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IDEA LAB

Asylum for the World's Battered Women

By ALEX KOTLOWITZ

This past fall, a [United Nations](#) report denounced the extraordinary number of women who are victims of domestic violence — and for whom protection from the authorities is often nonexistent. In some nations, like Bangladesh and Ethiopia, the U.N. found that as many as 6 of every 10 women interviewed had been beaten or sexually assaulted by their husbands or partners. The report called for better protection for abused women, but it didn't address how first-world nations like the United States should treat those women who manage to escape their abusers and flee their countries. Should victims of domestic violence be eligible for asylum, a protection that has traditionally been preserved for those persecuted as a result of political turmoil?

At times we've said yes; at other times we've said no. And in some cases, as with Aruna Vallabhaneni, we've just said, hold on until we make up our mind. Vallabhaneni is a tall, distinguished-looking woman who came to the U.S. from Hyderabad, India, in March 1997 on a tourist visa. She in fact had no intention of returning home. She was wed at age 17, through an arranged marriage, to a man who it turned out had a gambling problem and who would regularly demand that Vallabhaneni, who came from a prosperous Hindu family, request money from her parents. When she refused, he beat her. She was once hit so hard that she lost her sense of smell. Another time, she said her husband kicked her with such force that she experienced vaginal bleeding. She did file a complaint with the Indian police, who held her husband overnight, but when he was released, she testified, he beat her so severely that she was hospitalized for two days. She was afraid to report him to the authorities after that. So she ran. She was so desperate to find safety that she left her two children — a son, 12, and a daughter, 10 — with her parents, assuming that they would be able to join her once she arrived in the U.S. and applied for asylum. Her claim, though, was denied.

It is now a decade later, and Vallabhaneni, who lives in Chicago, remains in a kind of suspended animation. On appeal, her case was sent back to the immigration judge for reconsideration, but at the request of her attorney, the judge put off deciding her case until there's a clearer understanding as to how to treat victims of domestic violence.

It's not, however, as if the courts and the authorities haven't already wrestled with this question. The U.N.'s Refugee Convention of 1951, which a majority of countries, including the United States, eventually adopted, established guidelines for deciding who should be offered refuge. Essentially the convention and its subsequent protocols said that individuals with a well-founded fear of persecution for one of five reasons — political opinion, race, religion, nationality or membership in a particular social group — should not be sent back to their home countries. The category “particular social group” was added at the last minute, and so no one is certain of the authors' original intentions. Sex was not specifically mentioned.

But in the 1990s, U.S. immigration authorities began to recognize sex-based persecution as grounds for asylum. First, the Board of Immigration Appeals took up the asylum claim of a Salvadoran man who feared the guerrillas because he belonged to a taxi-driver cooperative. In rejecting his claim, the board laid out a definition for “social group” that seemed rather straightforward: individuals with immutable characteristics that they can't change or shouldn't be asked to change. A short time later, Fauziya Kasinga, who fled Togo because she feared undergoing genital cutting, a cultural practice of her tribe, applied for asylum. The board granted it, ruling that as a young woman and as a member of this particular tribe, she clearly had characteristics she couldn't change. And, the board ruled, having intact genitalia is “so fundamental to the individual identity of a young woman that she should not be required to change it.”

Then came the jumbled thinking. In 1996, Rodi Alvarado, a young Guatemalan, sought asylum because, she claimed, her husband had brutally beat her and had repeatedly raped and sodomized her. Moreover, the Guatemalan authorities had refused to protect her, saying it was a domestic matter. Like Vallabhaneni, she so feared for her life that she left her children behind and fled to the U.S. There has been profound disagreement among U.S. authorities over how to deal with Alvarado, whose credibility was never in question. An immigration judge granted her asylum, but the government attorneys appealed to the Board of Immigration Appeals, which ruled that Alvarado's husband didn't brutalize her because she was a woman but rather because she was his wife. The board ordered her removed to Guatemala. Then Attorney General [Janet Reno](#) stepped in, as she was permitted to do, and vacated Alvarado's deportation order. In her last days in office, Reno also proposed a set of regulations that recognized that a credible claim for asylum could be made based on domestic violence if it was severe and if the country in question was unwilling to do anything about such abuse.

