

Pull-out supplement

# theFocus

## Family ambiguity and domestic violence in Asia: Reconceptualising law and process

The book *Family Ambiguity and Domestic Violence in Asia* (2013; Brighton: Sussex University Press) raises pertinent questions as to why the incidence of domestic violence has remained as a continuing scourge. The Focus section in this issue of The Newsletter provides the abridged version of select articles within the book. Seven scholars examine comparative experiences in the Asian context in order to gauge the effectiveness of family regulations and laws in diverse national, cultural and religious setting. Although the issue of violence against women (VAW) has received much attention from scholars, social activists, policy makers and international agencies, violence in the home has persisted. Though a universal phenomenon, VAW is also context specific. As domestic violence (DV) per definition takes place within a family setting, the specific forms of families and their supporting ideologies greatly affect the specificities of DV in particular contexts. Comparative cultural and national responses to the issue have shown that the ambiguity of family underscores some of the gaps between the conceptual, legal and process-oriented solutions to the eradication of VAW in society.

Maznah Mohamad and Saskia Wieringa

## Family ambiguity and domestic violence in Asia *continued*

The culture defence discourse and the right to family and privacy, act to seal the family as an isolated and autonomous unit. A human rights perspective is needed to re-situate the family within the justice system. Violence against women is reinforced by the state conception of family as a private domain, as well as the notion of the harmonious family being the foundation of the nation. Male authority over the family and the women in it is further imposed as a religious norm.

AS HAS LONG BEEN ACKNOWLEDGED the family is no longer seen as primarily a site of production and reproduction, but also as a locus of tension and conflict, with violence among intimate partners being one of its manifestations. By conceptualising this issue as stemming from the family context, bestriding the private-public domain, this collection of research articles aims to uncover some of the sources of the difficulties and paradoxes in understanding domestic violence as an all-encompassing problem, from its legal to its cultural dimension.

Articles in this Focus section start from the conceptualisation of family as sited within both public as well as private domains; and herein lies the source of its ambiguity. When the state intervenes in family matters (as in policies on reproductive health and in criminalising domestic violence) the family is treated as a public concern. However, the state takes a liberal stance on respecting individual human rights or even multicultural rights, when the sacredness of family as a private domain is emphasised. There are also extremes in degree of state intervention upon the family. States that enforce Sharia - Muslim laws - do not even limit the extent of their intervention upon private, individual and family lives, but for the most part, reinforce masculine dominance. Other states are selective about when and how they intervene. If domestic violence is conceptualised as a private hurt that leads to public harm, the state criminalises the offence; but when domestic violence is presented as being rooted in gender inequality and in need of more than just a legal solution, then the nature of state intervention may be more ambivalent.

Contextualising the analysis of domestic violence within the notion of family ambiguity thus allows the issue to be explored from its multi-faceted aspects. At the policy-level, it is hoped that these questions can throw new light on how the state should relate to the family as an 'ambiguous' unit, often used to represent the unified state, yet in contrast to the state itself when 'family' is considered a private domain. By theorising and presenting field evidence around the issue of 'family ambiguity' this volume studies the various intervention measures used to affect family and its positive and negative possibilities. The three main focal points of the book - Concept, Law and Process - are explicated below.

### Concept

Articles under the rubric 'concept' capture some of the more salient debates surrounding the issue of domestic violence. There are conceptual issues that are still not reconciled or continue to be disputed, yet contribute towards how advocacy, law, policy and cultural norms are being shaped.

### Culture-as-defence

One of the more prevalent defences of why violence happens in the home is that certain cultural and religious doctrines allow for its use, and that by using it, the boundaries of cultural and religious distinctiveness are defended. Hence, domestic violence can be viewed as being a culture in and of itself, explains Aziz in her article. But she cautions that culture merely represents a socio-political symbolic discourse, which changes over time. By analysing several international cases of domestic violence, Aziz excavates how and why domestic violence continues to be erroneously placed within culture and why the intersecting issues of privacy, culture and honour with violence have gotten in the way of granting justice to victims of domestic violence. The culture defence discourse and the right to family and privacy, act to seal the family as an isolated and autonomous unit. A human rights perspective is needed to re-situate the family within the justice system. In this, state action and inaction sometimes work against this as they tolerate, if not encourage, domestic violence.

