University of Colorado Law Review

Volume 83 | Issue 4 Article 4

Fall 2012

Homely, Cultured Brahmin Woman Seeks Particular Social Group: Must Be Immutable, Particulara, nd Socially Visible

Sarah Kathryn French

HOMELY, CULTURED BRAHMIN WOMAN SEEKS PARTICULAR SOCIAL GROUP: MUST BE IMMUTABLE, PARTICULAR, AND SOCIALLY VISIBLE

SARAH KATHRYN FRENCH*

This Note examines whether Brahmin women constitute a particular social group under United States asylum law. The domestic violence victims in immigration court—who are predominately Latin American—have thus far failed to establish, in a precedential decision, that they are part of a particular social group or that their perpetrators' violence was on account of their membership in a particular social group. Orthodox Brahmin women in India, however, may be able to meet the elements of asylum where other victims have failed. This Note examines whether Brahmin women can meet the elements of a particular social group, whether the Indian government can protect Brahmin women, and other significant barriers preventing Brahmin women from seeking asylum.

---

* I traveled to India for seventeen days in spring 2011 with my Comparative Family Law Seminar class. We had the opportunity to interview people at numerous non-governmental organizations in Karnataka, India. I would like to thank Clare Huntington and Colene Robinson for organizing the trip.

A word is in order about this Note's title. In matrimonial advertisements in India, "homely" can signify a willingness to be in the home. *See* Exhibit A, Matrimonial ads in the SUNDAY TIMES, the Sunday edition of the TIMES OF INDIA.

"It is generally believed in India that the higher the caste, the higher the seclusion for women, and the lower the caste the more freedom for women."[1]

1. SELVY THIRUCHANDRAN, IDEOLOGY, CASTE, CLASS, AND GENDER 91 (1997).

INTRODUCTION

Asha's husband punched her swollen abdomen and left her on the floor bleeding.[2] She miscarried her baby.[3] Her husband abused and raped Asha, who was originally from a wealthy Brahmin[4] family, for years while she was living in her home country of India. Her husband was a powerful government official, and therefore she knew reporting the abuse to the police would be futile. Asha's opportunity to leave her husband came when she and her husband moved to the United States for his new job. In the United States, she fled, obtained a protection order, and then applied for asylum.[5]

There are two ways to seek asylum in the United States: " 'affirmative applications' and 'defensive applications.' "[6] Asylum applicants can apply affirmatively for asylum with United States Citizenship and Immigration Services (USCIS) in front of an asylum officer.[7] Affirmative cases are not published, nor are they precedential.[8]

Applicants may also seek asylum defensively when the government has placed the applicant in removal (deportation) proceedings. An immigration judge (IJ) in the Department of Justice's (DOJ) Executive Office for Immigration Review

---

2. This account is taken from the case materials of an Indian woman's affirmative asylum case. *Gender Asylum Case Summary: CGRS Case No. 408*, CENTER FOR GENDER & REFUGEE STUD., http://cgrs.uchastings.edu/law/search.php (select "India" in "Nationality" field; select "Domestic Violence" in "Type of Persecution/Case" field; click "search"; select case number 408) (last visited Mar. 10, 2012).

3. *Id.*

4. Brahmins are members of the highest Hindu caste in India. Particularly in smaller Indian villages, Brahmins are generally the dominant social group due to their "ritual status, land ownership, education, occupation, and political prominence." Suneeta Krishnan, *Do Structural Inequalities Contribute to Marital Violence?*, 11 VIOLENCE AGAINST WOMEN 759, 764 (2005).

5. Asylum is a protection the United States offers to people who are persecuted in their home countries and are unable or unwilling to return to their home countries. 8 C.F.R. § 208.13 (2011).

6. RUTH WASEM, CONG. RESEARCH SERV., R41753, ASYLUM AND "CREDIBLE FEAR" ISSUES IN U.S. IMMIGRATION POLICY 6 (2011), http://www.fas.org/sgp/crs/homesec/R41753.pdf.

7. *Id.* If the asylum officer denies the affirmative application, the case is referred to an immigration judge, and the applicant can reapply defensively. *Id.* 6–8.

8. Paul O'Dwyer, *A Well-Founded Fear of Having My Sexual Orientation Asylum Claim Heard in the Wrong Court*, N.Y.L. SCH. L. REV. 185, 192 & n.38 (2008) (citing 8 C.F.R. 1003.1(i)), *available at* http://a.nyls.edu/user_files/1/3/4/17/49/NLRvol52-203.pdf.

(EOIR) hears defensive asylum cases.[9] The Department of Homeland Security (DHS) represents the government's interests in immigration court.[10] Cases in front of an IJ are not precedential; only certain cases appealed from immigration court to the Board of Immigration Appeals (BIA) become precedential decisions.[11]

An asylum officer or immigration judge can only grant Asha's asylum application if Asha can prove she was persecuted on account of one of the following five grounds: race, religion, nationality, political opinion, or membership in a particular social group (PSG).[12] Because domestic violence is not one of these five enumerated grounds for asylum, most domestic violence victims like Asha have no choice but to argue that their persecution is on account of their membership in a PSG.[13] Asha chose to argue that she was abused because she was a member of a PSG: "Hindu women who have suffered extensive persecution [from] their husbands who believe that Hindu women are inferior to men."[14]

This is a risky path; PSG is a complex body of law and there is little precedent on point for domestic violence-based claims.[15] As of spring 2012, there is no binding BIA case or federal regulation acknowledging that victims of domestic violence can constitute a PSG. Yet, Asha has hope. In two non-precedential yet highly publicized cases in 2009, immigration judges granted asylum to two domestic violence victims on the basis of persecution on account of membership in a PSG.[16] In both of these cases, DHS, which represents the government in defensive asylum proceedings, agreed to not oppose the IJ's

9. *Id.* at 192–93.

10. U.S. DEP'T OF JUSTICE, THE BOARD OF IMMIGRATION APPEALS PRACTICE MANUAL, § 1.4(f), *available at* www.justice.gov/eoir/vll/qapracmanual/pracmanual/tocfull.pdf (last visited Apr. 3, 2012).

11. 8 C.F.R. § 1003.1(d) (2011) ("[T]he [BIA], through precedent decisions, shall provide clear and uniform guidance to the Service [and] the immigration judges.")

12. Immigration and Nationality Act (INA) § 101(a)(42)(A), 8 U.S.C. §1158(b)(1)(B)(i) (2006).

13. *See, e.g.*, Fatin v. Immigration & Naturlization Serv., 12 F.3d 1233, 1238, 1241 (3d Cir. 1993) (stating that PSG is "almost completely open-ended").

14. *Gender Asylum Case Summary*, *supra* note 2.

15. Asylum and Withholding Definitions, 65 Fed. Reg. 76,588, 76,593 (proposed Dec. 7, 2000) [hereinafter INS Proposed Regulations] (Of the five grounds of asylum, PSG is the "most complex and difficult to understand").

16. Barbara Barreno, *In Search of Guidance: An Examination of Past, Present, and Future Adjudications of Domestic Violence Asylum Claims*, 64 VAND. L. REV. 225, 230 (2011).

grant of asylum.[17] In one of these cases, *Matter of L-R-*,[18] DHS wrote an unusual Supplemental Brief.[19] Acknowledging the government's significant "delay" in producing "either regulations or an authoritative administrative precedent" on domestic violence-based asylum, DHS departed from its "normal practice" in asylum proceedings of "critiquing 'particular social group' formulations" that asylum seekers have advanced.[20] Instead, DHS offered two "alternative formulations of 'particular social group' that could, in appropriate cases, qualify aliens for asylum."[21] This brief is an invaluable resource for asylum practitioners given the lack of legal precedent for domestic violence-based asylum because it details the situations when DHS will not oppose a judge's grant of asylum.[22]

Given the unsettled state of the asylum law, why would Asha take the extraordinary and risky measure of seeking asylum in the United States when India has laws designed to curb domestic violence? Why wouldn't Asha divorce her husband, take her half of the assets, and move to a new house or her parents' house? The answer is troubling. Many Indian women, including Brahmin women, are often unable to seek protection under the law. Divorce is so culturally shameful it is almost unthinkable for many Brahmin women.[23] Furthermore, once many Brahmin parents have paid a substantial dowry for their daughter's marriage, the daughter is no longer welcome in her natal home.[24] Due to these factors and many others that will be discussed *infra* in Sections III and IV, many women in India are left in the untenable situation of being abused but unable to flee.

---

17. *See Documents and Information on Rody Alvarado's Claim for Asylum in the U.S.*, CENTER FOR GENDER & REFUGEE STUD., *available at* http://cgrs.uchastings.edu/campaigns/alvarado.php (last visited Apr. 3, 2012); *see also Matter of L-R-*, CENTER FOR GENDER & REFUGEE STUD., *available at* http://cgrs.uchastings.edu/campaigns/Matter%20of%20LR.php (last visited Apr. 3, 2012).

18. The identity of an asylum applicant is confidential. 8 C.F.R. § 208.6(b) (2011).

19. Supplemental Brief for Dep't of Homeland Sec. at 4–5, *In re* L-R- (2009) [hereinafter DHS Supp. Br.], *available at* http://cgrs.uchastings.edu/pdfs/Redacted%20DHS%20brief%20on%20PSG.pdf.

20. *Id.* at 4 (internal citations omitted).

21. *Id.* at 5.

22. *See id.*

23. *See* discussion *infra* Part II.

24. KARIN KAPADIA, SIVA AND HER SISTERS: GENDER, CASTE, AND CLASS IN RURAL SOUTH INDIA 54–55 (1996).

This Note examines whether female Brahmin victims of domestic violence like Asha can viably seek asylum in the United States as part of a PSG and the struggles they might face during the process. This Note concludes that, in many respects it is easier for a Brahmin woman to meet the elements of proving membership in a PSG than it has been for the women in the leading asylum cases. Brahmin women who live in villages, lack higher education, and are married to orthodox Brahmin men would be more likely to gain asylum because these factors generally decrease a victim's ability to leave her husband.[25] On the other hand, Brahmin wives with higher education, with economic independence, who live in urban areas, and who are less orthodox, would likely fail to win asylum. These women would probably fail because they are more likely to leave their abusers, obtain a divorce, and support themselves in India without their husbands.

Proving membership in a PSG is only the first hurdle for a Brahmin woman seeking asylum. She must also prove the Indian government is unwilling or unable to protect her, and DHS must not meet its burden to prove internal relocation within India is a reasonable alternative.[26] Finally, even a woman who could prove all of the preceding elements of an asylum claim may not have the resources to seek asylum, or desire to seek asylum in the first place.[27]

Part I explains the basic asylum framework, the history of gender-based asylum in the United States, and the difficulties practitioners face constructing a valid PSG for victims of domestic violence. Part II provides background about domestic violence in India, the history of the caste system, what it means to be Brahmin in modern India, and whether Brahmin women can constitute a particular social group. Part III discusses the Indian laws designed to protect domestic violence victims and whether the Indian government is able or willing to protect domestic violence victims. Part IV analyzes whether Brahmin women, after leaving their abusers, are still at risk for persecution or other serious harm; whether they are able to relocate in another part of India; and the practical barriers that Brahmin women seeking asylum may face.

---

25. *See* discussion *infra* Part II.

26. 8 C.F.R. § 208.13 (2011).

27. "[M]ost victims of domestic violence abroad would not have the resources or ability to . . . come to the United States" to seek asylum. DHS Supp. Br., *supra* note 19, at 13 n.10.

I. HISTORY OF GENDER AND DOMESTIC VIOLENCE-RELATED ASYLUM CLAIMS IN THE UNITED STATES

Domestic violence-based asylum claims are a new and emerging type of asylum claim. The following four sections will discuss the asylum legal framework, the law of particular social group, the history of gender-based asylum, and difficulties asylum practitioners face proving domestic violence-based asylum claims.

A. The Asylum Legal Framework

Under American asylum law, an applicant can be granted asylum in the United States if she proves that race, religion, nationality, political opinion, or membership in a particular social group was a central reason for persecuting the applicant, and the applicant's country is unable or unwilling to protect the applicant.[28] If the applicant was persecuted in the past, then there is a presumption that the applicant will be persecuted if she returns.[29] DHS can rebut this presumption one of two ways. It can prove there has been a fundamental change in the victim's circumstances such that the victim is no longer in danger of persecution.[30] Or DHS can prove the applicant could relocate to another part of India.[31] If DHS meets its burden, then the burden shifts to the applicant to prove that compelling reasons exist to let the applicant stay or that serious harm will happen to the applicant if she is denied asylum and deported to India.[32]

B. What Constitutes a PSG

In order to prove persecution on account of membership in a PSG, the applicant must show four elements: immutability, particularity, social visibility, and persecution on account of the victim's membership in the PSG. An immutable characteristic is a characteristic such as gender that cannot be changed or be

28. INA §§ 208(b), 101(a)(42)(A). These listed requirements are not exhaustive; there are many others, such as applying within a year of entry and proving the victim is credible, which this Note will not discuss. *Id.* § 208(a).

