

**Patriarchy's Link to Intimate Partner Violence: Applications to Survivors' Asylum Claims**

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### Abstract

Eligibility for asylum among survivors of intimate partner violence (IPV) has recently been contested. We summarize social science evidence to show how survivors generally meet asylum criteria. Studies consistently show a relationship between patriarchal factors and IPV, thereby establishing a key asylum criterion that women are being persecuted because of their status as women. Empirical support is also provided for other asylum criteria: Patriarchal norms contribute to state actors' unwillingness to protect survivors, and survivors' "political opinions" are linked to an escalation of perpetrators' violence. The findings have implications for policy reform and support of individual asylum-seekers.

*Keywords:* Patriarchy, Asylum, Intimate Partner Violence, Sexism

### **Patriarchy's Link to Intimate Partner Violence: Applications to Survivors' Asylum Claims**

In June of 2018, then-U.S. Attorney General (A.G.) Jeff Sessions issued a decision in the asylum case *Matter of A-B-*, in which he asserted that "generally" claims by survivors of intimate partner violence (IPV) would no longer qualify for asylum (*Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018)). Sessions' opinion overruled *Matter of A-R-C-G-*, a prior case issued by the Board of Immigration Appeals (B.I.A.) that established the right to asylum for those who had experienced IPV (often referred to as domestic violence or abuse). Sessions' decision not only overruled *Matter of A-R-C-G-* but undercut a decades-long move towards increased asylum protections for survivors of IPV and women's rights in general.

Although A.G. Garland has since vacated, or set aside, Sessions' decision in *Matter of A-B-* (*Matter of A-B-*, 28 I&N Dec. 307 (A.G. 2021)), survivors' access to asylum protection remains precarious. Because attorneys general have the authority to review and overrule decisions issued by the B.I.A., the next A.G. could, with the stroke of a pen, once again abrogate survivors' eligibility. Codifying—either in statute or in case law—that women constitute a discrete socio-cultural group, and therefore a "particular social group" (P.S.G.), could ensure enduring protection for IPV survivors seeking asylum (Jastram & Maitra, 2020). In this article, we provide evidence to show that women meet the legal criterion of a P.S.G. because of their membership in the group "women," with patriarchal factors associated with IPV victimization. We summarize social science evidence to show that women's persecution by intimate partners is

linked to their oppression inside and outside the home—through various forms of entrenched patriarchal norms and structures. We use a multi-faceted definition of the “patriarchy” derived from elements common to several forms of feminism (e.g., Walby, 1990). The patriarchy manifests as unequal social structures and sexist norms. Gender inequality is the main form of structural inequality. Negative attitudes toward women and rigid gender role beliefs are forms of “sexist/patriarchal norms.” Our definition covers both the public realm (the systemic oppression of women) and the private realm (e.g., men’s control of women in the home) (Bernstead, 2021; Walby, 1990)).

Our primary purpose is to synthesize the evidence on the link between the patriarchy and IPV as a key element for asylum claims. We summarize evidence showing that psychological and physical abuse by intimate partners, often meeting the definition of persecution, commonly arises from perpetrators’ misogynistic views and negative stereotypes of women, thereby satisfying the asylum standard’s nexus requirement. What Sessions describes as the “private crime” of IPV is, in fact, a public matter due to its socio-cultural, patriarchal roots. The patriarchy enables violence against women (*gender-based violence*) to continue unchecked by both governmental and non-governmental actors who should intervene but often do not (Robinson 2020). Violence against women should not be viewed as something that only occurs in the context of one violent partner, one household, or even one community. It contributes to and is a consequence of political, economic, and other inequalities women face daily.

Violence against women is fueled mainly by perpetrators’ negative socio-cultural beliefs about women (patriarchal norms) *and* systemic, structural failures to respond based on the same negative beliefs that lead to unequal treatment and status. Although men are also victims of IPV, women are disproportionately affected by IPV, incur more severe injuries, and experience more significant barriers when seeking protection from harm, including asylum (Hamberger & Larson, 2015, Hardesty & Oglesby, 2020; Saunders, 2002; UNHCR, 2015). Additionally, the misogyny of state actors in many countries of origin, typically in the criminal justice system, makes them unwilling to protect survivors. In some cases, state officials may even be hostile toward women seeking protection from IPV. Moreover, in some jurisdictions, a lack of resources renders law enforcement agencies unable to assist survivors, further allowing perpetrators to act with impunity (e.g., Walsh & Menjívar, 2016).