### DV: Neutral or gender-based?

Another conceptual paradigm that has muddied the debate on domestic violence is the question of whether domestic violence should be seen as a neutral wrong rather than one that is specific to gender discrimination. The profound ambiguities that these debates reflect are relevant to the Asian context. It shows how universal the idea of family and its link to the perceived dichotomy between private and public has become. As our Asian case studies illuminate, at one level there is successful mainstreaming of the domestic violence issue implying feminist collaboration with institutions such as social work, healthcare or the criminal justice system. However, these are not necessarily in tune with the feminist position on domestic violence, as a form of violent discrimination against women.

The other dilemma is that while the human rights approach has succeeded in eliciting a state response to domestic violence, criminalisation must also include preventive and protective support measures. However, there is still scant recognition that violence is intrinsically related to gendered inequality between men and women, a conceptual flaw that would need to be addressed all over the world.



Above: Protestors against gender violence, India. Image reproduced under a creative commons license, courtesy of 'Say No-Unite' on flickr.

### Family as state construction

In exploring the breadth and depth of domestic violence, the family as social construction forms part of the intriguing puzzle. Just as state prerogatives have shifted, so has the image of the family. Nandy traces the trajectory of family regulation vis-à-vis domestic violence in India, where there have been major shifts in legislation and its discourse. Outlining ancient Indian family's attempts at self-regulation, to modern state-based regulation, Nandy's contribution makes note of different forces that have buttressed the notion of family privacy and sanctity all along. She argues that rights to conjugality have always superseded that of the individual's.

In locating family as a state construction, Ganapathy analyses the tenor of state paternalism when the proposed Bill on Family Violence was rejected after 30 days of parliamentary debates in Singapore. The grounds for this was that it would be detrimental to the family. The bill was said to be at odds with the state's defined role of the family, considered the "fundamental building block out of which larger social structures can be stably constructed". Popular sentiment has it that criminalisation is neither an appropriate nor an effective method to deal with abusers against their own family and that social service agencies are preferred over police intervention.

Provisions in the 1987 Philippine Constitution define Filipino sexuality, and shape Filipinos' "consciousness of what is acceptable and unacceptable, what is normal, and what is deviant or perverse", as Alipio argues. Marriage, the family and the nation are interlinked. The Constitution "recognises the Filipino family as the foundation of the nation" and therefore the state will actively promote its development. Additionally, The Family Code of 1988 explicitly proclaims that parental authority over the person, property and children is given to the father/husband, whose decision shall be paramount over the mother/wife. Thus, the belief that the husband has absolute authority over his wife and children, and the impossibility of divorce, enhances the belief that the man can do no wrong. Alipio's study finds that for women their bodies have become their voice, by going abroad. This is seen as a silent but appropriate strategy to leave abusive relationships, especially since divorce is illegal in Catholic Philippines.

Katjasungkana similarly discusses the pervasiveness of violence against women that is being reinforced by the state conception of family as a private matter, as well as the notion of the harmonious family being the foundation of the nation. Male authority over the family and the women in it is further imposed as a religious norm.

In Malaysia no 'family code' is explicitly worded, as there is in the Philippine and Indonesian cases. Hence, the family debate is largely captured under the rubric of Islam as analysed in Mohamad's article. Due to the dominance of Islam in governance and the extending of provisions within Sharia law for Muslims, the Domestic Violence Bill was initially opposed because of the belief that the law (by encompassing Muslims and non-Muslims) would usurp the jurisdiction of the Sharia court over the Islamic family. Unlike the Philippines, India and Singapore, the notion of family protection and privacy was not the main narrative of that debate, but a power struggle between Islamists and feminists over legal

jurisdictions. Interestingly enough, the objection around 'marital rape', being defined as one form of domestic violence was only rejected by the Islamic faction. In Malaysia it is as though Islam has become the de facto representative of all patriarchal forces, and assumes its role as the main builder and gatekeeper of the essential 'moral' family.

### Heteronormativity as violence

Another crucial set of concepts explored here is heteronormativity and passionate aesthetics, and its link to violence in the family. Wieringa argues that in maintaining the internal cohesion of heteronormativity, violence is exerted in the physical and symbolic sense. Her research on widows, sex workers and prostitutes suggests that there is enormous violence involved in the perpetuation of the myth of heteronormativity as creating or preserving the harmonious Asian family.