29. 8 C.F.R. § 208.13(b)(1) (2011).

30. *Id.*

31. *Id.*

32. *Id.* § 208.13(b)(1)(iii)(A)–(B).

expected to change.[33] Second, the social group must be particular, meaning the group has well-defined boundaries, making it clear who is in the group and who is not.[34] Third, the group must be socially visible, meaning the victim's society recognizes that the victim's social group exists in that country.[35] Lastly, the applicant must prove that there is a nexus, or causal connection, between the acts of persecution and the PSG.[36] In other words, the applicant must prove the persecution is on account of the applicant's membership in a PSG.

C. *The Door Opens, Shuts, Opens, Shuts, Then Cracks Open a Bit*

Gender-based asylum claims—the prerequisite to domestic violence-based claims—were not recognized in the United States until the 1990s.[37] Asylum law is not receptive to gender-based claims, in part because the United States largely incorporated the gender-neutral language of the 1951 Convention Relating to the Status of Refugees (The Convention) and its 1967 Protocol.[38] Because "female-specific violence within most countries was considered part of the private sphere beyond state responsibility" until the 1970s, and "until the mid to late 1990s there was little to no discussion of violence against women as an interstate responsibility," the framers of both The Convention and American asylum laws arguably did not have gender-based persecution in mind.[39]

The United States' stance on gender-based persecution changed in part due to pressure from international organizations and changed perspectives on women's rights.[40] In 1985, the United Nations High Commission for Refugees (UNHCR) recommended that certain women could be part of a PSG and urged countries to create their own guidelines.[41] In

33. Acosta, 19 I. & N. Dec. 211, 233 (B.I.A. 1985).
34. S-E-G-, 24 I. & N. Dec. 579, 582 (B.I.A. 2008).
35. C-A-, 23 I. & N. Dec. 951, 955 (B.I.A. 2006).
36. *Acosta*, 19 I. & N. Dec. at 234–35.
37. Kasinga, 21 I. & N. Dec. 357 (B.I.A. 1996).
38. GUY S. GOODWIN-GILL, U.N. AUDIOVISUAL LIBRARY OF INT'L LAW, CONVENTION RELATING TO THE STATUS OF REFUGEES AND PROTOCOL RELATED TO THE STATUS OF REFUGEES (2008), *available at* http://untreaty.un.org/cod/avl/ha/prsr/prsr.html.
39. LISA S. ALFREDSON, CREATING HUMAN RIGHTS 85 (2009).
40. *Id.* at 92.
41. *Id.*

response, in 1995 the United States published a comprehensive policy on gender-related persecution.[42] The following year in *Matter of Kasinga*, the BIA granted a Togalese women asylum based on her membership in a PSG comprised of women in a Togalese tribe expected to undergo female genital mutilation.[43]

After *Kasinga*, the BIA began to hear more gender and domestic violence-based cases. The most famous and procedurally complicated case is *Matter of R-A-*. In *Matter of R-A-*, a former member of the Guatemalan military brutally beat and tortured his wife.[44] She begged the Guatemalan police to protect her, yet they would do nothing because of her powerful husband, so she fled to the United States.[45] The immigration judge agreed that she was part of a PSG and granted her asylum. But the BIA overturned the IJ's decision, holding the victim's PSG of "Guatemalan women who have been involved intimately with Guatemalan male companions, who believe that women are to live under male domination" was not a valid PSG because Guatemalan society did not "recognize" or understand the PSG "to be a societal faction."[46] Furthermore, there was no proof that the persecution was on account of the victim's membership in that PSG.[47]

For the next decade, R-A's case was the object of tug-of-war between Republican and Democratic-led administrations. Following the BIA's ruling, Clinton administration Attorney General Janet Reno proposed regulations to "aid in the assessment of claims made by applicants who have suffered or fear domestic violence."[48] Before leaving office in 2001, she certified *Matter of R-A-*, vacated it, and had it stayed for reconsideration until the proposed regulations were finalized.[49] In 2003, Bush administration Attorney General John Ashcroft lifted the stay, referred the case to his office, and began to modify the proposed regulations.[50] In 2005, he then remanded

42. *Id.*

43. Karen Musalo & Stephen Knight, *Asylum for Victims of Gender Violence: An Overview of the Law, and an Analysis of 45 Unpublished Decisions*, IMMIGRATION BRIEFINGS, at 2 (Dec. 2003).

44. *Documents and Information on Rody Alvarado's Claim for Asylum in the U.S.*, CENTER FOR GENDER & REFUGEE STUD., *available at* http://cgrs.uchastings.edu/campaigns/alvarado.php.

45. *Id.*

46. R-A-, 22 I. & N. Dec. 906, 918 (B.I.A. 1999).

47. Barreno, *supra* note 16, at 237.

48. INS Proposed Regulations, *supra* note 15.

49. Barreno, *supra* note 16.

50. *Id.*

Matter of R-A- to the BIA for reconsideration until the new regulations were published. Yet, the Bush administration did not publish any regulations before leaving office.[51] In 2008, Republican Attorney General Mukasey lifted the stay to permit the BIA to consider the case notwithstanding the lack of new regulations.[52]

In April 2009, DHS, which represents the government's interest in asylum cases, wrote a Supplemental Brief for a new Mexican asylum case, *Matter of L-R-*, suggesting two new PSG formulations for some victims of domestic violence: "Mexican women in domestic relationships who are unable to leave," and "Mexican women who are viewed as property by virtue of their positions within a domestic relationship."[53] R-A's attorneys used one of the PSGs DHS suggested for L-R-'s case, and in December 2009, the IJ acknowledged that "[i]nasmuch as there is no binding authority on the legal issues raised in this case," and granted R-A- asylum in a discretionary non-precedential decision.[54] In August 2010, the victim in *Matter of L-R-* received asylum in a non-precedential decision also based on the stipulation of the parties.[55]

While gender-based asylum law has made great strides in the last fifteen years, there is still no precedential case granting asylum to victims of domestic violence.[56] R-A- and L-R- were granted asylum because the respondents' attorneys and DHS stipulated that a grant of asylum was the proper outcome. As such, the IJ did not have to make an "independent determination as to whether [their claims] satisfied the requirements for asylum and the new considerations of social visibility and particularity."[57] While the DHS's brief articulates the agency's new position, the brief is nonbinding on immigration judges and only provides that DHS will not oppose

51. *Id.*

52. *Id.*

53. DHS Supp. Br., *supra* note 19, at 14.

54. *See supra* note 44 and accompanying text.

55. *Matter of L-R-*, CENTER FOR GENDER & REFUGEE STUD., *available at* http://cgrs.uchastings.edu/campaigns/Matter%20of%20LR.php (last visited Apr. 3, 2012).

56. Officers of affirmative asylum applications in USCIS have granted asylum to some victims of domestic abuse, *see* DHS Supp. Br., *supra* note 19, at 13 n.10, and one IJ has granted victims asylum on account of membership in a PSG in a written opinion, *see* Decision Granting Asylum by IJ Bertha Zuniga (Jan. 18 2011), *available at* http://bibdebb.blogspot.com/2011/01/social-group-victory-in-san-antonio.html.

57. Barreno, *supra* note 16, at 250.

asylum grants if the applicant meets one of two narrow PSG formulations.[58] In the absence of precedential case law or regulations, asylum practitioners have been utilizing DHS's Supplemental Brief as a blueprint for formulating valid PSGs.[59]

D. Challenges Advocates Face Proving Membership in a PSG

Advocates of domestic violence victims from Latin America have trouble meeting all the elements of a PSG. In the absence of new regulations or case law, advocates have difficulty analogizing the social groups of domestic violence victims to PSGs in existing BIA precedent cases. The case most on point for domestic violence-based asylum claims is the *Kasinga* case, which held that Togalese women expected to undergo female genital mutilation can constitute a PSG.[60] In order to comport with this precedent, advocates of domestic violence victims must try to analogize husbands abusing their wives to elders performing female genital mutilation on young tribal women.[61] When the victim is part of a clan or a tribe, it is easier to prove the PSG is particular and socially visible.[62] Yet this is difficult to do, especially for victims in Latin American, because many victims do not come from a definite tribe or clan with specific culture and traditions.[63] Ultimately, most domestic violence-based claims fail for these reasons.

II. BRAHMIN WOMEN AS A PARTICULAR SOCIAL GROUP

This section will provide a general summary of domestic relations and domestic violence in India and the history and culture of Brahmins in India. Then it will analyze whether

58. *See Matter of L-R-*, CENTER FOR GENDER & REFUGEE STUD., *available at* http://cgrs.uchastings.edu/campaigns/Matter%20of%20LR.php.

59. Interview with Shannon Allen, Law Student in the Civil Practice Clinic, University of Colorado Law School (May 4, 2011).

60. Kasinga, 21 I. & N. Dec. 357, 361, 368 (B.I.A. 1996).

61. *Id.*

62. C-A-, 23 I. & N. Dec. 951, 959 (BIA 2006).

63. Latin American victims constitute a large portion of asylum seekers. *See* Ruth Ellen Wasem, CONG. RESEARCH SERV., RL32621, U.S. IMMIGRATION POLICY ON ASYLUM SEEKERS 16 (2005), http://www.au.af.mil/au/awc/awcgate/crs/rl32621.pdf.

Brahmin women can meet the legal definition of a particular social group, including immutability, particularity, social visibility, and nexus, the causal connection between the persecution and the PSG.

A. India: Domestic Violence, Marriage, and Divorce Regardless of Caste

India differs from most other countries because many Indians have a high rate of "arranged" marriages instead of "love" marriages.[64] India also has the highest rate of domestic violence of any country, with thirty-eight percent of males admitting abusing their wives.[65] Wife beating is generally accepted "as an integral part of the patriarchal social structure."[66] Indian women are also victims of a unique form of domestic violence: dowry deaths.[67] In 2001, 163,000 Indian women were killed in fires, mostly reported as "kitchen accidents"; in reality, the cause of many of these accidents is a woman's husband or in-laws throwing kerosene on the wife and lighting her on fire, often in retaliation for the wife not providing sufficient dowry.[68]

It is difficult for most Indian women, regardless of caste, to leave an abusive relationship because divorce is strongly stigmatized.[69] Although the divorce rate is increasing, India still has one of the world's lowest divorce rates, with only about one in every 1,000 marriages ending in divorce.[70] Those

64. Meg Panzer, Note, *Social Media, Social Change: The Influence of Social Media on Views of Dating and Divorce in Bangalore India* (2011) (on file with author).

65. Neha Bhayana, *Indian men lead in sexual violence, worst on gender equality: Study*, THE TIMES OF INDIA (Mar. 7, 2011), http://articles.timesofindia.indiatimes.com/2011-03-07/india/28665246_1_indian-men-international-men-males.

66. Rebecca Adams, *Violence Against Women and International Law: The Fundamental Right to State Protection from Domestic Violence*, 20 N.Y. INT'L. L. REV. 57, 67 (2007) (quoting Subrata Paul, *Combating Domestic Violence Through Positive International Action in the International Community and in the United Kingdom, India, and Africa*, 7 CARDOZO J. INT'L & COMP. L. 227, 236–37 (1999)).

67. Sanghavi P et al., *Fire-related deaths in India in 2001: a retrospective analysis of data*, LANCET (Apr. 11, 2009), http://www.ncbi.nlm.nih.gov/pubmed/19250664.

68. *Id.*

69. Amy Hornbeck et al., *The Protection of Women from Domestic Violence Act: Solution or Mere Paper Tiger?*, 4 LOY. U. CHI. INT'L L. REV. 273, 277 (2007).

70. Mark Dummett, *Not so happily ever after as Indian divorce rate doubles*, BBC NEWS (Dec. 31, 2010), http://www.bbc.co.uk/news/world-south-asia-12094360. Compare the United States, where around two in every five marriages

seeking divorce are usually "members of India's thriving, urban middle class whose lives have been transformed by India's [economic] boom."[71] To many Indians, divorce is a reflection of a woman's poor "character, morals, or child-bearing ability."[72] These cultural factors, as well as others described *infra* in Part III, help explain the high rate of domestic violence in India and the low rate of divorce of couples that experience domestic violence.

B. The Brahmin Caste

Understanding the caste system and how its history has influenced modern Brahmins is key to understanding the susceptibility of Brahmin women to domestic violence. Brahmins are the highest caste in the Hindu social hierarchy.[73] The origins of the caste system date to the Rig Veda, which was written around fifteenth century B.C.,[74] making it the most ancient Hindu scripture in existence. The Rig Veda explains that caste originated from the Hindu god Brahma: the Brahmins (priests and philosophers) came from Brahma's head, the Kshatriyas (warrior and politicians) from his arm, Vaisyas (traders and farmers) from his thighs, and Sudras (servant class) from his feet.[75] Fittingly, Brahmins were the religious intellectual leaders in Indian society.[76] In order to maintain the requisite purity to perform religious tasks, Brahmins observed numerous taboos such as vegetarianism, followed meticulous codes of conduct, and restricted their contact with lower castes.[77] Before 500 B.C., Brahmin women had relative freedom, education, and the ability to participate in social and political life.[78]

Beginning around 500 B.C., the status of Brahmin women deteriorated with the publication of the Smirtis, treatises

---

end in divorce. Dan Hurley, *Divorce Rate: It's Not As High As You Think*, N.Y. TIMES (Apr. 9, 2005), http://www.nytimes.com/2005/04/19/health/19divo.html.