That was more than six years ago. These administrative regulations — despite their support from an unlikely coalition of politicians, from [Sam Brownback](#) on the right to [Hillary Clinton](#) on the left — have still not been approved. Immigration judges have interpreted this logjam in conflicting ways. There have been grants as well as denials of asylum for domestic-violence

victims, and there have been many cases that, like Alvarado's and Vallabhaneni's, have been placed in limbo until there's some clarity about our policy. At a recent gathering with Attorney General Gonzales, immigration judges reiterated their longstanding request for clear regulations so that they'd have some guidance. But there appears to be an impasse. Three years ago, the [Department of Homeland Security](#) came out in support of Alvarado's bid for asylum, but it's apparent that there has since emerged internal disagreement over how to handle domestic-violence claims. Last month, a D.H.S. spokesman assured me that the agency in conjunction with the Department of Justice "is diligently working on publishing a final rule." The agency has told reporters this before.

The D.H.S. spokesman told me that before a rule can be issued, there are still "a lot of complex analytical questions to be answered" revolving around how to think about social groups. This, it seems, has been central to the debate: Does beating your wife rise to the level of group persecution? Some argue that a husband brutalizing a wife may do so because he's a drunk or a bully and not because he wants to beat all women. The upshot, says James Hathaway, the director of the program in refugee and asylum law at the [University of Michigan](#), is that "if you can't prove intent of the guy with the stick, then you don't get asylum." And that, he adds, is pretty hard to do. In immigration circles, this is what's called the nexus question, which essentially asks asylum seekers: Are you being persecuted on account of your membership in a particular social group? Hathaway points out that some countries, like Britain and Canada, grant asylum if you can show that you've been seriously abused and that your government is unwilling to protect you because of your membership in a particular social group, that is, because you're a woman. In essence, says Hathaway, these nations' refugee laws consider domestic violence more than just a private matter.

Behind these legal arguments, though, is a practical one, especially in these times when immigration is such a hot political issue. Some believe that if we freely used sex to define a social group, it would open the floodgates to victims of domestic violence, who in many countries, as the U.N. study suggests, can be found in large numbers. Deborah Anker, a clinical professor of law at [Harvard](#), says that such a fear has "always underlined every concern about asylum." During the cold war, when the U.S. quite readily granted asylum to political dissidents from the Soviet bloc, there were some who worried that tens of thousands of people who were unhappy under Communism would seek refuge in the U.S. It never happened. And Canada, which began granting asylum to victims of domestic violence in 1993, never experienced the surge that critics worried about.

There are a number of reasons that today's floodgate concerns are a red herring. Asylum seekers need to provide corroboration of their stories, and in the case of domestic violence, that could mean obtaining evidence like hospital records or affidavits from family members (which is what

Vallabhaneni provided). They also must be able to show that they can't get governmental protection from their abusive husbands. What's more, it is especially difficult for women, who often have little or no resources, to leave their home countries. It has also become more difficult to enter this country post-9/11.

For Harvard's Anker, the Ping-Pong approach to domestic-violence victims seeking asylum — sometimes yes, sometimes no — is reflective of an immigration system that is marked by inconsistencies. A comprehensive study last year found huge disparities among immigration judges and their rates of approval for asylum seekers. "What I think is at stake," Anker says, "is whether asylum is going to be governed by a rule of law or whether we go back to an ad hoc, politicized regime," which it was before the U.S. formally adopted the international standards of refugee law in 1980. Stephen Knight, an attorney with the Center for Gender and Refugee Studies at the [University of California's](#) Hastings College of Law, suggests that it boils down to a rather simple divide: "There are people who just don't believe that these women are refugees."

Not long ago, I met Vallabhaneni for coffee. She has been able to secure a work permit, and this was her day off from her job as a customer-service agent for Southwest Airlines at Midway Airport. At one point, she caught me glancing at a bar of milk chocolate that she'd been nibbling on. She laughed. "It makes me sturdy," she told me, "and I didn't want to cry in front of you." She then began showing me photographs of her children, whom she speaks to three times a week and who she told me are now grown and living with her parents. At that point, Vallabhaneni began to tear up. "I feel like I betrayed my children," she said. "I dream about them almost every day." But she told me that if she returned home, her family would force her to return to her husband, and she feared that would be the equivalent of a death sentence. I asked her what she would do if in the end she was denied asylum. She had clearly given this a lot of thought and so was ready with her answer. "I can't go back," she said.

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