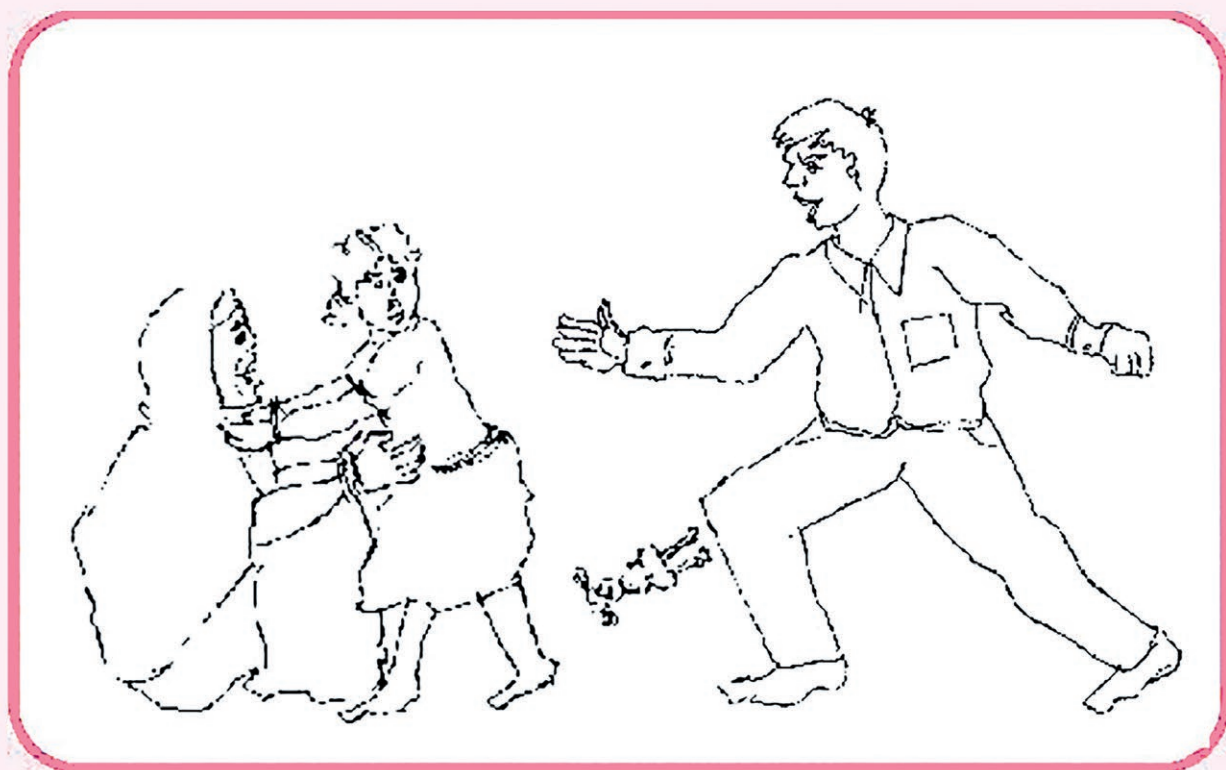
Wieringa explicates the meaning of aesthetics in situating violence within heteronormativity. It is a concept referring to a set of principles that underlie the making of morality. Heteronormativity as a system of values is subjective, while at the same time considered to have universal relevance. Any aesthetic distinction is based on subjective views, yet acquires a hegemonic power in a given context. Violence, as explored in Wieringa's article is intrinsic to passionate aesthetics that underlie heteronormativity. Even when mental and sexual violence occurs the ideal of the harmonious heterosexual family remains intact. Women internalise their shame and guilt rather than blame the perpetrators. Hence, they attest to the power of the symbolic violence of heteronormativity.

### Law

Besides 'concepts', the articles also centre their analyses of domestic violence in Asia around the issue of 'law'. They touch on the role of law in bringing the issue of domestic violence into the public realm. It was in Malaysia that the first legislation on domestic violence was passed in Asia. The Malaysian Domestic Violence Act (DVA) was first passed in Parliament in 1994, but it took two years for it to be implemented. The two years that the law was held in limbo was due to pressure from various quarters, significantly the Islamic faction, which did not want Islamic family matters to be governed by what was perceived as a civil and therefore 'secular' law. Mohamad's article argues that in the Malaysian case the state tried to be responsive to both feminists as well as the Islamic factions, resulting in a law that was 'diluted', and making it difficult for domestic violence to be charged either as a criminal offence or a civil wrong.