In this article, we draw on studies from different countries to highlight the universality of

patriarchy and its relationship to violence against women. Our synthesis, however, emphasizes the conditions and rights of asylum seekers from the “Northern Triangle” countries of Honduras, Guatemala, and El Salvador because of the recent, increased flow of asylum seekers from these countries to the U.S. and the precedent-setting court and A. G. decisions regarding asylum-seekers’ claims from those countries. However, the analysis may be applied beyond those countries.

### **Legal Definitions and History**

Congress enacted the Refugee Act of 1980 to conform United States (U.S.) law with two international treaties: the 1951 Convention Relating to the Status of Refugees and the 1967 United Nations Protocol Relating to the Status of Refugees. Thus, like laws in many other countries, U.S. refugee and asylum law has its origins in international law. The Refugee Act delineates the standard for asylum in the U.S., requiring that an applicant demonstrate that they have experienced persecution in the past or have a well-founded fear of future persecution on account of a protected ground. The harm must be perpetrated either by the government or a private actor the government is unwilling or unable to control (known as the “state action” requirement).

Courts have defined the term “persecution” as “the infliction of suffering or harm upon those who differ in a way that is regarded as offensive by the persecutor” (*Kovac v. Immigration & Naturalization Serv.*, 407 F.2d 102, 107 (9th Cir. 1969); *Matter of T-Z-*, 24 I. & N. Dec. 163, 173 (B.I.A. 2007)). Physical and sexual violence, female genital mutilation/cutting, torture, “honor” crimes, and unlawful detention have all been recognized as persecution (Collier, 2007; Tahirih Justice Center, 2009). In some cases, psychological abuse, threats, or harm to family members can constitute persecution (*Salazar-Paucar v. I.N.S.*, 281 F.3d 1069 (9th Cir. 2002)). Financial abuse might also qualify (Collier, 2007; Falkler, 2007). However, harm must rise above ‘unpleasantness, harassment, or even basic suffering’ to qualify as “persecution.” Thus, IPV frequently rises to the level of persecution that asylum law requires. It is far from a mere dispute between those on equal footing and often leads to severe physical and mental injuries (Black et al., 2011).

Importantly, the law requires persecution to be perpetrated “on account of” a protected “ground,” or category, specifically race, religion, national origin, political opinion, or membership in a particular social group. Gender is not on the list of protected grounds, so in

cases involving IPV, this nexus is often to a “particular social group.” The B.I.A.’s definition of a P.S.G. has evolved significantly in recent years. The current criteria for valid P.S.G. are 1) immutability, 2) particularity, and 3) social distinction (Bookey, 2016; Nanasi, 2017; Vogel, 2019). An immutable P.S.G. is one whose members possess a characteristic that, like the other four asylum grounds, either cannot be changed *or* is so fundamental that a person should not be required to change it. (Matter of Acosta, 19 I&N Dec. 211 (BIA 1985)). For a P.S.G. to be considered “particular,” an “adequate benchmark for determining group membership” must exist. For example, in a 2007 case, the B.I.A. found that the particular social group of “wealthy Guatemalans” was insufficiently particular because it was too subjective. It was impossible to determine who fit into the group and who did not (Matter of A-M-E- & J-G-U-, 24 I&N Dec. 69 (B.I.A., 2007)). Lastly, the “social distinction” element requires “evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group” (Matter of W-G-R- 26 I&N Dec. 208 (B.I.A. 2014)). In *Matter of A-B-*, Sessions stated that the “unable to leave” P.S.G. lacks social distinction because “there is significant room for doubt that Guatemalan society views these women, as horrible as their personal circumstances may be, as members of a distinct group in society rather than each as a victim of a particular abuser in highly individualized circumstances” (Matter of A-B- 27 I&N Dec. 316, 336 (A.G. 2018)).