71. Dummett, *supra* note 70.

72. *See* Hornbeck et al., *supra* note 69, at 277.

73. G.K. GHOSH & SHUKLA GHOSH, BRAHMIN WOMEN 1 (2003).

74. P.D. MEHTA, ZARATHUSHTRA: THE TRANSCENDENTAL VISION 8 (1985).

75. GHOSH & GHOSH, *supra* note 73, at 2; *see also* EKTA SINGH, CASTE SYSTEM IN INDIA: A HISTORICAL PERSPECTIVE 100 (2009).

76. INDIAN INHERITANCE: ARTS, HISTORY & CULTURE 30 (K.M. Munshi & N. Chandrasekhara Aiyer eds., 1956).

77. *Brahman*, BRITTANICA ENCYCLOPEDIA, *available at* http://www.britannica.com/EBchecked/topic/77093/Brahman (last visited Feb. 13, 2012).

78. GHOSH & GHOSH, *supra* note 73, at 30–31.

which advocated subordinating Brahmin women.[79] The Smirtis advocated that Brahmin women should participate in arranged, pre-pubescent marriages and should not divorce or remarry, if widowed.[80] The Smirtis restricted Brahmin women from working, relegating them to the domestic sphere.[81] The Smirtis emphasized the "Brahmanical ideal" of women as *pativratas*, or husband worshippers whose first duty was to "worship her husband as god, no matter how cruel" he was.[82]

One of the the most influential Smirtis was the Code of Manu written in the first century A.D.[83] Manu advocated for the seclusion and zealous regulation of female behavior, writing that "women should always be guarded" in order to control their sexuality.[84] These texts codify Brahmin social mores and dictate the subordinate status of Brahmin women.[85] Other influential Brahmin works also describe in detail how a Brahmin woman should act in order to maintain purity.[86] The eighteenth-century Stridharmappadati, for example, is of Brahmin authorship and details the duties of a Brahmin wife.[87] Her "main purpose . . . was to bear a son for her husband's family," and her fidelity had to be ensured to preserve the "purity of the family and the caste lineage."[88] The Dharmapaddati states that a good wife "always regards her husband as a god."[89] While these texts are old, a "surprising number" of orthodox Brahmins still adhere to these texts.[90] While scholars have not extensively studied the relationship between caste hierarchy and the subordination of women,

79. JOANNA LIDDLE & RAMA JOSHI, DAUGHTERS OF INDEPENDENCE: GENDER, CASTE AND CLASS IN INDIA 63 (1989).

80. *Id.* at 59.

81. *Id.*

82. *Id.* at 64.

83. *Id.* at 63, 67.

84. *Id.*

85. Julia Leslie, *The Significance of Dress for the Orthodox Hindu Woman*, *in* DRESS AND GENDER: MAKING AND MEANING IN CULTURAL CONTEXTS 198, 198 (Ruth Barnes & Joanne B. Eicher eds., 1997); *see* Uma Chakravarti, *Conceptualising Brahmanical Patriarchy in Early India: Gender, Caste, Class and State*, 28 ECON. & POL. WKLY. 579, 579 (1993), *available at* http://www.jstor.org/pss/4399556.

86. *See* Chakravarti, *supra* note 85.

87. Jim Masselos, *Sexual Property/Sexual Violence: Wives in Nineteenth-Century Bombay*, 12 S. ASIA RES. 81, 81 (1992).

88. *Id.*

89. Leslie, *supra* note 85, at 199; Hillary Rodrigues, *Women in the Worship of the Great Goddess*, *in* GODDESSES AND WOMEN IN THE INDIC RELIGIOUS TRADITION 72, 91 (Arvind Sharma ed., 2004).

90. Leslie, *supra* note 85, at 198.

historian Uma Chakravarti recognizes the "brahmanical texts of early India" as the origin of the belief in the subordination of women.[91] The caste structure dictated in these early texts has "shaped the ideology of the upper castes and continues to be the underpinning of beliefs and practices extant today."[92]

The economics of caste also caused the position of Brahmin women in Indian society to decline. Around 500 A.D., Brahmins were able to consolidate their land holdings over other castes.[93] Maintaining this elite economic position in society required Brahmin men to effect "tight constraints of female sexuality," including a ban on Brahmin women inheriting land and marrying non-Brahmin men.

These historic practices motivated by cultural and economic considerations resulted in the subordination of Brahmin women.[94]

C. Not All Brahmins Are the Same: Modern Brahmins

Although caste is still an important component of individual and collective identity in modern India, not all Brahmins today follow the norms listed above.[95] Brahmins who are well-educated and urban are less likely to find caste traditions relevant in their lives, whereas Brahmins living in more rural regions of India, particularly in villages, are more likely to follow traditional norms.[96]

The rural/urban divide in India profoundly affects a woman's ability to leave her husband. Brahmin society in rural India is "much more conservative," causing "rural Brahmin women [to] suffer the most."[97] Religious, cultural, and familial restraints, as well as the high levels of illiteracy and social awareness,[98] make leaving an abuser an almost impossible task for rural Brahmin women.[99]

---

91. *See* Chakravarti, *supra* note 85.
92. *Id.*
93. LIDDLE & JOSHI, *supra* note 79, at 64.
94. *Id.* at 58, 68.
95. Suneeta Krishnan, *Gender, Caste, and Economic Inequalities and Marital Violence in Rural South India*, 26 HEALTH CARE FOR WOMEN INT'L 87, 89 (2006); GHOSH & GHOSH, *supra* note 73, at 137, 145.
96. GHOSH & GHOSH, *supra* note 73, at 137, 145.
97. *Id.* at 145.
98. *See id.*
99. *See id.*

Divorce is a more viable option for urban, educated Brahmins.[100] Urban Brahmin women are more likely to be literate, educated, and financially independent.[101] Furthermore, conservative values are more likely to be loosened, due to many factors, including globalization.[102] For example, one urban interview subject described how her Brahmin aunt obtained a divorce about a decade ago, which resulted in her family shunning the aunt out of embarrassment.[103] Fortunately the aunt had a college degree and was employed at the time of divorce, so she was able to support herself without the assistance of her family or her ex-husband.[104] Brahmin women who have an education, employment, or a supportive family willing to welcome their victimized daughter back into their family home are more likely to consider divorce or separation a viable option, and therefore may have no need to seek asylum.[105]

Caste endogamy (intermarriage) is still common among all Brahmins regardless of geography.[106] For many Brahmins, marrying outside of the Brahmin community "is clearly disapproved, and often a source of embarrassment."[107] In a study of both rural and urban Brahmins who live in the central state of Karnataka in 2001, the survey found that of one hundred households, there was not a single instance of the head of the household marrying outside of the Brahmin fold.[108] Of the twenty-six people younger than thirty in the study, twenty reported marriages to other Brahmins among their siblings and cousins.[109] Only three reported marriages outside the Brahmin community among themselves, siblings, or

100. Dummett, *supra* note 70.

101. *Id.*

102. *See* GHOSH & GHOSH, *supra* note 73, at 137.

103. Interview with Anjali, Brahmin from the suburbs of New Delhi (Mar. 11, 2011).

104. *Id.*

105. Interview with Stanly K.V., Lawyer and Co-Founder of Odanadi, Mysore, Karnataka, India, (Mar. 21, 2011); *see also* Neeru Sharma, Sumati Vaid, & Akriti Kesar, *Intergenerational Differences in the Concept of Marriage Among Dogra Brahmin Females (Mothers and Daughters)*, 722 ANTHROPOLOGIST 253, 255 (2005).

106. RAMESH BAIRY T.S., BEING BRAHMIN, BEING MODERN 87 (2010).

107. *Id.* at 107.

108. *Id.* at 87. "[E]ven to this day when a family begins to look for a marital alliance, the first and unmistakable preference is for partners from within [their] tradition, and indeed within the particular jati, to which it belongs." *Id.* at 106.

109. *Id.* at 106.

cousins.[110] "Imagine if a Brahmin girl married a Holeya [a Dalit caste] boy and went to live with his family," one survey respondent replied.[111] "Right from eating habits to cleanliness—everything would be so different."[112] Regardless of the rural/urban divide, many Brahmins still want to marry other Brahmins because they follow the same traditions.[113]

D. Brahmin Women as a Particular Social Group

Brahmins are an extremely heterogeneous group that varies based on geography, education, and degree of orthodoxy. Yet the process of analyzing an asylum claim requires immigration lawyers to make broad generalizations about people in certain societal groups. Due to the heterogeneity of Brahmins, this Note will focus on rural Brahmins for purposes of this analysis. Albeit oversimplified, there is a pattern: urban, educated, employed Brahmins tend to be more progressive; rural, less educated Brahmins tend to be more orthodox.[114] Among these more progressive Brahmins there has been a "loosening of caste norms" and ritual practices.[115] Urban, progressive, educated Brahmin women would likely not constitute a particular social group because they probably would not consider marriages to be immutable, the first prong of the PSG standard. Furthermore, they may not meet the other requirements of asylum, such as proving the government is unable to protect them and proving internal relocation is unreasonable.

The following sections will evaluate whether rural, orthodox Brahmin women, using DHS's current formulations, can be a valid PSG.[116] DHS suggests that a valid PSG includes

---

110. *Id.* at 106–07.

111. *Id.* at 107.

112. *Id.*

113. *Id.*

114. Of course, exceptions exist. In a study of Himachali Brahmins, educated women were *less* likely to divorce. *See generally* Mohan Singh, *Divorce in a Rural North Indian Area: Evidence from Himachali Villages*, 76 MAN IN INDIA 215, 215 (1996); Virendra Kumar, *Burnt Wives: An Epidemiological Review*, 27 INDIA J. CMTY. MED. (2002), http://www.indmedica.com/journals.php?journalid=7&issueid=43&articleid=542&action=article. Interestingly, "91% of the dowry death victims were educated and amongst them 30% were graduates and postgraduates." *Id.*

115. *See* BAIRY, *supra* note 106, at 110.

116. DHS Supp. Br., *supra* note 19, at 10. PSGs cannot include "abusive" or "domestic violence" because it would make the PSG impermissibly circular. A

the reason "why [the abuser] chose the female respondent as his victim and continued to mistreat her."[117] Either of the following formulations could meet the DHS criteria that could result in DHS stipulating to or not opposing an asylum grant in a defensive asylum case: (1) "*Brahmin wives who are unable to leave their orthodox Brahmin husbands*," which mirrors a DHS suggestion that was used successfully by a woman who was granted asylum by an IJ in February 2011,[118] and (2) "*Brahmin women who are viewed as property by virtue of their positions within a domestic relationship.*"[119]

1. Immutability

"In a village with orthodox Brahmins divorce is still unthinkable and impossible." – Arjun, Brahmin from Bangalore[120]

An immigration judge would likely consider both PSGs of Brahmin women to be immutable. Under *Matter of Acosta*, the seminal case about social group, members of a PSG must share an immutable characteristic, which may be "an innate one such as sex, color, or kinship ties, or in some circumstances it might be a shared past experience, such as former military leadership or land ownership."[121] The characteristic must be "beyond the power of an individual to change or is so fundamental to individual identity or conscience that it ought not be required to be changed."[122] In *Kasinga*, the seminal gender-based asylum case which granted asylum to a victim of female genital mutilation (FGM), the BIA held that being a "young woman," and a "member of the Tchamba-Kunsuntu Tribe [are characteristics that] cannot be changed," and having intact genitalia should not be changed because it is fundamental to

"particular social group cannot be significantly defined by the persecution suffered or feared." *Id.*

117. *Id.* at 15.

118. Decision Granting Asylum by IJ Bertha Zuniga, *supra* note 56 at 12–15 (explaining PSG of Honduran women who are unable to escape their domestic partner).

119. *See* DHS Supp. Br., *supra* note 19, at 14.

120. Interview with Arjun, Brahmin (Mar. 29, 2011). His family is from Bangalore and is progressive. His family accepted his sister's divorce, but he reports that same divorce would have been unthinkable in an orthodox Brahmin community in a village. *Id.*

121. Acosta, 19 I. & N. Dec. 211, 233 (B.I.A. 1985).

122. *Id.*

identity.[123] The DHS Supplemental Brief and the proposed INS regulations suggest that intimate relationships can be immutable "where economic, social, physical or other constraints make it impossible" for the victim to leave the relationship.[124]

Under *Acosta* and *Kasinga*, being "Brahmin" and being a "woman" are likely immutable characteristics because a person is unable to change or should not be expected to change these characteristics.[125] Under *Acosta*, innate characteristics such as "sex . . . or kinship ties" are immutable.[126] Brahmins as a group have kinship ties because Brahmins have historically practiced endogamous marriage for thousands of years, making them genetically distinct from middle and lower castes.[127] In modern Indian society, caste identity is immutable because it is transmitted to children at birth. Being Brahmin, therefore, is "beyond the power of an individual to change."[128] Moreover, *Matter of Kasinga* dictates that being a woman is fundamental to identity and "cannot be changed."[129]

It is likely that an "orthodox" Brahmin marriage would be considered to be immutable. In order to prove this assertion, the advocate must prove that the victim is unable to leave her husband and therefore that her marriage is unable to be changed. While persuasive sources such as the DHS Supplemental Brief and 2000 INS proposed regulations discuss these points, there is no binding BIA or Circuit precedent precisely on point. Nevertheless, there is strong evidence that both are immutable.

