

TORTURE BASED ON SEX ALONE

Do women have special asylum claims? They do, and they ought to be recognized.

By ANNA QUINDLEN

RODI ALVARADO PENA CLEANS HOUSES FOR A living, thinks about her two children in Guatemala and waits. For six years she has been in the United States seeking asylum, watching her case go back and forth in a flurry of dizzying inconsistency. One judge granted her the right to stay in this country; a panel of other judges reversed that decision. The U.S. attorney general herself vacated that ruling and said the case should be decided in light of soon-to-be-released regulations. But administrations changed, the new regulations have not appeared, and Rodi cleans and worries and waits some more.

The question of immigration in America is like one of those ill-fated science experiments in school that blow up with a boom. It combines a passive element, the great unyielding bureaucracy of the Immigration and Naturalization Service, with an active one, the hot-button issue of allowing foreigners residency in a land that in theory is welcoming but in practice is hostile. The question of asylum ups the ante, because it goes to the very heart of what the United States professes to be: a nation in which those who have been persecuted in their own country can be guaranteed succor and a second home.

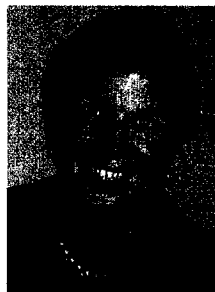
But the issue of asylum for women as women raises the stakes even higher, because it shines unwelcome light on the violence that has long been inflicted on one part of the population by another as a matter of course. Rodi Alvarado says that during a decade of marriage her husband, a member of the Guatemalan military, raped her, tried to abort one of their children by kicking her, and hit her until she lost consciousness in front of those children. And she says that as a matter of policy the government of her country looked the other way, that a judge told her domestic violence was a private matter, that the police would not arrest her husband. In May 1995 she fled for her life to the United States.

She arrived here at a moment of both great promise and great confusion for women seeking asylum because of persecution related to their sex. Standards created half a century ago extend asylum to those persecuted because of race, religion, nationality, membership in a social group or political opinions. One category is glaringly missing from that list, of course, and it is gender. Asylum standards have remained frozen in the amber of a time when silence about gender politics prevailed and asylum was understood as a remedy for unpopular views, not devalued human status.

As a result, women who seek asylum because of sex-based persecution seek it under the rubric of membership in a social group, as though gender were somehow less definitive than race, religion or nationality instead of more so. And they have made

some progress. Karen Musalo, the director of the Center for Gender and Refugee Studies at the University of California's Hastings College of Law, who is representing Rodi Alvarado, was responsible for a major victory in 1996 in the successful asylum claim of an African woman who would have faced traditional genital mutilation had she returned home. But results in cases involving domestic violence have been more equivocal, perhaps because the United States has no history of female genital mutilation but, until recently, a somewhat spotty record of protecting women beaten and even killed in their own homes.

Musalo is also keeping tabs on the case of Rosalba Aguirre-Cervantes, who claimed asylum based on a lifetime of beatings by her father. A federal appeals court ordered immigration authorities not to deport her, and the panel lambasted her native country, Mexico, for its "tacit approval of a certain measure of abuse." But an immigration judge in Chicago recently denied an asylum claim by an Indian woman who says her abusive husband, after beating her so severely that she needed to have a hysterectomy, was let go by police because of the intervention



of her own father, who had arranged the marriage.

Opposition to this sort of asylum claim relies on the old flood-gates argument that has been used over the years to try to curtail admission of everyone from the Irish to the Vietnamese. But it also covertly minimizes societally permissible persecution of women. One anti-immigration activist in California, Barbara Coe, charmingly describes these asylum claims as "You get a punch in the mouth, and you're home free." (Perhaps that quote should be paired with the one from a father in Istanbul who killed his 13-year-old daughter: "I fulfilled my duty. We killed her for going out with boys.") Ms. Coe is not only glib but, by the numbers, wrong. Only about 1,100 of the 55,000 asylum claims in 1999 were from women claiming gender bias.

The numbers in Canada are similar, which is significant because the Canadian Immigration and Refugee Board has adopted progressive guidelines for asylum claims that urge officials to consider the "subordinate status" of women in many countries. Asylum standards, according to the board, were based on "the experiences of male claimants" and ignored the special conditions of women around the world, ranging from compulsory sterilization to honor killings. Canada was in an excellent position to do the right thing, both politically and legally; unlike the United States, it has a Constitution that expressly prohibits discrimination on the basis of gender.

This situation cries out for the simple common-sensical remedy of adding gender to the list of categories that constitute reasonable asylum claims. Countries that permit the abuse, sexual assault, even murder of women as a matter of commission or omission are as guilty of a form of systemic persecution as those that make life unlivable for members of a hated religion or political movement. In one asylum case involving a Haitian man, an appeals-court panel recognized that the issue was the "relationship of the weak to the powerful." Clearly that is true of Rodi Alvarado Pena and those other women who hope the United States will offer a safe haven from lands in which simply being female is reason enough for torture.