In *Matter of A-R-C-G-*, the Board of Immigration Appeals held that the group “married women in Guatemala who are unable to leave their relationship” met all the requirements for a P.S.G. (26 I&N Dec. 388 (B.I.A. 2014)). This precedent-setting case, which was overruled by Sessions in *Matter of A-B-*, firmly established the right of a survivor of IPV to claim asylum in the United States. But survivors of IPV had been granted asylum in the U.S. long before the certainty provided by that B.I.A. decision. In fact, in 2009, even the Department of Homeland Security, which represents the government’s interest in immigration proceedings, agreed that “Mexican women who are viewed as property by virtue of their positions within a domestic relationship” qualified as a P.S.G. (Department of Homeland Security’s Supplemental Brief, *In re L-R-* (B.I.A. 2009)).

*Matter of A-B-* also deviated from the B.I.A.’s prior rulings regarding the state action requirement. The opinion states that “the fact that the local police have not acted on a particular report of an individual crime does not necessarily mean that the government is unwilling or

unable to control crime, any more than it would in the United States.” (Matter of A-B- 27 I&N Dec. 316, 337 (A.G. 2018)). Sessions, in a sweeping statement, concluded that “the mere fact that a country may have problems effectively policing certain crimes—such as intimate partner violence or gang violence . . . cannot itself establish an asylum claim.” (Matter of A-B- 27 I&N Dec. 316, 320 (A.G. 2018)). The Tahirih Justice Center states that this assertion “ignores the social and political conditions that may allow intimate partner violence to flourish without government protection . . . [and] disregards the social norms and lack of political will that create an environment in which women can be seen as the property of their intimate partners and government agents, such as police, refuse to intervene to protect their rights.” (Tahirih Justice Center, 2018, p. 1).

Sessions’ opinion in *Matter of A-B-* is rife with dicta, which are nonbinding opinions that are not central to the ultimate legal decision. *Matter of A-B-* did overrule the P.S.G. recognized by the Board of Immigration Appeals in *Matter of A-R-C-G-*, but did not—and cannot—exclude all survivors of IPV from asylum protection. Marouf (2019) points out that a “near-blanket rule . . . excluding entire categories of asylum claims without any individualized assessment of the facts and circumstances . . . conflicts with the longstanding requirement” that all asylum claims must be analyzed on a case-by-case basis (Matter of W-G-R- 26 I&N Dec. 208, 251 (B.I.A., 2014)). As a result, in *Grace v. Whitaker*, a case brought in response to the decision in *Matter of A-B-*, a federal court “rejected this general rule against asylum claims based on domestic violence . . . as arbitrary and capricious in the context of credible fear interviews. The same reasoning supports rejecting the near-blanket rule in removal proceedings.”

Returning to the key legal issue implicated in *Matter of A-B-*, which is at the core of this article, a P.S.G. of “women” meets the legal requirements—immutability, social distinction, and particularity—for a valid particular social group. Women are recognized as a distinct socio-cultural group in all societies, and a benchmark for determining group membership exists.<sup>1</sup> Other countries have also long provided asylum protection to survivors of gender-based violence. In 1993, Canada became the first country to codify refugee protections for gender-related persecution (Musalo, 2007).<sup>2</sup> By 2005, Europe had made significant advances in gender-based asylum law (Crawley & Lester, 2004). By 2019, over 40 countries had signed a convention mandating the development of gender-sensitive asylum procedures that recognized IPV as a form of persecution (Council of Europe, 2019). The U.S. Senate introduced similar legislation in 2019,

but it did not pass (U.S. Senate Refugee Protection Act, 2019).

In the U.S., the case law regarding gender as a basis for asylum has evolved (Bookey, 2016; Coutu, 2013; Nanasi, 2016; Musalo, 2014). Nanasi (2016), for example, states that “gender alone may be enough to constitute a particular social group” and that “[t]he simplest articulation of a particular social group would be ‘women’ from the applicant’s home country, village, city, town, or geographic region.” (p. 767). In fact, in the first federal case to consider gender-based asylum after Sessions’ opinion in *Matter of A-B-*, the First Circuit Court of Appeals rejected Sessions’ categorical rule precluding asylum for survivors of IPV, leaving open the possibility of a group defined by an applicant’s gender (*Pena-Paniagua v. Barr*, 957 F.3d 88 (1st Cir. 2020)). However, eighteen months later, the Fifth Circuit Court of Appeals denied the claim of a survivor of IPV, effectively defying A.G. Garland’s ruling that vacated *Matter of A-B-* (*Jaco v. Garland* (5th Cir. 2021)). The different paths taken in these two cases illustrate the importance of recognizing “women” as a particular social group in asylum law, a proposition supported below.