Brahmin women *who are unable to leave their husbands* could be considered an immutable characteristic because a Brahmin woman could not reasonably be expected to divorce

123. Kasinga, 21 I. & N. Dec. 357, 366 (B.I.A. 1996).

124. DHS Supp. Br., *supra* note 19, at 16; Asylum and Withholding Definitions, 65 Fed. Reg. 76,588 (proposed Dec. 7, 2000).

125. *See* Acosta, 19 I. & N. Dec. 211, 233–34 (B.I.A. 1985).

126. *Id.* at 233.

127. Elie Dolgin, *Indian Ancestry Revealed*, NATURE (Sept. 23, 2009), *available at* http://www.nature.com/news/2009/090922/full/news.2009.935.html; *see also* Sangita Roy et al., *Mitochondrial DNA Variation in Ranked Caste Groups of Maharashtra (India) and Its Implication on Genetic Relationships and Origins*, 30 ANNALS HUM. BIOLOGY 443, 443 (2003).

128. *Acosta*, 19 I. & N. Dec. at 233; *see also* V-T-S-, 21 I. & N. Dec. 792, 798 (B.I.A. 1997) (explaining that being a Filipino of mixed Filipino-Chinese ancestry cannot be changed).

129. Kasinga, 21 I. & N. Dec. 357, 366 (B.I.A. 1996).

because of "economic, social, physical or other constraints."[130] From a religious perspective, Hindu marriages are sacred and indissoluble.[131] Even divorces under the Hindu Marriage Act, while legally binding, are not recognized religiously because marriage is a sacrament that cannot be undone.[132] Although the prohibition of divorce affects all Hindus, Brahmins take it much more seriously. Brahmin marriage has been distinct from all other marriages since before the sixth century B.C.[133] The Rig Veda describes the "prototype of Brahman marriage," venerating it as the "highest, purest and most evolved method of marriage."[134] It is more difficult for Brahmins to leave marriages because Brahmins are the archetypes of the Hindu religion. Society looks to Brahmins to be model Hindus and to maintain purity and adherence to Hindu beliefs.[135] Because marriage is often the most important event in a Brahmin's life, a Brahmin's divorce is particularly "disgraceful."[136] One Brahmin woman from outside Delhi explained that Brahmins believe that it is the wife's responsibility "to make it work no matter what."[137] It follows that, for many, a Brahmin woman cannot leave her husband because that means she has not tried to make it work.

From a practical perspective, some Brahmin women who want to leave a marriage have no place to go because it is "shameful for Brahmin parents to have a married daughter living with them."[138] In the view of some, maltreated non-Brahmin women have "the right to come home," whereas "the Brahmin woman has no such right."[139] Havik Brahmin women in the state of Karnataka often lack the resources to leave their husbands.[140] Culturally they are not permitted to inherit land,

130. DHS Supp. Br., *supra* note 19, at 16 (tracking INS proposed regulations).

131. SRIKANTA MISHRA, ANCIENT HINDU MARRIAGE LAW AND PRACTICE 10 (1994).

132. *Id.* at 10–11.

133. *Id.* at 70.

134. *Id.* In modern times, other castes imitate the Brahmin form of marriage. *Id.*

135. *See Brahman*, BRITTANICA ENCYCLOPEDIA, *available at* http://www.britannica.com/EBchecked/topic/77093/Brahman (last visited Mar. 19, 2012).

136. Dennis McGilvray, Professor of Anthropology, University of Colorado at Boulder, Class Presentation (Jan. 31, 2011).

137. Interview with Anjali, Brahmin from outside Delhi (Mar. 11, 2011).

138. KAPADIA, *supra* note 24, at 55.

139. *Id.* at 54–55.

140. HELEN E. ULLRICH, *Caste Differences Between Brahmin & Non-Brahmin Women in a South Indian Village*, *in* SEXUAL STRATIFICATION: A CROSS-CULTURAL VIEW 94, 107 (Alice Schlegel ed., 1977).

and all of a Havik Brahmin women's property and possessions are transferred to her husband upon marriage.[141] Of course there are exceptions. Some married Brahmin women have families who would welcome them back; others may be financially independent enough leave their husbands. But overall, these Brahmin-specific characteristics, combined with the stigma that all Indian women face when trying to leave a marriage, make it nearly impossible for orthodox Brahmin women in a village to leave their husbands.

The PSG of Brahmin women *who are viewed as property by virtue of their position within the domestic relationship* is likely immutable because a Brahmin woman's husband who holds this view is unlikely to change his belief that his wife is property. In Tamil-Nadu in southern India, when a Brahmin daughter marries, she belongs "entirely to her husband's family"; her natal family relinquishes all rights and obligations.[142] Because Brahmin women "belong" to their husbands' families, Brahmin women tend to live with their in-laws, who wield extreme power over the Brahmin women.[143] A study of Havik Brahmins in Karnataka noted that a Brahmin woman must be submissive and "subordinate to all desires, the whims, and the angers of her husband."[144] Brahmin husbands literally command every aspect of their wives' lives, including when they can leave the house, what they should cook, and how they should act.[145] The Brahmin women "ha[ve] to obey" their in-laws and husbands, whereas lower caste women have "more freedom."[146] While not all Brahmins in all rural areas adhere to these traditions, these traditions are common. These studies suggest Brahmin husbands believe that Brahmin women are property, which is a belief reinforced by society, and is unlikely to change. For these reasons, an immigration judge would likely consider that an abuser's belief in the subordination of his wife is immutable.

Therefore, both PSGs, *Brahmin women who are unable to leave their husbands,* and *Brahmin women who are viewed as property by virtue of their position within the domestic*

141. *Id.* Non-Brahmin Divaru women in the same village are permitted to hold property, and have more independence and "economic power." *Id.*

142. KAPADIA, *supra* note 24, at 56.

143. *See* THIRUCHANDRAN, *supra* note 1, at 80.

144. ULLRICH, *supra* note 140, at 107.

145. *See* THIRUCHANDRAN, *supra* note 1, at 92.

146. *Id.* at 91–93.

relationship, could meet the immutability requirement of a PSG.

2. Particularity

Brahmin women using the two DHS-proposed social groups could likely prove their PSG meets the particularity requirement. A PSG must have "particular and well-defined boundaries."[147] The essence of the particularity requirement is to ensure that the "proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons."[148] If people's idea of who is in the PSG varies, the group is not particular.[149] For example, a PSG comprised of "wealthy" Guatemalans is too subjective to be a cognizable social group because one person's conception of who is wealthy may differ from that of another.[150] In a similar vein, a PSG that includes the phrase "family members" is too amorphous to meet the particularity requirement because "family members" could mean nuclear family to some or extended family to others.[151] The group does not have to be homogenous nor does there need to be a voluntary associational relationship among group members.[152] The DHS argues that the two PSG formulations proposed in its brief[153] could be valid PSGs because the PSG formulations permit the IJ to "determine with clarity whether an applicant is or is not a member of the group."[154]

Both of the suggested DHS PSG formulations could be delineated enough to meet the particularity requirement. An advocate, however, would struggle to find enough information to make that conclusion without the testimony of an expert witness. A PSG is particular if the group has "well-defined boundaries" and people's idea of who is in the group does not

147. S-E-G-, 24 I. & N. Dec. 579, 582 (B.I.A. 2008).

148. *Id.* at 584.

149. A-M-E- & J-G-U-, 24 I. & N. Dec. 69, 76 (B.I.A. 2007).

150. *Id.* at 74 ("Because the concept of wealth is so indeterminate, the proposed group could vary from as little as 1 percent to as much as 20 percent of the population, or more.").

151. *See S-E-G-*, 24 I. & N. Dec. at 585.

152. C-A-, 23 I. & N. Dec. 951, 956–57 (B.I.A. 2006).

153. "Mexican women in domestic relationships who are unable to leave," and "Mexican women who are viewed as property by virtue of their positions within a domestic relationship." DHS Supp. Br., *supra* note 19, at 14.

154. *Id.* at 19.

vary.[155] In essence, if Indians were asked who in Indian society was a member of the PSG, and if Indians generally agreed which people in their society were in that social group, then the group would be particular.

In order to determine whether either of these proposed PSGs is particular, the asylum judge must determine if there are words or phrases in the PSG that would make it difficult to delineate who is in the group. "Brahmins" are undoubtedly a discrete class of persons of India and would be considered particular under asylum law. On the other hand, people's opinions of what constitutes an "orthodox" Brahmin may differ, just as people's idea of "wealth" varies.[156] Orthodox is defined as "conforming to established doctrine," or "relating to . . . conservative religious . . . groups" and is commonly used to refer to conservative Brahmins.[157] People who live in cities and have an education are less likely to be orthodox, whereas people in rural areas are more likely to be orthodox.[158] To truly determine whether "orthodox" can be particular, a broader survey of Indians would need to be performed, or an expert witness would need to testify in immigration court.

Indian society could probably delineate who is in the groups *Brahmin women who are unable to leave their orthodox husbands* and *Brahmin women viewed as property by virtue of their position within the domestic relationship*, but an expert would be needed to testify to this point. While orthodox families generally believe that women are unable to leave or that they are property, some orthodox families may not. Educated interviewees in Bangalore insisted that they have the freedom to do whatever they want, but emphasized that it is still a different world in rural India.[159] Anthropological literature supports this proposition of an urban/rural divide in India.[160] These interviews and anthropological studies indicate that the two PSGs have relatively defined boundaries: urban

155. *S-E-G-*, 24 I. & N. Dec. at 582, 584–85.

156. *Id.* at 584–85 (holding that "wealth" was too subjective and, thus, was not sufficiently particular to be the defining characteristic of a PSG, because people's opinions of what constitutes wealth may vary).

157. MERRIAM WEBSTER, http://www.merriam-webster.com/dictionary/orthodox (last visited Mar. 19, 2012) (defining "orthodox").

158. *See* GHOSH & GHOSH, *supra* note 73, at 137, 145.

159. Interview with Arjun, *supra* note 120; Interview with Niyati and Sipa, Second and Third Year Law Students, respectively, Bangalore University Law School, in Bangalore, India (Mar. 23, 2011).

160. *See* ULLRICH, *supra* note 140, at 107.

Brahmins probably would not be in the group, but rural Brahmins probably would.[161] Fortunately, the BIA does not require the PSG to be perfectly homogenous, merely recognizable.[162]

While at first glance including the phrase "in villages" as part of the PSG would make it easier to define who is in the group with particularity, it could complicate the nexus analysis, because the advocate would have to prove the abuser persecuted her because she was in a village.[163]

DHS states that the language in its two PSG formulations, which are nearly identical to the two Brahmin formulations, would meet the particularity standard. Because these issues have never been studied before, there is no research directly on point examining whether Indians would think these groups are particular. While interviews and anthropological research indicate this group could be particular, an expert would be needed to provide testimony.

3. Social Visibility

The two PSGs are socially visible if the victim can prove that her PSG is recognizable by others in her home country. The BIA holds that a group is socially visible if the PSG is "generally recognizable by others" in the applicant's community.[164] Social groups based on "innate characteristics such as sex or family relationship are generally easily recognizable and understood by others to constitute social groups."[165] Clans or tribes are socially visible if the group is recognizable to others in the country.[166] Furthermore, the PSG's relevant conduct must be in "the public view."[167] The "context of the country of concern and the persecution feared" are important factors in determining whether a PSG is socially visible.[168] The DHS Supplemental Brief elaborates on these

161. *See* GHOSH & GHOSH, *supra* note 73, at 137, 145.

162. C-A-, 23 I. & N. Dec. 951, 956–57 (B.I.A. 2006).

163. DHS Supp. Br., *supra* note 19, at 15. A valid PSG will include the "specific characteristics that the persecutor targets in choosing his victim." *Id.*

164. S-E-G-, 24 I. & N. Dec. 579, 586 (B.I.A. 2008).

165. *C-A-*, 23 I. & N. Dec. at 959.

166. *See id.*

167. *See id.* at 960. "Confidential informants" against the Cali cartel are by their nature not visible because informants try to stay unknown or unrecognized. *Id.*

168. A-M-E-, 24 I. & N. Dec. 69, 74–75 (B.I.A. 2007).

factors, noting a domestic violence victim's PSG could be socially visible if there is a "societal view . . . that the status of a woman in a domestic relationship places the woman into a segment of society that will not be accorded protection from harm inflicted by a domestic partner."[169] Therefore, both the group of victims and their persecution must be familiar to the victim's society.

