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

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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.

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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 concept-situation 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 muddled 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.
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. 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.

Katjaungkana similarly discusses the pervasiveness of violence against women that is being reinforced by the state conceptualisation 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 moral 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 and its dominance over the family. The Philippines, on the other hand, has 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 KH and the Labour Law.

Besides the problems of implementation experienced similarly elsewhere, there are 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 KH 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 the sharia court jurisdiction and the secular court jurisdiction. Domestic violence straddles both. Regional particularity such as the comprehensive implementation of Sharia in the provinces and the law’s failure to address the difficulty of enforcing laws 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 (PDAV), did not radically transform the notion that family privacy is sacrosanct. Many surveys in India, as discussed in Nandy’s study, argue that the “deterrent nature of 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 a solution in itself. 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 the law. The nature of ‘hurt’ and ‘harm’ is inflicted by intimate partners on each other.

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 the 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 333) 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 political participation in domestic violence. In a patriarchal discourse, protection is predominant over empowerment or equal treatment.

In the Philippines, despite the enactment in 2004 of Republic Act 9262 (The Anti-Violence Against Women and Their Children (VAWC) Act), violence persists 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 mean the enactment of a law. It needs to be followed through with implementation.

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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. The violence reflects this recognition. The anti-women’s backlash spurred by the family violence approach may lead to the continuation of practices that put women’s safety at risk. Sexual literacy, legal awareness among women and gender awareness among law enforcers must be given special attention, as should education for girls and boys on early marriages. As domestic violence takes place in the home and is often justified by patriarchal biases that stipulate that women should be subordinate and submissive, the fallacy of the harmonious Asian family must be exposed.

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 ‘Centre for Women’s Global Leadership’ (CWGL) on flickr.