### **Links Between Patriarchy and IPV Perpetration On Societal and Individual Levels**

As noted earlier, our primary purpose is to draw on social science research to assess whether there is a positive relationship between the patriarchy (sexist beliefs and social structures) and IPV. Evidence of such a relationship would support a key asylum criterion and thus bolster the rights of asylum-seeking survivors of IPV. We included only studies based on representative samples that had measures with good to excellent reliability. Thirteen studies and one meta-analysis using nations or socio-cultural units as the level of analysis met these criteria; seven additional studies with the individual as the unit of analysis also met the criteria.

#### **Societal Level Analyses Between Countries and Societies**

Cross-societal and cross-national studies allow an assessment of the links between patriarchy and IPV at the societal level. For example, in an analysis of 52 nations, including Honduras, Guatemala, and El Salvador, Archer (2006) found that IPV was associated with gender inequality. Sexist beliefs and approval of IPV were also related to women’s victimization. In contrast, general levels of violent crime were not associated with IPV.

Levinson (1989) studied IPV across 90 societies using the Human Relations Area Files data, applying quantitative codes to the ethnographic descriptions. In 16 societies, child and wife

abuse<sup>3</sup> were largely non-existent. Compared to societies without wife abuse, those with wife abuse featured economic inequality favoring men, barriers to divorce for women, male dominance in decision-making, and violent conflict resolution on a societal level. To illustrate some of the traits of nonviolent cultures, he described the characteristics of the Bang Chan culture of central Thailand: spouses are freer to leave the marriage, with both men and women acting equally as midwives and farmers and owning property equally.

Zapata-Calvente et al. (2019) measured three macro-level variables for each country in the European Union: 1) Traditional gender role beliefs, 2) Attitudes toward gender equality, and 3) Gender gaps in financial resources. Women in countries with stronger traditional beliefs about gender reported a higher prevalence of IPV than in other countries. Women in countries with stronger beliefs supporting gender equality or economic equality were less likely to experience IPV. The ultimate form of IPV, femicide, has also been studied as an outcome. Across 61 countries, rates of femicide increased as gender inequality increased. Indicators were male/female unemployment rates, the percentage of girls in primary education, the gender ratio for education, and the percentage of parliamentary seats occupied by women (Palma-Solis et al., 2008).

### **Societal Level Analyses Within Countries**

Studies have also examined the variation of patriarchal norms and IPV at the community level within countries. For example, Yllo and Straus (1984) used states within the U.S. as their unit of analysis. They created a Status of Women Index to measure economic, educational, political, and legal equality in each state, with IPV measured in a nationally representative survey of married couples. They found that IPV was more common in states with norms that strongly supported male dominance than those with weaker norms. Further analysis (Yllo, 1983) showed a curvilinear relationship between IPV and women's status: states in which women had low status had high IPV. IPV decreased as status increased, but only to a point. IPV was moderately high in states where women's status was high. Yllo speculates that limited options in low-status states may keep IPV survivors in abusive relationships. In contrast, rapid social change in high-status states may be threatening male partners' traditional, dominant status. A similar state-by-state analysis in the U.S. found that gender inequality was related to states' rates of physical victimization, but not sexual victimization of women in dating relationships. Gender inequality was not related to either form of violence toward young men (Gressard et al., 2015).



Ahmad and colleagues (2019) assessed the association between IPV and community-level indicators of women's empowerment in India. They found that women living in communities where a higher proportion of both men and women justify physical IPV are at higher risk of experiencing any form of IPV. Similarly, Boyle et al. (2009) used a six-item index reflecting women's acceptance of wife abuse in communities in India. This community-level measure of acceptance was related to IPV perpetration. Koenig and colleagues (2003) studied IPV in Bangladesh, finding that women's higher status was related to lower levels of IPV. However, they further concluded that this association was context-specific, depending on community characteristics. Women who had more autonomy (e.g., education, socioeconomic status) were at a higher risk of experiencing IPV in communities that adhere to norms enforcing social and physical isolation among women. In another Bangladeshi study of 50 urban and 62 rural communities, men in more gender-equitable communities had lower rates of IPV perpetration (Yount et al., 2018). Naved and Persson (2005) found that women's attitudes toward gender roles in Bangladesh were not related to IPV in urban or rural communities.