Before proceeding to the analysis of the social visibility of the two Brahmin PSGs, it is important to understand the distinction between the particularity and social visibility prongs of the PSG requirement. The particularity prong inquires whether the PSG has well-defined boundaries; the social visibility prong analyzes whether society actually perceives the well-cabined PSG to be a group.[170] If a group is too small, for example, "daughters of the Martinez family," the group is particular but not socially visible, because Guatemalan society does not perceive two daughters of a man in a small Guatemalan village to be a societal group.[171] If a group is very large, society is more likely to consider it a PSG, but the social group is much less likely to be considered particular.[172]

It is possible that an advocate could prove that the two Brahmin PSGs are particular. Undoubtedly, Brahmin women are highly visible in Indian society, but an advocate must prove the *entire* PSG is socially visible.[173] A Brahmin woman using one of the two suggested PSGs would have to prove that in India there is a societal view that Brahmin wives are unable to leave their orthodox husbands or that Brahmin women are viewed as property by virtue of being in an orthodox Brahmin marriage.

Indian society perceives that domestic violence is widespread in India.[174] The Indian Parliament passed the Protection of Women Against Domestic Violence Act in 2005 to address this widespread problem.[175] There is a plethora of

169. DHS Supp. Br., *supra* note 19, at 18.

170. *See* S-E-G-, 24 I. & N. Dec. 579, 582, 587 (B.I.A. 2008).

171. Interview with Shannon Allen, Law Student in the Civil Practice Clinic, University of Colorado Law School, in Boulder, CO (May 4, 2011).

172. *S-E-G-*, 24 I. & N. Dec. at 585–86.

173. *See* Ngengwe v. Mukasey, 543 F.3d 1029, 1034 (8th Cir. 2008); *see also* C-A-, 23 I. & N. Dec. 951, 960 (BIA 2006).

174. *See supra* Part II.A.

175. *See* The Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE (2005).

news articles and ad campaigns in India decrying the high rate of domestic violence.[176] While anthropological literature indicates that Brahmins are particularly susceptible to domestic violence, it is less clear whether Indian society as a whole perceives intra-Brahmin domestic violence to be a problem; the fact that Brahmin women are less likely to discuss marital problems to protect their social standing may contribute to society's lack of awareness of intra-Brahmin violence.[177]

While Indian society is aware of the pervasive domestic violence, the fact that domestic violence is generally hidden within the home could cut against a finding of social visibility. In *Matter of C-A-*, the BIA held that confidential informants of a cartel were not socially visible because the work they did was by definition clandestine and therefore was not socially visible.[178] Domestic violence often, but not always, occurs in the home, away from the public eye. While the analysis in *Matter of C-A-* indicates that actions done in secret cut against a finding of social visibility, the case emphasizes the informant's intent to remain secret.[179] While it is often taboo to discuss domestic violence in India, it is unclear whether the abuser or the victim actually intends for the abuse to remain secret. Domestic violence is common and accepted in many areas of India, so it is unclear whether this precedent would bar Brahmin women from proving social visibility.

Despite the lack of statistics in the popular media, evidence of Brahmin women's susceptibility to domestic violence is well documented in anthropological, sociological, and medical journals. Anthropological literature indicates that "[i]t is generally believed in India that the higher the caste, the higher the seclusion for women and the lower the caste, the

176. *See e.g.*, Neha Bhayana, *Indian Men Lead in Sexual Violence, Worst on Gender Equality: Study*, TIMES OF INDIA (Mar. 7, 2011), http://articles.timesofindia.indiatimes.com/2011-03-07/india/28665246_1_indian-men-international-men-males; *see also infra* Part III.B.2 (discussing the "Ring the Bell" ad campaign, which urges people to interrupt domestic violence by ringing their neighbors' door bells if and when they hear signs of violence coming from inside those neighbors' homes).

177. Suneeta Krishnan, *Do Structural Inequalities Contribute to Marital Violence?*, 11 VIOLENCE AGAINST WOMEN 759, 767 (2005); *see also* THIRUCHANDRAN, *supra* note 1, at 95–96.

178. *See C-A-*, 23 I. & N. Dec. at 960.

179. *See id.*

more freedom for women."[180] In South Indian villages in Tamil Nadu, a non-Brahmin woman can easily leave an abusive husband's house and have a right to return to her parent's home, whereas a Brahmin woman has no such right.[181] The Brahmin woman lacks this right because her parents likely impoverished themselves to provide their daughter sufficient dowry to get married, which truncates any rights a Brahmin daughter has in her parent's house.[182] Dowry has "traditionally been the common marriage transaction of the highest (Brahmin) caste,"[183] which has resulted in Brahmin women suffering a disproportionate risk of murder at the hands of their husbands and in-laws.[184] The India Journal of Medicine reports that Brahmin women constitute an "overwhelming majority" of dowry deaths by burning, about 60%, even though Brahmins constitute only about 9% of the Indian population.[185] Among Brahmin women in villages in Tamil Nadu, divorce is unthinkable because a divorced woman is "a castaway item . . . a social disgrace, an evil omen," and a failure.[186] The thirty-two Brahmin women who were interviewed for the study were unanimous that women should tolerate marital violence instead of enduring the societal shame of leaving their husbands.[187] Despite the lack of media coverage, it is likely a Brahmin applicant could use the numerous scientific studies to prove these two PSGs are socially visible.

180. THIRUCHANDRAN, *supra* note 1, at 91; *see also* Dennis McGilvray, Professor of Anthropology, University of Colorado at Boulder, Class Presentation (Jan. 31, 2011) (explaining that India's "elite" culture is the country's most restrictive).

181. KAPADIA, *supra* note 24, at 54–55.

182. *See id.* at 55 (providing a Telugu Brahmin woman's account of why Brahmin women have no right to leave their husbands and return to their natal homes).

183. Vijayendra Rao, *Dowry 'Inflation' in Rural India: A Statistical Investigation*, 47 POPULATION STUD. 283, 283 (1993). Brahmins are more likely to exchange dowry, which is originally a Brahmin tradition, but many other castes practice it through Sankritization (imitation and veneration of Brahmin culture). *Id.*

184. *See* Virendra Kumar, *Burnt Wives: An Epidemiological Review*, 27 INDIAN J. CMTY. MED. (2002), *available at* http://www.indmedica.com/journals.php?journalid=7&issueid=43&articleid= 542&action=article.

185. *Id.*

186. THIRUCHANDRAN, *supra* note 1, at 80.

187. *See id.*

4. The Nexus Requirement

Brahmin women have a strong argument that the domestic violence they experience meets the nexus requirement. The nexus requirement is met if the abuse is "on account of" the Brahmin woman's membership in a PSG.[188] In order to prove that a nexus exists, the asylum applicant must establish by direct or circumstantial evidence that the applicant's membership in the PSG is one central reason or motive for persecuting the applicant.[189] An asylum applicant can prove the persecutor's motive through direct or circumstantial evidence, "from which it is reasonable to believe that the harm was motivated" in part by the victim's membership in a PSG.[190] In *Kasinga*, the BIA found that tribal elders intended to perform FGM on the applicant because she was a member of the PSG "young women of the Tchamba-Kunsuntu Tribe who have not had" female genital mutilation.[191] Because she was a young woman who had not undergone FGM, the tribe believed it was necessary to perform FGM to control her sexuality.[192] Had Kasinga's gender and tribal membership not been central factors driving tribal elders to perform FGM on her, the nexus requirement would not have been met. DHS argued nexus could be proven in the *L-R-* case if L-R- could demonstrate her husband hit her because of "his perception of the subordinate status she occupies within that domestic relationship."[193]

Many orthodox Brahmin men commit domestic violence against their wives due to the fact their wives are Brahmin. Like the tribal members in *Kasinga* who sought to "control [Kasinga's] sexuality," some Brahmin men abuse their wives in order to control their wives' sexuality.[194] Historian Uma Chakravarti concluded that a "central factor for the subordination of the upper caste women [is] the need for effective sexual control over such women to maintain not only patrilineal succession . . . but also caste purity" and land

188. J-B-N-, 24 I. & N. Dec. 208, 211 (B.I.A. 2007).
189. *Id.*
190. S-P-, 21 I. & N. Dec. 486, 490 (B.I.A. 1996).
191. Kasinga, 21 I. & N. Dec. 357, 358 (B.I.A. 1996).
192. *Id.* at 367.
193. DHS Supp. Br., *supra* note 19, at 15.
194. *Kasinga*, 21 I. & N. Dec. at 366; *see also* Saibaba Rajesh, *Women in India: Abysmal Protection, Peripheral Rights and Subservient Citizenship*, 16 NEW ENG. J. INT'L & COMP. L. 111, 112 (2010) ("Often, violence against women is considered a vital component in many cultures necessarily to 'discipline' them.").

ownership.[195] The way for a low-caste man to penetrate the Brahmin caste was through the "sexual access" to Brahmin women.[196] To maintain caste purity, Brahmins "highly restricted [the] movement of women," keeping them inside the house to prevent lower caste men from polluting the women and therefore their whole families.[197] Because of this belief, many Brahmin women in villages are tightly controlled and punished for seemingly meaningless infractions. Tamil Brahmin women in villages are "punished by being beaten or by other kinds of ill-treatment" for "going out alone or [being] seen on the street alone after six."[198] The Tamil Brahmin women were beaten because they were not permitted to go out late, and they were not permitted to go out late because they were Brahmin.[199] Even more striking is that one survey found that seventy percent of Indian women believe their physical abuse was justified, demonstrating broad societal acceptance of beatings as a corrective act.[200] Domestic violence and asserted control is thought to ensure that the Brahmin wife is subordinated and that her sexuality will not be a threat to Brahmin sexual purity.

Lack of a male heir may also be a reason Brahmin men hit their wives. The *dharmasastra*, the "system the Brahmin class founded upon religious perceptions of righteousness,"[201] states that the purpose of marriage is to procreate a son, who is necessary for the salvation of the husband's soul.[202] Although there are no Brahmin-specific statistics, Indian men are more likely to beat their wives if their wives have not produced sons.[203]

---

195. Chakravarti, *supra* note 85. Also, women's sexuality was controlled to maintain property rights. *Id.*

196. *See id.* at 579.

197. *Id.*

198. THIRUCHANDRAN, *supra* note 1, at 92 ("[Going out late] is not socially approved within our circle (high class Brahmin). My husband or father-in-law [sic] will ask, why have you gone out? . . . We have been expected to behave . . . The husband is our god. He is our world.").

199. *See id.*

200. Hornbeck et al., *supra* note 69, at 274.

201. Sampak P. Garg, *Law and Religion: The Divorce Systems in India*, 6 TULSA J. COMP. & INT'L L. 1, 5 (1998).

202. *See* MISHRA, *supra* note 131, at 15.

203. Vijayendra Rao, *Domestic Violence and Intra-Household Resource Allocation in Rural India: An Exercise in Participatory Econometrics*, *in* GENDER, POPULATION, & DEV. 18 (Maithreyi Krishna Raj et al. eds., 1998), *available at* http://siteresources.worldbank.org/INTPOVRES/Resources/477227-1142020443961/2311843-1197996479165/DomesticViolence.pdf.

While evidence of the abuser's culture can help prove nexus, proving nexus also depends on testimony from the victim recounting why the abuser hit her. Due to rigid orthodox Brahmin traditions that are still observed in India, many Brahmin women, particularly those in villages, would likely be able to prove nexus because Brahmin women are subordinated on account of being Brahmin.

III. WHETHER THE INDIAN GOVERNMENT IS UNABLE OR UNWILLING TO PROTECT BRAHMIN WOMEN FROM DOMESTIC VIOLENCE

Even if the asylum applicant can successfully prove that she is a member of a PSG, she must also prove that the Indian government is unable or unwilling to control the persecutor.[204] A successful domestic violence-based claim must demonstrate that the victim's society and legal norms tolerate and accept violence against women.[205] The following sections will analyze how Indian laws, culture, and corruption affect the government's ability to protect victims of domestic violence.

A. Protection for Indian Women Who Are Victims of Domestic Violence

The Indian government has made efforts to protect victims of domestic violence. In order to determine the efficacy of a country's laws in protecting asylum applicants, immigration judges and officers look to the Department of State (DOS) Country Reports for the most accurate description of country conditions.[206] The 2009 DOS report on India states that domestic violence is a "serious problem"[207] in India, but paints a rosy picture of the laws protecting women.[208] The law protects women from "all forms of abuse"; recognizes the victim's right to stay in the household or to have other accommodations provided at the government's expense;

204. O-Z-, 22 I. & N. Dec. 23, 26 (B.I.A. 1998).

205. DHS Supp. Br., *supra* note 19, at 14.

206. Memorandum from Michael J. Creppy, Chief Immigration Judge, U.S. Dep't of Justice Exec. Office for Immigration Review, 10–11 (Aug. 4, 2000), *available at* http://www.justice.gov/eoir/efoia/ocij/oppm00/OPPM00-01Revised.pdf.

