domestic violence law and serve as key stakeholders in the implementation of the law. Pre-litigation, the protection officers assist the aggrieved person, and post-litigation the protection officers carry out the orders of the court and thus assist both the courts and aggrieved persons.<sup>321</sup>

Thus, the protection officer has a twofold duty: first, to assist the woman in accessing the court and other support services (such as legal aid, medical facilities, shelter homes, etc.) and second, to assist the court during the course of the proceedings and in the enforcement of orders. In addition, the law allows for the registration of NGO service providers.<sup>322</sup> This provides recognition and legal protection to NGOs and other registered bodies that work on women's rights or provide support to women facing violence. This provision was put in place with the intention that protection officers will be able to work closely with such bodies and draw from their experience of providing support. Although protection officers have been appointed in almost all states, unfortunately the appointments have been at the district level, and in most cases existing government officials have been designated as protection officers.<sup>323</sup> The lack of training, infrastructure and support has led to reduced capacity among service providers. On the other hand, a few states have begun the process of registering service providers.<sup>324</sup>

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317. *Id.*

318. *Id.*

319. *See id.* at 89.

320. *Id.* at 162.

321. Over 90 percent of Protection Officers in Delhi have commented that women approached them with complaints of being beaten and being subject to economic abuse. Sexual violence was not high on the list due probably to cultural reservations. *See Recommendations: Third Monitoring and Evaluation Report 2009 on the Protection of Women from Domestic Violence Act 2005*, LAW RESOURCE INDIA (Nov. 15, 2009), <http://indialawyers.wordpress.com/2009/11/15/recommendations-third-monitoring-evaluation-report-2009-on-the-protection-of-women-from-domestic-violence-act-2005/>.

322. Indian Act, *supra* note 130, § 10(2).

323. *See id.* § 8.

324. *Id.* § 10(1).

The Indian Domestic Incident Report is a novel and pioneering effort to ensure prompt and effective record keeping on domestic violence. In India, the Domestic Incidence Reports (DIR) catalogues the various acts of violence under characterizations of physical, sexual, emotional, or economic abuse.<sup>325</sup> Although an extensive list is provided under each category, there is a provision for crimes that are not covered under the given offense.<sup>326</sup> These reports also help to ensure that protection officers are fulfilling their duties and acting responsibly. The protection officers in Andhra Pradesh have reported that women approached them for counseling.<sup>327</sup> The first thing a protection officer does when approached by a woman is to listen to her.<sup>328</sup> If the complaint is trivial and relates to complaints such as “my husband comes very late” or “my husband does not take me out,” the protection officer can make the decision to settle the dispute through counseling and can make a referral to the in-house counselor in the post office.<sup>329</sup> The third monitoring report prepared by the Lawyers Collective and the International Center for Research on Women in 2009 four years after the law came into force shows that a majority of domestic violence cases are resolved through counseling.<sup>330</sup>

## CONCLUSION

Because of the women’s movement’s use of international human rights conventions as lawmaking tools, domestic violence is now considered a human rights violation by many countries in Asia. Specialized police stations and special law enforcement mechanisms have been created and a multi-disciplinary approach to domestic violence now requires both governments and non-governmental organizations to work in partnership.<sup>331</sup> The unfortunate reality however is that civil society remains disengaged

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325. LAWYER’S COLLECTIVE, *Staying Alive: Fifth Monitoring and Evaluation Report 2009 on the Protection of Women from Domestic Violence Act 2005* (2012).

326. *See generally* STAYING ALIVE, *supra* note 316.

327. *Id.*

328. *Id.* at 55.

329. *Id.*

330. *Id.*

331. These range from one-stop centers in Malaysia where a victim is first examined and then seen by a counselor in 24 hours. The victim is then advised to go to an emergency shelter or encouraged to see a social worker. In Lahore, a shelter is provided by an NGO. The shelter provides legal aid, skills and training. Several countries in Asia have adopted the White Ribbon Campaign which supports men and boys to wear white ribbons on November 25th- the international day for the elimination of violence against women. This is a pledge not to commit or condone violence against women. *See generally* *White Ribbon Campaign to Stop Women Discrimination*, SOUTHEAST ASIA WEEKLY, <http://thesoutheastasiaweekly.com/?p=160>, (last visited Mar. 31, 2012); Immigration and Refugee Board of Canada, *Pakistan:*

in the enforcement of the law. As a result, although women's groups actively participate in legal reform and the monitoring of the legislative process, there remains a gap between laws on the book and law in action and women's groups are marginalized from monitoring the implementation of the law.