Similar research has been conducted in other regions. For example, in Nigeria, Benebo and her associates (2018) used 11 items to construct a women's status index. The items assessed women's empowerment (e.g., employment status, earnings, decision-making participation) at the community level. Results showed that IPV against women was less likely in areas where women's status was higher. However, the protective effect of women's status was reversed in communities where men justified acts of violence against wives.

Similarly, Oyediran and Feyisetan (2017) explored the factors associated with IPV in Nigeria, finding that community-level gender norms favoring men increased the likelihood of women experiencing IPV. In another Nigerian study, communities with a high rate of men approving physical IPV and husbands dominating decision-making had a higher risk of IPV (Cage & Thomas, 2017). In Ghana, patriarchal factors at the community level are associated with IPV (Cofe, 2018); specifically, a higher percentage of women experience IPV in communities where it is condoned, and women have low levels of education.

Female asylum seekers may also be fleeing from sexual assault, or its threat, perpetrated by intimate partners, gang members, or agents of the state (UNHCR, 2015). Although this article does not focus on violence against women outside of intimate relationships, it is important to highlight the parallels between rape/sexual assault by strangers and IPV. Sanday's (1981) study

of the socio-cultural context of rape across 156 societies showed an association between gender inequality and rape at the societal level. Specifically, rape was less frequent or did not occur in societies where females were part of public decision-making. In addition, rape was positively associated with interpersonal violence, toxic masculinity, and war. Studies of college campus communities have also found that women are at higher risk of sexual assault in fraternities that treat women with hostility (Humphrey & Kahn, 2000), as subordinates (Boswell & Spade, 1996), and unequal in decision-making (Sanday, 1996). It is worth noting that in some instances, IPV and gang violence intersect, for example, when family members are also in gangs (Southern Poverty Law Center, 2018).

### **Individual Level Analysis**

The above findings on the links between the patriarchy and IPV on the societal level are also apparent on the individual level. Consistent with the nested ecological model (Heise, 1998), social risk factors and individual-level risk factors are mutually and simultaneously reinforcing. Recognizing the misogyny of individual IPV perpetrators is critical in establishing the legally required “nexus” between persecutors’ perceptions and their persecution of their partners. In other words, it is essential to show that female intimate partners are persecuted “on account of” their status as women, which requires an analysis of the perpetrators’ motivations. Evidence for the patriarchy-IPV link on the individual level is revealed in multi-national studies. For example, Fulu and colleagues (2013) surveyed men in nine countries and found that IPV perpetration was associated with attitudes supporting gender inequality. These attitudes were more predictive than childhood trauma, alcohol misuse and depression, low education, and poverty. Similarly, in Barker et al.’s (2011) study covering six countries, men’s violence was related to rigid gender role attitudes, work stress, violence in childhood, and alcohol use. Similar results were found in an extension of this study, which added two more countries to the analysis (Levtov et al., 2015).

Abramsky and colleagues (2011) surveyed women at 14 sites in 10 countries. They found that higher education of both partners was related to lower rates of IPV. IPV was more prevalent when a woman’s education level was higher or lower than her partner’s. The relative employment status of each partner (man employed, woman unemployed, and vice versa) was not consistently related to IPV. Showing the pervasive influence of attitudes, IPV increased as women’s attitudes supporting IPV increased. Similarly, Vyas and Heise (2016) investigated men’s and women’s reports from 26 regions of Tanzania using individual and community-level

indicators of IPV. At both the individual and community level, women's acceptance of wife-beating was related to IPV.

Patriarchal norms and heterosexist bias may also be risk factors for same-sex IPV. While some scholars do not see same-sex violence as gendered, others argue that feminist theories can and should be applied (Merrill, 1996). For example, Merrill (1996) posited that homophobia might lead to "lateral abuse" by one same-sex partner against the other. Evidence for internalized homophobia linked to IPV comes from two studies (Balsam & Szymanski, 2005; Pepper & Sand, 2015). Internalized homophobia correlated with perpetration and victimization of physical/sexual violence. A drawback was that measures were on the individual level, while a true test of the model would compare different societies. Additional support is found in a review by Longobardi and Badenes-Ribera (2017), showing internalized homophobia related to IPV, along with the degree of "outness," stigma consciousness, and experiences of discrimination based on sexual orientation. Asylum-seeking women who are lesbian, bisexual, trans, or gender nonconforming in other ways may be targets of persecution as members of sexual minority groups. Discrimination against LGBTQIA2 people appears especially prevalent in Central America (Lee & Ostergard, 2017). Aponte (2018), for example, points to the poor documentation of sexuality- and gender-based crimes and the high levels of impunity in El Salvador and Honduras, where most violence against LGBTQIA2 members "remain[s] in the dark." Because both rely on the criteria of being in a "particular social group," legal struggles for both LGBTQIA2 asylum-seekers and gender-based asylum-seekers, often intersecting in their identities, are closely aligned. This alignment is apparent in response to Sessions' ruling and others like it (e.g., *Immigration Equality v. Department of Homeland Security*, 2020).