207. U.S. DEP'T OF STATE, 2009 HUMAN RIGHTS REPORT: INDIA (2010) [hereinafter 2009 HUMAN RIGHTS REPORT: INDIA], http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136087.htm.

208. *See id.*

provides women with the "right to police assistance, legal aid, shelter"; and "empower[s] magistrates to issue protection orders."[209]

Much of DOS's assertion is indeed accurate that, at least on its face, the Indian Constitution and laws provide generous protection of women. Article 51(a) lists the ten "fundamental duties" of each Indian citizen, including "renounc[ing] practices derogatory to the dignity of women."[210] Indian Penal Code Section 319 criminalizes causing another physical pain.[211] The Indian government has also specifically proscribed domestic violence and dowry harassment. Section 498a of the Indian Penal Code, passed in 1983, criminalizes cruelty against women at the hands of her husband or in-laws.[212] The Dowry Prohibition Act of 1986 creates a presumption of murder when a woman's death is caused by "burns or bodily injury," or within seven years of marriage, and it is shown that "soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry."[213]

The Hindu Marriage Act of 1955[214] lists marital cruelty as a ground for divorce and provides for interim maintenance during divorce proceedings and financial maintenance of wives after divorce.[215] Under Section 18(2) of the Hindu Marriage Act, a married woman has a right to claim maintenance in a separate residence if her husband has been cruel to her and the wife reasonably believes it would be unsafe to live with the husband, unless she has been "unchaste" or has become "non-Hindu."[216]

---

209. *Id.*

210. INDIA CONST. art. 25, *available at* http://india.gov.in/govt/documents/english/coi_part_full.pdf.

211. INDIA PEN. CODE, § 319 (1860).

212. *Id.* § 498A.

213. *Id.*; D.N Sandasnshiv & Jolly Mathew, *Legal Reform in Dowry Laws*, *in* KALI'S YUG 79, 81–83 (Rani Jethmalani ed., 1995).

214. In India, laws related to marriage, divorce, child custody and inheritance are governed by personal law, which is determined by the religious community to which the particular citizen belongs. Hornbeck et al., *supra* note 69, at 276. While personal law protects "pluralism and the religious rights of minority groups, they have been criticized as a mere means of reinforcing patriarchy and preventing gender equality." *Id.*

215. VIJAY SHARMA, PROTECTION TO WOMEN IN THE MATRIMONIAL HOME 247 (1994).

216. *Id.*

The most recent legislation is a civil act, the Protection of Women from Domestic Violence Act of 2005 (PWDVA).[217] Under the PWDVA, women can seek protection orders against their abusers, residence orders to prevent being ejected from their houses, and monetary relief.[218] If a woman calls the police to report domestic violence, the woman is assigned a protection officer who can help the woman file a domestic incident report, apply for protection orders, and make sure the victim understands her options.[219] Some jurisdictions have All Women Police Units (AWPUs) to make women feel more comfortable reporting domestic violence.[220]

There are also many NGOs that provide shelters and resources for victims of domestic violence. Odenadi, an NGO located in Mysore, Karnataka, protects domestic violence victims but also strives to keep the families together.[221] If the wife decides to stay in her house with her abuser, Odenadi will follow up to ensure the relationship is still safe for the victim.[222] Only when Odenadi cannot help the couple resolve their domestic violence situation does Odenadi contact the police.[223] The federal government also funds a hotline located at Odenadi, which provides counseling for women in "difficult circumstances."[224] Odenadi runs the phone line for the Mysore district, and an operator is on staff twenty-four hours a day to answer calls and provide counseling.[225] Vimochana, an NGO in Bangalore, approaches domestic violence from a different perspective. Vimochana brings the abuser into the NGO and chastises him for hitting his wife.[226] Shaming is a fairly common practice in smaller Indian villages, and often embarrassing an abuser is enough to curtail domestic

217. The Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE (2005).

218. *Catching Up with DV in the News*, 15 NAT'L BULLETIN ON DOMESTIC VIOLENCE PREVENTION 2, 4 (2009) [hereinafter *DV in the News*].

219. *See* Hornbeck et. al., *supra* note 69, at 277, 283–84; *see also* Interview with Stanly K.V., *supra* note 105.

220. Hornbeck et. al., *supra* note 69, at 293–94.

221. Interview with Stanly K.V., *supra* note 105.

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. Interview with Lacksmi, Vimochana NGO, in Bangalore, India (Mar. 25, 2011).

violence.[227] These laws and NGO programs are working to end domestic violence in India.

B. In Practice, the Indian Government is Often Unwilling and Unable to Protect Some Victims of Domestic Violence

The DOS report lists the laws that protect women, but does not evaluate their efficacy, whether they deter domestic violence, or whether women actually take advantage of the protection of the laws.[228] The DOS report notes that "underreporting [of domestic violence] was likely," and notes that laws banning dowry have not noticeably reduced the incidence of such crimes.[229] While the laws seem strong on their face, a law professor at the National Law School in Bangalore explained that laws intended to fight deep-rooted Indian culture have been a "huge failure."[230]

1. The Ostensibly Protective but Essentially Inadequate Indian Laws

While there are laws in place to protect victims of domestic violence, in reality it is difficult for women to invoke the laws designed to protect them. While Section 319 criminalizes the act of causing physical harm to another, in practice the police rarely enforce this law when the harm is between husband and wife because many policemen still do not recognize domestic violence as a crime.[231] Section 498A of the Indian Penal Code, which specifically criminalizes domestic violence, was passed to close this loophole.[232] However, it only criminalizes domestic violence that "results in punishment where the violence or harassment is likely to drive the woman to commit suicide or to cause grave danger."[233] Section 498A is therefore inadequate

227. *Id.*
228. *See* 2009 HUMAN RIGHTS REPORT: INDIA, *supra* note 207.
229. *Id.*
230. Dr. Elizabeth V.S., Lecture at the National Law School in Bangalore, India (March 24, 2011).
231. *See* Geethadevi, Meghana, Raghunandan, Renuka & Shobha, *Getting Away with Murder: How Law Courts and Police Fail Victims of Domestic Violence*, 120 KAMLESHWAR SINGH 31, 32, 35 (2000), *available at* http://www.manushi.in/docs/728.%20Getting%20Away%20with%20Murder.pdf.
232. *See id.* at 31.
233. Hornbeck et al., *supra* note 69, at 277.

because a great deal of domestic violence consists of mental cruelty or violence that does not rise to the level of causing grave danger and thus does not fall under 498A.[234] Vimochana observes that police rarely intervene or press charges in cases of battering, regardless of the severity.[235] When women try to bring their own 498A claims, police "heavily scrutinize" such claims because of a perceived high incidence of claim fabrication.[236]

While the text of the 2005 PWDVA provides women more protections, in practice few women have been able to take advantage of the Act's benefits.[237] Many states have not appointed enough protection officers, and some have not appointed any.[238] That means women living in villages far from the concentration of governmental and nongovernmental resources cannot obtain a protection order or use an NGO or protection officer as a springboard to obtain victims' resources. Stanley, the Director/Founder of Odenadi, explained that even in Mysore, the government services are so poor that police rely on NGOs to perform work that the police are unable to do.[239] Protection orders, while available to women subjected to domestic violence, are not always enforced.[240] The magistrate judges charged with protection orders are often uninformed about the PWDVA and hesitant to issue protection orders.[241] The PWDVA requires the government to "take all measures" to publicize the law, but the "average Indian citizen is likely unaware of the law and the protection it offers."[242] Moreover, while the PWDVA gives a woman the right to reside in her husband's home during a dispute so that the woman does not become homeless or "destitute," it does not give a wife who lives with her in-laws after marriage, a common practice in India,

234. Roland D. Maiuro, *Sticks and Stones May Break My Bones, but Names Will Also Hurt Me: Psychological Abuse in Domestically Violent Relationships*, *in* PSYCHOLOGICAL ABUSE IN VIOLENT DOMESTIC RELATIONS, at ix-x (K. Daniel O'Leary & Roland D. Maiuro eds., 2001).

235. *See* Geethadevi et al., *supra* note 231, at 31–32.

236. Hornbeck et al., *supra* note 69, at 278. Some commentators suggest, however, that some women are being "forced to overstate the violence they are experiencing" because they have no other options for recourse. *Id.*

237. Interview with Stanly K.V., *supra* note 105.

238. *Id.*

239. *Id.*

240. Lecture by Dr. Elizabeth V.S., *supra* note 230.

241. Flavia Agnes, *Looking Beyond*, 1 COMBAT L. 64, 64–65 (2010).

242. Hornbeck et. al., *supra* note 69, at 286–87.

the right to continue live with her in-laws during a dispute with the husband.[243]

All Women Police Units (AWPUs) have good intentions, but many victim's advocates criticize the AWPUs for being inaccessible, encouraging women to remain with their abusers, and returning women to abusive homes.[244] AWPUs are generally in big cities, not rural areas.[245] While the government does provide shelters, these shelters are poorly run, have a very limited capacity, and do not address the mental and emotional needs of victims.[246]

The Hindu Marriage Act of 1955[247] and the Hindu Succession Act of 1956[248] often prevent women from having the financial resources needed to leave their husbands. No provision exists to give Hindu women a share of their husbands' property acquired during marriage, and because most married Hindu women do not work, they have little opportunity to acquire assets under their own name.[249] Determining ownership based on financial contribution works inequitably against women because many women stay at home to assume "all domestic responsibilities, and thus, free[] the husband" to work outside the home.[250] Furthermore, traditional Hindu law did not permit married women to inherent their fathers' property.[251] Despite changes in the Hindu code in 1947 giving sons and daughters equal inheritance rights, "the change in the law has not resulted in a change in practice for most families; sons continue to inherit their fathers' property to the exclusion of daughters."[252] Moreover, in an attempt to encourage reconciliation, The Hindu Marriage Act prevents judges from hearing divorce

243. Rajesh, *supra* note 194, at 120. The case *Batra v. Batra* held that the PWDVA does not give victims the right to reside in their in-laws' matrimonial homes. *Id.* at 128.

244. *See* Hornbeck et al., *supra* note 69, at 293–94.

245. *See* INT'L CTR. FOR RES. ON WOMEN, DOMESTIC VIOLENCE IN INDIA: A SUMMARY REPORT OF THREE STUDIES 18 (1999), *available at* http://www.women studies.in/elib/dv/dv_domestic_violence_in_India_a_summary.pdf.

246. Interview with Stanly K.V., *supra* note 105.

247. Hindu Marriage Act, INDIAN CODE (1955), *available at* http:// punjabrevenue.nic.in/hmrgact(1).htm.

248. Hindu Succession Act, INDIAN CODE (1956), *available at* http://indiacode. nic.in/fullact1.asp?tfnm=195630.

249. SHARMA, *supra* note 215, at 376.

250. *Id.*

251. *Id.*

252. Hornbeck et al., *supra* note 69, at 276.

cases for one year after the marriage has elapsed except for circumstances of extreme depravity.[253]

While women can continue to live in their marital homes and receive maintenance, Stanley from Odenadi explained that husbands in private employment can easily hide their earnings to ensure that their wives receive only the 500 rupees a month statutory minimum in maintenance (about U.S. $11).[254] Yet if the husband goes to jail for committing "cruelty" and has no other assets, the wife may lose her maintenance because the husband is no longer able to earn income.[255] This serves as a disincentive to report offenses to the police. The wife also may not be able to obtain partial ownership of her husband's house because of ancestral property claims by her husband's family.[256]

Laws have done little to prevent the exchange of dowry and the murder of women as a result of dowry harassment.[257] Furthermore, only thirty percent of dowry death prosecutions result in convictions because of evidentiary issues.[258] For example, it is difficult to prove that an abuser subjected a woman to cruelty before death unless she wrote it down or told someone.[259] Most importantly, in practice, the Act does not protect women from dowry harassment because the Act only "catches dowry demands after the death of a woman."[260]

Indian NGOs like Vimochana and Odenadi do great work, but their resources are limited and can help only a very small percentage of the population. Although the greater Mysore area that Odenadi serves had a population of over 2,600,000 in 2001,[261] Odenadi has space for only forty-six women, with most spaces reserved for victims of human trafficking.[262] Furthermore, the state delegates the management of state-run services to Odenadi, but does not provide enough funding to do so, so Odenadi must supplement

253. *See* Garg, *supra* note 201, at 16.

254. Interview with Stanly K.V., *supra* note 105. But if the husband has a government job, ten percent of his salary is automatically garnished and sent to his wife. *Id.*

255. *Id.*

256. *Id.*

257. Lecture by Dr. Elizabeth V.S., *supra* note 230.

258. *Id.*

259. *Id.*

260. *Id.* However, it could be argued that prosecution might be a deterrent.

261. *Know India: Karnataka*, GOVERNMENT OF INDIA (2010), http://india.gov.in/knowindia/districts/andhra1.php?stateid=KA.