In order to fulfill the potential of the law, rights must be claimed and rights violations redressed through implementation of laws. The lack of the enforcement of laws is a flaw that affects the effectiveness of domestic violence laws in Asia. In India, the courts have been asked to implement the law and intersecting provisions of the law. Several cases in India have directed the state to implement the national domestic violence law.<sup>332</sup>

Lawmaking on domestic violence is hampered by the weak implementation of laws. Implementation of the law through po-

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*Resources available to female victims of violence in Karachi, Islamabad, and Lahore*, PAK103284.E (Nov. 26, 2009).

332. See generally STAYING ALIVE, *supra* note 317. In *Sou Ratnabai Jaising Patil v. The State of Maharashtra*, the Bombay High Court in a landmark decision addressed the implementation of the PWDA because of the proactive approach adopted by the Court in addressing ineffective enforcement of the law. In this appeal, taking note of the issue of increasing instances of bride burning and offences against women, the High Court of Bombay provided a number of directions to the Government of Maharashtra for effective implementation of PWDVA in the state, as one of the critical laws to address violence against women. The case of, *Sou Ratnabai Jaising Patil And Ors v. the State of Maharashtra* also issued a list of guidelines for Protection Officers. The Court states in the guidelines that the Government of Maharashtra shall establish at the district level in every district of Maharashtra within the Jurisdiction of each Police Headquarters, a Counseling Centre (Special Cell) for women within 12 weeks of the passing of the order. Moreover, the Judicial Officers Training Institute and the Police Training Academy for the State of Maharashtra is directed to introduce in its curriculum topics related to violence against women. The Court directed the government of Maharashtra to establish at the district level a Special Cell for Women and Children as per the provisions contained in the relevant Government Resolutions within 12 weeks of the passing of this order. One of the social workers to be appointed in each of the newly established Special Cells shall be notified as a PO and another social worker shall be registered as Service Provider under the Act within eight weeks of their appointment. Moreover, the Court called for Postal help to ensure that letters reach clients and access to wireless and control rooms. The Court also called for facilities for telephones and home visits. Further, every social worker was to be provided with an ID card so that they could visit the police station, access records, or jails without any difficulty. Furthermore, the State Government was to appoint full time Protection Officers. A Steering Committee that had been previously constituted by the state Women and Child Development Department was given responsibility to monitor and make recommendations to ensure comprehensive implementation process, review of programmes of the implementing agencies, multi-agency coordination within the government and periodic monitoring of implementation of the Act. The High Court Division Bench directed the state Judicial Officer's Training Institute to introduce in its curriculum topics related to violence against women. Similar directions were also issued by the Court to the state Police Training Academy. The Government of Maharashtra was also directed to create more Counseling Centers for Women and Children at the sub- district level in a phased manner.

litical will, judicial fiat, and citizen engagement is the first step towards putting the rhetoric of these laws into action. More must be done by women's groups to actively use the courts to defend and enhance the enforcement of women's rights.<sup>333</sup> As indicated above, even when laws have changed, the implementation of these laws have been plagued by gender bias and double standards. The artificial separation between the private and public spheres still affects the implementation of laws. Around the world, law enforcement officials continue to refuse to interfere in acts of violence in the family, often deeming domestic violence as private and outside the ambit of the law. Severe budgetary restrictions and resource allocations, poor multi-agency coordination, absence of training, and at times, lack of political will constrain the implementation of these laws. Despite these failures and short-comings, the domestic violence lawmaking process itself is important because of the movements and coalitions it helps to catalyze. The lawmaking process is as an empowering process that catalyzes coalitions and revitalizes civil society's engagement with international and national processes.

The last decade was marked by both innovative legal change in the arena of domestic violence as well as the revival of change-resistant cultural traditions that have threatened women's security. Despite their largely symbolic value and rather weak enforcement capabilities, the power of human rights treaties in conjunction with national laws to address these human rights violations must not be underestimated. State compliance with human rights is stimulated by non-state actors both within and outside a state. These initiatives can significantly enhance the level of government compliance with international human rights law. That is why strong transnational and national domestic violence movements are key elements of the narrative of domestic violence lawmaking and practice.

Domestic violence impacts every aspect of a woman's life and affects her role as a citizen. Violence against women is connected with a myriad of aspects of women's citizenship including the right to education, employment, inheritance, property, and autonomy. Although criminal sanctions are an important tool and reflect the notion that violence is considered a crime and not just a private offense, a human rights based approach that focuses on interventions, prevention, and reparation will be better

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333. Some countries like Bangladesh use a litigation strategy to mobilize legislative forces for change. Often a case can break through the veil of invisibility and become the symbol for a pressing campaign. See Mohit Joshi, *Bangladesh court issues official sexual harassment guidelines*, TOPNEWS.IN., <http://www.topnews.in/bangladesh-court-issues-official-sexual-harassment-guidelines-2166800> (last visited Mar. 31, 2012).

than criminalization. The laws examined above attempt to combine those approaches on paper. Global domestic violence norms have now been vernacularized by many Asian countries. The time is now right to translate those values into practice.