When viewing the above set of risk factors at the socio-cultural and individual levels, we need to emphasize the constant interplay between the levels and their mutual reinforcement. In the asylum context, "political" power as manifested in the patriarchy exists in the sphere of intimate relationships as much as in the social sphere. This interplay is illustrated in meta-theoretical frameworks like Heise's (1998) socio-ecological model that integrates the macrosystem (e.g., beliefs, attitudes), exosystem (e.g., poverty, isolation), and microsystem (e.g., male dominance in family, communication, conflict) with the ontogenic level (e.g., childhood experiences with violence). Risk factors at the individual or family level, such as unemployment, can be placed within the higher ecological levels of the socio-cultural sphere since patriarchal

norms will likely influence men's reactions to unemployment as threats to their masculinity. We agree with Heise when she stresses that individual-level variables "in no way [exculpate] the perpetrator of violence" (p. 285). Flay et al. (2009) extend the socio-ecological model explicitly placing a decision-making stage where the influence "streams" of the social ecology converge before the individual acts.

### **Gender Inequality and IPV as Drivers of Asylum-Seeking**

Gender inequality, negative beliefs about women, IPV, and IPV acceptance exist in all countries. However, there is considerable variation. We provide here some exemplary reviews and studies of this evidence. As noted earlier, we focus on the plight of persecuted women in certain Central American countries and factors that seem to lead to asylum-seeking. The salience of these countries in the development of asylum law also stems from the nature of Sessions' ruling on the substantial number of IPV asylum-seekers from these countries.

Regarding gender inequality, United Nations reports show a wide variation from country to country on multiple indicators of women's equality with men (e.g., U. N. Development Programme (2016)). Among countries with the greatest equality were Norway, Switzerland, and Denmark, and those with the least were the Arab states and countries in sub-Saharan Africa. Across Central American countries, considerable variations exist in women's political empowerment and educational and economic status (Gibbons & Luna, 2015). The Northern Triangle countries, accounting for high rates of those seeking asylum in the U.S., tend to lag behind other Central American countries on these dimensions. Costa Rica showed the most equality and Guatemala the least in a broad measure of equality. For all countries, the gender gap was most pronounced in employment (Gibbons & Luna, 2015). Gibbons and Luna state that in Central America, "for men, life is hard; for women, life is harder." Intersecting identities place men and women in very different positions in society based not only on gender but also on rural-urban residence, economic conditions, ethnicity, and race. Women asylum seekers may belong to an additional oppressed and persecuted ethnic group and, thus, to a recognizable "gender plus" social group (Bookey 2016; Coutu, 2013). Since ethnic/racial minorities tend to be among the most impacted by poverty (Rodriguez, 2016), they are at risk of further marginalization. Those living in rural areas often face geographical barriers to accessing services and the justice system (Sieder, 2012). Thus, gender disparities are exacerbated by other forms of oppression, including racism and global capitalism, which have caused instability in Central America (Golash-Boza et

al., 2019; see also Barrios et al., 2020).

Like objective measures of women's status, men's views about gender equality vary widely by country (e.g., Barker et al., 2011). As one might expect, gender inequality is directly linked to sexist beliefs, with evidence showing that such beliefs increase societies' gender inequality over time (Brandt, 2011). Many researchers have also measured the acceptance or approval of IPV. In a survey of 23 Latin American countries, the approval of domestic abuse was among the highest in the Northern Triangle countries (Honduras, 59%; Guatemala, 56%; El Salvador, 47%) (Bucheli & Rossi, 2019). Negative views of women are also linked to the acceptance of IPV in studies across many countries (e.g., Herrero et al., 2017). For IPV itself, Bott et al. (2012) found it widespread in all 12 Latin American countries studied, with 17% to 53% of women reporting a lifetime history of IPV. Guatemala and Honduras were in the middle of this range at 24% and were in the top five countries for rates of sexual violence by a partner.