262. Interview with Stanly K.V., *supra* note 105.

the twenty-four-hour hotline and counseling services program with its own money.[263] While laws are in place to protect women, in practice the laws fail to do so, and NGOs have only limited resources.

2. The Culture

The main reason the laws do not adequately protect women is because laws designed to fight deep-rooted culture in India have been failures.[264] Despite the numerous laws protecting women, culturally, Indians still view domestic violence as a private problem; neighbors, extended family members, police, and even judges are often reluctant to interfere.[265] In an anti-domestic violence ad campaign called "Ring the Bell,"[266] a man hears his neighbor hitting his wife. She screams and pleads. The man walks next door and rings the doorbell. The screaming stops, the neighbor answers the door, and the man asks to borrow a cup of milk. The campaign is designed to create awareness, yet reveals how domestic violence is still a private problem; the "solution" the ad encourages is not calling the police or an NGO, confronting the neighbor about the error of his actions, or offering the wife a safe place to stay, but rather passive-aggressively asking for milk to interrupt the violence.[267] The public service announcement reveals that even addressing domestic violence passive-aggressively is still a big cultural step for many Indians.

Many Indians are hesitant to intervene when domestic violence occurs.[268] Domestic violence is rarely a "hidden . . . private activity" in villages because people in adjacent houses can easily hear the screaming and fighting.[269] Yet in a study of three rural villages in Karnataka, other villagers usually

263. *Id.* Each hotline must have a counselor and three field social workers, but the government gives Odenadi only 3000 rupees per month (U.S. $66) for each social worker, and 6000 rupees per month (U.S. $128) for the counselor. It is "impossible," according to Stanly, to get qualified workers at such a low price. *Id.* Both times I visited Odenadi, the twenty-four-hour hotline operator was not present and no one was manning the line.

264. Lecture by Dr. Elizabeth V.S., *supra* note 230.

265. Interview with Lacksmi, *supra* note 226.

266. Bell Bajao Campaign, YOUTUBE, http://www.youtube.com/watch?v=9t3BPv8tBP4 (last visited Mar. 20, 2012).

267. *Id.*

268. Rao, *supra* note 203, at 9.

269. *Id.* at 9.

intervene only when the "community views the violence as extremely severe or 'meaningless.' "[270]

Even victims of domestic violence go to the police only "as a matter of last resort."[271] Statistics show that two percent of victims seek intervention from police and only one third of abused Indian women seek help from non-law enforcement sources, such as village councils, elders, or NGOs.[272] Discussing marital relations and domestic violence openly in an office, court, or society is a "daunting task" for women.[273] Rapes in police custody are also common, which may discourage women from entering a police station to report a crime.[274] Women may also be reluctant to report cruelty because their marriage—which may have been difficult to obtain in the first place because her family paid an expensive dowry to give her the opportunity to marry—may dissolve.[275] The lack of sensitivity and domestic violence training for police, protection officers, and judges exacerbates this problem.[276] If public servants are not trained how to appropriately deal with the nuances of domestic violence cases, they will perpetuate the culture of condoning domestic violence that the laws intend to counteract.[277] For all of these reasons, women are unlikely to report abuse to the police.

3. The Corruption: Rich People Can Buy "Whatever They Want"

Corruption in India is widespread and often prevents victims from seeking justice. It is generally accepted in India that both "police and courts consciously choose not to enforce laws designed to protect women."[278] A study by 2005 Transparency India found that more than ten percent of Indian households reported paying bribes to the police in order to obtain services.[279] Transparency International scored India as

270. *Id.* at 9–10.
271. Interview with Stanly K.V., *supra* note 105.
272. *DV in the News*, *supra* note 218.
273. Rajesh, *supra* note 194, at 140.
274. Hornbeck et al., *supra* note 69, at 288.
275. Interview with Lacksmi, *supra* note 226.
276. No gender-sensitization training had been provided for protection officers and magistrate judges as of 2007. *See* Hornbeck et al., *supra* note 69, at 287.
277. *See id.*
278. *Id.* at 288.
279. *Country Advice: India*, THE UN REFUGEE AGENCY, http://www.unhcr.org/refworld/country,,AUS_RRT,,IND,,4d9992052,0.html (last visited Mar. 20, 2012).

a 3.1 on a scale of one to ten, zero being highly corrupt and ten being clean.[280] Stanley from Odenadi explained that supervisors tell police officers to collect a certain number of bribes per month.[281] Even if the abuser himself is not working for the government, police are known to extort bribes from women reporting domestic violence, threatening not to investigate the case without under-the-table payment.[282] Stanley noted that when Odenadi is involved in the legal process, its presence serves as a check on corruption and women usually receive the protection they need.[283] Yet NGOs lack the resources to combat a country-wide culture of corruption. As Arjun, a young Brahmin, told me, "If you have money, you can get away with murder."[284] The widespread corruption paired with the numerous disincentives women have to report domestic violence make seeking protection of the laws an almost insurmountable task for victims.

4. Can Brahmin Women Prove that the Government Is Unable or Unwilling to Protect Them?

Under the law, Brahmin women receive the same government protection as other women, which means they face the same barriers all Indian women face who are seeking the protection of the government. Yet the predominance of Brahmins in civil service and politics may further hinder a victim's ability to stay safely in India.[285] The Center for Gender and Refugee Studies' database, which gathers information about asylum applicants, shows two grants of asylum for victims (one a Brahmin) who were unable to invoke the government's protection because one of their abusers was a "powerful government official"[286] and the other a "security

280. *Corruption Perceptions Index 2011*, TRANSPARENCY INTERNATIONAL (2011), http://cpi.transparency.org/cpi2011/results/.

281. Interview with Stanly K.V., *supra* note 105.

282. *INDIA: Police extort money from a victim of domestic violence in Assam*, ASIAN HUMAN RIGHT COMM'N (Jun. 2, 2010), http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-075-2010.

283. Interview with Stanly K.V., *supra* note 105.

284. Interview with Arjun, *supra* note 120.

285. LIDDLE & JOSHI, *supra* note 79, at 245.

286. CENTER FOR GENDER & REFUGEE STUD., *supra* note 2 (search the database with "India" selected for Nationality and "domestic violence" selected for Type of Persecution/Case; follow "408" hyperlink).

forces employee."[287] As these cases illustrate, Brahmin husbands who abuse their wives may be able to use their connections to avoid prosecution. On the other hand, urban Brahmin women are more likely to be educated, and many come from middle- to upper-class families.[288] These Brahmin women may have the resources to connect with an NGO or a lawyer to ensure that their husbands are prosecuted and that the protection orders are enforced. They may also come from progressive families, which may take their daughter back into their home. Overall Indian society tolerates domestic violence, making it difficult for victims to seek protection.[289]

While India has laws to protect victims of domestic violence, these laws do not adequately address the problem of widespread underreporting of violence or the pervasive corruption, fight the cultural norms that still perpetuate domestic violence, or provide meaningful aid to women in rural areas.[290] Therefore, it is likely a rural Brahmin woman could prove the Indian government is unable or unwilling to protect her.

IV. WHETHER BRAHMIN WOMEN CAN MEET THE OTHER STATUTORY REQUIREMENTS FOR ASYLUM OR OVERCOME NON-LEGAL BARRIERS

Once an asylum applicant demonstrates she has been persecuted in the past, the burden shifts to the DHS attorney to prove that (1) the applicant's circumstances have *fundamentally changed*, that (2) she could *relocate to another part of India*, or that (3) *some other serious harm would not occur* if she returns to India.[291] If DHS cannot meet its burden, the applicant is granted asylum.[292] If DHS does meet its burden, then the applicant can still obtain asylum if she can show that there are compelling circumstances to grant asylum, or that she would fall victim to other serious harm if she returns to India.[293] Even if a Brahmin woman does meet all of

287. *Id.* (search the database with "India" selected for Nationality and "domestic violence" selected for Type of Persecution/Case; follow "198" hyperlink).

288. *See supra* Part II.B.

289. Geethadevi et al., *supra* note 231.

290. *See* Hornbeck, *supra* note 69, at 273.

291. 8 C.F.R. § 208.13(b) (2012).

292. *See id.* Of course the applicant must meet other requirements not discussed in this Note, such as the commission of no serious crimes.

293. *Id.* § 208.13(b)(1)(iii).

these requirements, there are numerous non-legal barriers to obtaining asylum.

A. Changed Circumstances

If DHS, the entity representing the government in defensive asylum cases, can prove the original threat of persecution against the victim no longer exists, the government will have met its burden to prove changed circumstances.[294] Changed circumstances could include the death of the victim's abuser, proof the government would now be able to protect the victim, or proof that he would not abuse her further if she returned to India.[295] The DHS Supplemental Brief argues that a claim of fear of future persecution is bolstered if "the abuser would not recognize a divorce or separation as ending the abuser's right to abuse the victim."[296] The Brief notes that the record in *Matter of L-R-* has many "instances of repeated abuse even after [L-R-] left," including her husband pursuing her from Mexico to the United States.[297] The persistence of Latin American men in pursuing their partners is well-documented.[298] Yet Indian men tend not to pursue their fleeing wives, according to Lacksmi at the NGO Vimochana.[299] There are always exceptions. In one affirmative asylum case, USCIS granted asylum to an Indian woman whose husband threatened to kill her and her family unless she returned to him.[300] In another Indian asylum case that was eventually granted, the husband threatened to take away the victim's child if she did not return, and his in-laws "vow[ed] to avenge the 'dishonor' she has brought on them" for leaving her son.[301] Each asylum case is a fact-specific inquiry, but evidence that

294. N-M-A-, 22 I. & N. Dec. 312, 318 (BIA 1998).

295. *Cf.* S-A-, 22 I. & N. Dec. 1328, 1335. (BIA 2000).

296. DHS Supp. Br., *supra* note 19, at 16.

297. *Id.*

298. *Background: Ms. L-R-'s Story*, CENTER FOR GENDER & REFUGEE STUD., *available at* http://cgrs.uchastings.edu/campaigns/Matter%20of%20LR.php (last visited Mar. 20, 2012).

299. Interview with Lacksmi, *supra* note 226.

300. CENTER FOR GENDER & REFUGEE STUD., *supra* note 2. (search the database with "India" selected for Nationality and "domestic violence" selected for Type of Persecution/Case; follow "408" hyperlink). "Eventually, fearful that her refusal to go back to her husband would endanger her family, she returned to her husband." *Id.*

301. CENTER FOR GENDER & REFUGEE STUD., *supra* note 2 (search the database with "India" selected for Nationality and "domestic violence" selected for Type of Persecution/Case; follow "77" hyperlink).

Indian men tend not to pursue or attack their wives after the woman chooses to leave the domestic relationship could help DHS meet its burden to prove that a fundamental change has occurred.[302]

B. Relocation Within India

If the government can prove the victim can safely relocate to another part of the country, the victim will not be able to obtain asylum.[303] When an immigration judge is determining whether internal relocation is reasonable, he considers the following factors: whether the applicant would face other serious harm, whether there is ongoing civil strife, whether the country has good infrastructure, and whether there are geographical limitations or social and cultural constraints such as gender, health, social, and familial ties.[304] Although not all of the factors fall in favor of Brahmin women, there are many barriers that would make it difficult to relocate within India.

The fact that India is a very large country that is not in a state of pervasive civil strife indicates that Brahmin women could relocate in-country. Relocation is generally unreasonable in smaller countries such as Togo because it is easier for the abuser to find the victim, but India is the seventh largest country in the world.[305]

While India is a large country and lacks pervasive civil strife, it is nevertheless a difficult place to relocate due to language barriers, social and cultural ties, and lack of housing, education, and money.[306] While English and Hindi are the official languages of India, there are numerous regional languages, and often Indians will speak the regional language

302. Interview with Lacksmi, *supra* note 226. This is contrasted to American culture, where women attempting to leave their husbands are most susceptible to violence. *See* NAT'L COUNCIL ON CHILD ABUSE AND FAMILY VIOLENCE, SPOUSE/PARTNER ABUSE INFORMATION, http://www.nccafv.org/spouse.htm (last visited Mar. 20, 2012).

303. 8 C.F.R. § 208.13(b)(1)(i) (2012).

304. *Id.* § 208.13(b)(3).

305. *See* Kasinga, 21 I. & N. Dec. 357, 367 (BIA 1996). *Countries of the World by Area*, ONE WORLD NATIONS ONLINE, http://www.nationsonline.org/oneworld/countries_by_area.htm (last visited Feb. 18, 2012).