In Singapore, the first legislative change dealing with domestic violence came about in 1997 when the Amendments to the Women's Charter (Chapter 353) were made to provide protection for family members. Most cases of domestic violence are set aside of the criminalisation process, due to the absence of support structures for 'victims' if criminalisation proceeds as the course of action. The paternalistic and patriarchal state also impedes women's empowerment by prescribing the limits of police intervention in domestic violence. In a paternalistic discourse, protection is predominant over empowerment or equal treatment.

Below: Illustration taken from an Indian poster about violence against women and how to seek assistance. Image reproduced under a creative commons license, courtesy of the 'Center for Women's Global Leadership' (CWGL) on flickr.



In the Philippines, despite the enactment in 2004 of Republic Act 9262 (The Anti-Violence Against Women and Their Children (VAWC) Act), violence still remains pervasive throughout the country, where reported cases of rape and acts of lasciviousness are high. Alipio argues that the protection of women's rights does not end with the enactment of a law. It needs to be followed through with implementation.

Besides the problems of implementation experienced similarly elsewhere, Katjasungkana analyses several national laws that are in conflict with the stipulations within the DVA. This constitutes one of the biggest structural barriers to the successful implementation of the DVA. The laws include the 1974 Marriage Law, the 1991 KHI and the Labour law. Another problem is Indonesia's system of Legal Pluralism, which is a legacy of Dutch colonialism. Additionally there is the dichotomy between civil and criminal legal and court jurisdiction. Domestic violence straddles both. Regional particularity such as the comprehensive implementation of Sharia in the province of Aceh also contributes to the difficulty of enforcing law that is based on the principle of gender rights as human rights.

Poor conviction rates in domestic violence cases and unwieldy court procedures have made legal remedies less useful for women. Hence, the passage of India's domestic violence law, the Protection of Women from Domestic Violence Act (PWDVA), did not radically transform the notion that family privacy is sacrosanct. Many surveys in India, as discussed in Nandy's article confirm the popular perception that "domestic violence is a family affair". The privacy of family will continue to sustain gendered hierarchies that are often dependent on the deployment of male domination and violence. In such a situation law "becomes a site of ambiguity instead of a force against it".

The ambiguous status of the law, being both civil and criminal, has become an obstruction to the solution. Mohamad's study shows that gendered violence, even if defined within the ambit of the Malaysian Penal Code, will still not be sufficiently addressed by it, given the complex nature of 'hurt' and 'harm' inflicted by intimate partners on each other.

### Process

A third crucial layer, after concept and law, is the process itself – how actors and stakeholders participate in the contest to get domestic violence on the agenda of national and global deliberations and interventions. In Mohamad's article the Malaysian DVA was presented as one of the most outstanding examples of law-making from below, involving the participation of a spectrum of interest groups.

The campaign and social movement behind the establishment of the DVA in Indonesia is another significant social process evolving rights consciousness on gender-based violence. Katjasungkana documents how NGOs like LHB-APIK and Rifka Annisa collaborated with state agencies, such as the Gender Unit of the Ministry of Religious Affairs and the Indonesian National Commission on VAW, to push for a legislation on domestic violence. The drafting team consisted of Members of Parliament in collaboration with the Parliamentary Forum on Population, established academics, law professors and members of APIK. The law was finally enacted on 14 September 2004, and became effective on 22 September 2004, during the term of President Megawati Soekarnoputri.

The above triangulation of civil society, politicians and bureaucrats finds similar resonance in the Malaysian domestic violence movement. The campaign for a DVA in Malaysia started as early as 1985, although the law was only passed in 1994 and enforced in 1996. Like the Indonesian case, the drafting of the bill was an inclusive process that engaged many different representatives of civil society and government, including the religious bureaucracy.

But the process of making domestic violence a named subjectivity is not just the preserve of civil society; Ganapathy's study reveals the frontline process undertaken by the police in the recognition or concealment of domestic violence as a punishable offence. In his study, police response to domestic violence is largely circumscribed by a state discourse that discourages its criminalisation.

### Rethinking the Asian family

Violence against women is a global phenomenon, rooted in the unequal balance of power between women and men, in which women suffer severe forms of physical, emotional, sexual and economic harm. Laws and policies must reflect this recognition. The anti-women's backlash spurred by the family violence approach may lead to the continuation of practices that put women's health and safety in jeopardy. Sexual literacy, legal awareness among women and gender awareness among law enforcers must be given special attention, as should education for girls and a ban on early marriages. As domestic violence takes place in the home and is often justified by patriarchal biases that stipulate that women should be demure, dependent and submissive, the fallacy of the harmonious Asian family must be exposed.