#### **Patriarchal Norms Tied to Societies' Unwillingness to Protect IPV Survivors**

In addition to being a direct risk factor for IPV, patriarchal norms contribute to the maintenance of IPV by creating societal barriers to helping and protecting survivors. This linkage is relevant to IPV survivors seeking asylum because the law requires them to demonstrate that the government of their home country was "unwilling or unable" to protect them (Bishop, 2019).<sup>4</sup> For example, studies on barriers to help-seeking showed systemic failures due to government and nongovernment professionals' refusal to believe survivors (Robinson et al., 2020). Furthermore, the professionals marginalized survivors and discriminated against them. Many survivors report that "insults are added to injury" when those they seek help from blame them for their abuse. Such blaming is tied to patriarchal norms (Saunders et al., 1987). The links between patriarchal norms, attitudes toward survivors, and subsequent failures to aid and protect survivors have been found in law enforcement, family court, psychotherapy, health care, and other agencies (Saunders, 2018). Fewer legal protections and domestic violence programs are also linked to higher femicide rates in state-by-state analyses in the U.S. (Stout, 1992; Dugan et al., 1999). Lister (2016) asserts that a state may implicitly give men authority to dominate women:

"[W]e see societies where control over certain classes or groups of women—wives, unmarried daughters, and the like—is largely delegated to particular groups of males—fathers, husbands, sometimes older brothers, and similar figures . . . Examples here

include the enforcement of modesty and chastity, female genital cutting or mutilation, and domestic violence. . . . The state is not merely unable to protect the people subjected to harm, but has made a decision to allow others, typically closely related males, to exercise authority in these areas of life” (p. 55).

Asylum adjudicators look at the following criteria to determine if the home government was unable or unwilling to control the abuser: whether a) there are reasonably sufficient governmental controls on the harmful actions; b) the government has the ability and will to enforce those controls; c) the applicant had access to those controls; and d) the applicant attempted to obtain protection from the government and the government’s response (USCIS, 2009). Regarding IPV, Bishop (2019) proposes several criteria to determine if a country is willing and able to help protect survivors and prevent violence: whether the country a) has laws criminalizing IPV or laws promoting gender equality; b) enforces its laws criminalizing gender-based violence or promoting gender equity; c) offers resources and support services to gender-based violence survivors; and d) has a history of using gender-based violence as part of state-sponsored terrorism.

The Inter-American Court of Human Rights (IACHR) has held governments responsible for failing to uphold human rights when they do not exercise “due diligence” in preventing violence. In one notable case from Honduras (*Velásquez Rodríguez v. Honduras*, 1988), the court ruled that a state also fails to exercise due diligence when it allows private persons to act with impunity. Although this decision addressed forced disappearances, the IACHR has also been greatly concerned that “the majority of acts of violence against women go unpunished, perpetuating the social acceptance of this phenomenon.” (IACHR, 2007, p.122). The IACHR further states that “the ineffectiveness or indifference in the administration of justice constitutes, in and of itself, discrimination (against women) in the access to Justice.” (Inter-American Court of Human Rights, 2014, (*Veliz Franco et al. v. Guatemala*), op. cit., paragraph 208). As one example, the country of Guatemala was held to account for failing to investigate the murder of fifteen-year-old María Isabel Veliz Franco, which occurred in the context of an ingrained reluctance to protect women from violence.

Even in the United States, which began to criminalize domestic violence in the 1970s, law enforcement has shown notable cases of impunity. For example, the IACHR found that the

U.S. violated the human rights of a mother and her children when the state failed to enforce a protective order for family violence (McQuigg, 2012). The father murdered the children during a visit with them while the mother repeatedly called the police for help. The commission ruled that all states in the U.S. have a “legal obligation to respect and ensure the right not to discriminate and to equal protection of the law.”