306. *Background Note: India*, U.S. DEPARTMENT OF STATE (Nov. 8, 2011), http://www.state.gov/r/pa/ei/bgn/3454.htm.

but not speak English or Hindi.[307] Women who seek to relocate in a different region of India may have difficulty communicating or obtaining a job because of similar language barriers.[308]

Lack of housing presents a major problem for women fleeing domestic violence.[309] As described in Section III.B.1, there are pitifully few government shelters, and those that exist are poorly managed and funded.[310] Often shelters will limit the age and number of children a fleeing victim can bring with her, which discourages victims with children from leaving their abusers.[311] From his experience, Stanley from Odenadi observed that public resources are easily abused if an NGO is not overseeing the process. Many NGOs such as Odenadi run domestic violence shelters, but their scope is limited; Odenadi can only house eight domestic violence victims, and some regions do not even have an NGO like Odenadi.[312] Single women searching for apartments are often subject to housing discrimination—landlords are often skeptical to rent to a single woman, believing that she is "loose" sexually.[313]

Women often lack the economic, educational, or familial resources to survive on their own. Female Havik Brahmins in Karnataka usually do not contribute to the family income.[314] As mentioned in Section III.B.1, most women do not inherit money or property from their parents, and abusers with non-government jobs usually pay the statutory minimum 500 rupees a month.[315] Wives can feel pressured to stay with their husbands because it is difficult for divorced women with children to find a second husband.[316]

---

307. *Indian Languages*, ENCYCLOPEDIA BRITANNICA, *available at* http://www.britannica.com/EBchecked/topic/285754/Indian-languages (last visited Mar. 21, 2012).

308. *See id.*

309. Judith G. Greenberg, *Criminalizing Dowry Deaths: The Indian Experience*, 11 AM. U. J. GENDER SOC. POL'Y & L. 801, 838 (2003).

310. *Id.* (describing how Madhya Pradesh allocated 0.03% of its budget for women's shelters); *see* Nishi Mitra, *Best Practices Among Responses to Domestic Violence in Maharashtra and Madhya Pradesh*, TATA INST. SOC. SCI., Sept. 1999, at 7, *available at* http://www.cwds.ac.in/library/collection/elib/dv/dv_best_practices.pdf, at 7; *see also* Interview with Stanly K.V., *supra* note 105.

311. Mitra, *supra* note 310, at 8.

312. Interview with Stanly K.V., *supra* note 105.

313. Dummett, *supra* note 70.

314. ULLRICH, *supra*, note 140, at 98.

315. Interview with Stanly K.V., *supra* note 105.

316. Greenberg, *supra* note 309, at 838. However, this is not impossible. A dating website called Second Shandi is for divorced Indians and is gaining

While Brahmin women are statistically more educated than their non-Brahmin counterparts, Brahmin women are still less employed than their male counterparts, in part due to Brahmin families often prioritizing the education of their sons rather than their daughters.[317] Seventy-eight percent of Indian women are unemployed, and those that are employed earn 40-60% less than their male counterparts.[318] Orthodox Brahmin women are further limited in the types of jobs they can perform because "Brahmin prohibitions prevent Brahmin women from mixing too much with other castes."[319] Brahmin women are less able to return to their natal home than women of other castes.[320]

Brahmin families give their daughters' husbands a huge dowry, often impoverishing themselves in the process.[321] With this dowry their responsibility ends: "their door closes on their daughter . . . she no longer has any rights in her father's house."[322] The mothers of Dogra Brahmins in Northern India would not accept their daughters' divorces, but their educated daughters believe they would nevertheless proceed to get a divorce if they were unhappy.[323] Educated, working Brahmin women can probably relocate and support themselves without the assistance of their parents, but internal relocation would be daunting for a Brahmin woman who has no means of supporting herself when her family will not take her back.

C. Compelling Reasons or Other Serious Harm

If DHS is able to meet its burden to prove that the victim's circumstances have changed or the victim can relocate within India, the victim cannot be granted asylum except in two narrow circumstances. The burden shifts to the victim to demonstrate *compelling reasons* for being unwilling or unable to return to India arising out of the severity of the past

---

popularity. *See* SECOND SHANDI, www.secondshandi.com (last visited Mar. 21, 2012).

317. *See* KAPADIA, *supra,* note 24, at 57.

318. Greenberg, *supra* note 309, at 838–39.

319. KAPADIA, *supra* note 24, at 55–56. Kapadia interviewed a Brahmin woman who is now an astrologer who must mix with many castes as part of her job, which results in her being a social outcast among her fellow Brahmins. *See id.*

320. *Id.* at 55.

321. *Id.*

322. *Id.* at 55 (comparing the plight of the Brahmin women to that of middle caste Tamils, most of whom continue to retain rights in their father's home).

323. *See* Sharma et al., *supra* note 105, at 253.

persecution.[324] Or, the victim must prove there is a reasonable possibility that she may suffer *other serious harm* upon deportation from the United States.[325]

A compelling reason not to deport an applicant who no longer has a well-founded fear would be if the severity of the persecution rose to the level of torture and the victim retained permanent scars.[326] In the seminal case on humanitarian asylum, *Matter of Chen*, a Chinese Christian who was brutally tortured and permanently disfigured received humanitarian asylum because it would have been inhumane to return him to China.[327] It is certainly possible that severe domestic violence resulting in disfigurement or permanent injuries, especially a successful attempt to burn a wife with kitchen oil, could meet that standard.

A Brahmin woman may be able to meet the "other serious harm" requirement. "Other serious harm" is defined as "harm that is not inflicted on account of race, religion, nationality, membership in a particular social group, or political opinion, but equals the severity of persecution."[328] The BIA defines physical persecution as the "infliction of harm or suffering by a government."[329] Economic conditions "so severe as to deprive applicant of all means of earning living" can also rise to the necessary level of persecution.[330] For example, if the victim has fled her husband, she has abandoned her communal property, so she may have few resources or lack a place to live.[331] Further, her family may not be willing to take her because they consider it her duty to "adjust" to her husband.[332] If she is not

---

324. Belishta v. Ashcroft, 378 F.3d 1078, 1081 (9th Cir. 2004).

325. *Id.*

326. 8 C.F.R. § 208.13(b)(1)(iii)(A)–(B). In *Nazaraghaie v. INS*, 102 F.3d 460, 463 (10th Cir. 1996), the court held that an applicant can receive humanitarian asylum if return would "sear a person with distressing associations with his native country that it would be inhumane to force him to return there, even though he is in no danger of future persecution."

327. Chen, 20 I. & N. Dec. 16, 20–21 (BIA 1989).

328. Krastev v. INS, 292 F.3d 1268, 1271 (10th Cir. 2002) (quoting 65 Fed.Reg. 76121, 76127 (2000)).

329. Acosta, 19 I. & N. Dec. 211, 222 (BIA 1985).

330. Borca v. INS, 77 F.3d 210, 215 (7th Cir. 1996) (describing how a Romanian doctor who was forced to do farm labor was denied asylum because forced farm work did not deprive her of all means of making a living.).

331. *See* Sharma, *supra* note 105, at 247 ("Married women in most cases do not have any independent source of income and are economically dependent on their husbands.").

332. *Id.* ("In some cases parents are also unwilling to take the responsibility of their married daughters, with or without children.").

educated and lacks social support, she may have no way of making a living. If she is living in a smaller village, she may be ostracized from and stigmatized by the community. Poverty and social isolation make women more vulnerable to trafficking,[333] or vulnerable to abuse by another man. All of these factors could deprive the victim of all means of earning a living and make her vulnerable to a level of harm, such as human trafficking, kidnapping or rape, that equals the severity of persecution. Demonstrating compelling reasons or other serious harm are fact-specific inquiries, but it is certainly possible for Indian Brahmin women to meet either scenario.

D. Other Practical Considerations that May Prevent Indian Women from Seeking Asylum in the United States

Even if an orthodox Brahmin woman can be a member of a PSG, there are many other barriers that may prevent her from seeking asylum in the United States. The United States is far and travel is expensive.[334] Furthermore, a Brahmin woman may lack motivation to go to the United States if she does not already have family members or friends there. Moreover, Indian governmental, nongovernmental, and familial resources, while insufficient resources for most Indian victims, may be sufficient resources for some victims of domestic violence.

For the same reason most women across the world do not report domestic violence—economic dependency, shame, fear of retaliation, among others—it is possible that most Indian women would likely not seek asylum.[335] Post Traumatic Stress Disorder frequently can cause victims of domestic violence to avoid anything that reminds them of their trauma and renders them unable to participate in activities unrelated to immediate

333. Interview with Stanly K.V., *supra* note 105.

334. On Travelocity, a one-way flight from Bangalore, India to New York City in April 2012 was $780 with tax. An asylum seeker would also have other expenses, including food, shelter, and other transportation. TRAVELOCITY, www.travelocity.com (last visited Mar. 21, 2012).

335. Enrique Gracia, *Unreported Cases of Domestic Violence Against Women: Towards an Epidemiology of Social Silence, Tolerance, and Inhibition*, 58 J. EPIDEMIOLOGY & CMTY. HEALTH 536, 536–37 (2004), *available at* http://jech.highwire.org/content/58/7/536.full.

survival, such as the process of seeking asylum.[336] Even if an Indian woman arrives in the United States, winning an asylum case requires numerous experts, submission of extensive country condition evidence and legal memoranda, and the victim's countless retelling of the persecution to attorneys, officers, or judges.[337]

These non-legal barriers make winning an asylum claim difficult for most Indian women, but not impossible, particularly for Brahmin women. This conclusion is rooted in generalizations that Brahmins are generally wealthier,[338] more educated,[339] and therefore may have easier access to the United States than other castes. Brahmin women may be able to borrow money from a relative to travel to the United States, and, because of their higher education levels, they may have a higher likelihood than other castes of getting international jobs. Asha, the Brahmin woman discussed in the introduction, came to the United States because her husband had an employment visa.[340] On the other hand, while some Brahmins are well educated and cosmopolitan, many live in rural villages and have less education and resources to pursue an asylum claim.[341] The Brahmin women in villages who may be best able to be a PSG and meet the other requirements of asylum may be the Brahmins who have the least exposure to the United States or higher education. Brahmin women's education, socio-economic status, and connections to the United States impact which kinds of Brahmins can seek asylum.

CONCLUSION

Orthodox Brahmin women who are unemployed or uneducated live in rural villages and do not have a supportive

336. Victims of domestic violence often meet the criteria for PTSD. MARGARET J. HUGHES & LORING JONES, SAN DIEGO STATE UNIV., WOMEN, DOMESTIC VIOLENCE, AND POSTTRAUMATIC STRESS DISORDER (PTSD) 57 (2000), http://www.csus.edu/calst/government_affairs/reports/ffp32.pdf.

337. John P. Wilson & Boris Drožđek, *Uncovering: Trauma-Focused Treatment Techniques with Asylum Seekers*, *in* BROKEN SPIRITS: THE TREATMENT OF TRAUMATIZED ASYLUM SEEKERS, REFUGEES, WAR AND TORTURE SURVIVORS 243, 244 (John P. Wilson & Boris Drožđek eds., 2004).

338. RAJESH SHUKLA ET. AL., CASTE IN A DIFFERENT MOULD 47 (2010).

339. *See* BAIRY, *supra* note 106, at 104.

340. CENTER FOR GENDER & REFUGEE STUD., *supra* note 2 (search the database with "India" selected for Nationality and "domestic violence" selected for Type of Persecution/Case; follow "408" hyperlink).

341. GHOSH & GHOSH, *supra* note 73, at 137, 145.

natal family could constitute a PSG. They could also show that the Indian government is unable to protect them, since few resources are available to women in rural areas. Brahmin women with education or those living in bigger cities, such as Bangalore, would probably not qualify for asylum nor need to seek asylum. This is because they tend to have more progressive families who may take the victim back into their home, a progressive social support system, or the Brahmin woman may be able to leave and find a job to support herself and her children economically.[342] While only about nine percent of the Indian population is Brahmin, the grand total of women who could be members of this PSG could be upwards of around 3.78 million given that seventy percent of India's 1.2 billion people live in rural areas where abuse is largely condoned.[343]

There would be broad implications if the BIA, in a precedent-making decision, granted a Brahmin woman asylum based on her membership in a PSG. Some asylum advocates might celebrate the fact that the BIA finally affirmed that victims of domestic violence should obtain asylum. Other advocates might worry that it could hinder the cause of non-Brahmin women who want to obtain asylum. Brahmin women can constitute a PSG because they come from a distinct culture with specific, documented traditions, and Indian society is aware of their group and their traditions. Other battered women may not be able to meet the precedent the Brahmin women have set.

Asha, the abused Brahmin wife, applied affirmatively for asylum as part of a PSG of "Hindu women who have suffered extensive persecution form their husbands who believe that Hindu women are inferior to men."[344] An asylum officer granted her case without a decision or explanation.[345] While decisions made by asylum officers are not precedential or published,[346] her case lends credence to the assertion that some Brahmin women can constitute a valid particular social group.

---

342. *See* discussion *supra*, Part II.

343. OFF. OF THE REGISTRAR GEN. & CENSUS COMM'R, INDIA, RURAL-URBAN DISTRIBUTION, 2001 CENSUS, http://www.censusindia.gov.in/Census_Data_2001/India_at_glance/rural.aspx.

344. CENTER FOR GENDER & REFUGEE STUD., *supra* note 2 (search the database with "India" selected for Nationality and "domestic violence" selected for Type of Persecution/Case; follow "408" hyperlink).

345. *Id.*

346. O'Dwyer, *supra* note 8, at 192 n.38.