Nations vary considerably in their level of protection and aid for survivors. The plight of IPV survivors in Central America is especially dire, despite progress since the adoption of the 1995 Convention to Prevent, Punish and Eradicate Violence against Women (Convention of Belem do Para), in legislation and education on violence against women and women’s rights generally (O.A.S., 2017). In Guatemala, non-lethal and lethal IPV rates are exceptionally high (Musalo & Bookey, 2013; Walsh, 2008). Legislation against domestic abuse has not effectively addressed IPV because there is confusion over the law, and survivors do not have easy access to shelter and free legal aid. There are additional barriers for indigenous women due to the widespread discrimination they suffer, leading to a lack of government protection and services (Lopez & Hastings, 2015).

Femicides are also exceptionally high in El Salvador (Walsh & Menjívar, 2016). Although institutions and laws to address IPV have existed there for a long time, femicides have not decreased. Impunity helps maintain “a potent combination of structural, symbolic, political, gender and gendered, and everyday forms of violence” (Walsh & Menjívar, 2016, p. 1). Walsh and Menjívar (2016) describe “extra-personal structures that create and exacerbate the conditions that permit violent acts and impunity to persist” (p. 1). In Honduras, as well, IPV is treated leniently. Authorities generally fail to exercise due diligence in investigating, prosecuting and punishing perpetrators (Advocates for Human Rights, 2016). Menjívar and Walsh (2017) describe the large gap between laws and their implementation.

Finally, state-sponsored gender-based violence adds considerably to the plight of all women, especially IPV survivors (Menjivar & Walsh, 2017). Violence from the state and IPV are intertwined and mutually reinforcing. Police, military, and gangs are frequently interconnected, helping to explain why almost all femicides in some Central American countries go unpunished (Menjivar & Walsh, 2017). Sexual violence used as a weapon of war in El Salvador’s civil war is another example of state violence causing pervasive and long-lasting effects on all women (Walsh & Menjívar, 2016).

### **"Political Opinion" of Survivors Resulting In IPV**

When women assert their rights or seek independence from their abusive partners' oppression, these actions can be viewed as "political opinions" (P.O.), which may lead to persecution or the threat of persecution by an abuser. Persecution for a "political opinion" can bolster a P.S.G. asylum claim or can meet the asylum criteria by itself (Vogel, 2019).<sup>5</sup> For example, a woman who faces abuse from her intimate partner when she refuses to submit to his orders may be able to claim asylum based on her "feminist" political opinion, specifically, a belief in gender equality and opposition to male dominance. A group of 46 former immigration judges concluded in an expert declaration that: "if women's rights are human rights, then their expression in repressive and sexist societies should be regarded as political opinions" (Pangea Legal Services v D.H.S., 2020, p. 706).

In an analysis of 203 cases (1994 to 2012), 117 IPV survivors were granted asylum based on membership in a P.S.G. on the grounds of "political opinion," or a combination of the two (Bookey, 2013). The rates at which IPV survivors were granted asylum varied substantially due to precedent-setting court decisions, Attorneys General vacating those decisions, proposed guidelines from the Department of Homeland Security, and opinions from the B.I.A. A great deal of uncertainty marked this period due to repeated reversals and a delay in finalizing a government rule regarding asylum and gender-based violence. The most famous example of the consequences of this uncertainty is the case of Ms. Rodi Alvarado (Matter of R-A-), a Guatemalan woman abused by her husband who was granted asylum after ten years, in a non-precedent setting case (*In re R-A-*, 22 I. & N. Dec. 906 (B.I.A. 1999)).

Originally, persecution for a "political opinion" was understood to mean persecution by one's government for political beliefs known to the government (Porter, 1992). The definition broadened over time, eventually growing to include IPV asylum seekers. This expansion coincided with dissolving the line between the political and personal aspects of women's lives, a defining element of second-wave feminism in the U.S. The links between personal experience and social and political structures were encapsulated in the phrase "the personal is political" (McCann & Seung-Kyung, 2013). The "personal as political" lens also needs to be applied to asylum determinations for women. This article demonstrates that patriarchal norms and structures are infused throughout intimate relationships and society's response to IPV.

Before giving examples of political opinions that provided a basis for successful asylum



cases, it is worth noting that some P.S.G.'s in successful claims included the misogynist and pro-violence views of perpetrators, in line with the studies described above. The views included: "Mexican women who are viewed as property by virtue of their position in a domestic relationship"; "Guatemalan women who are or have been affiliated with men who believe it is their right to dominate 'their women' by force or violence"; "Married women in a culture that implicitly condones violence against women"; and "Malinke women who refuse to conform to gender-specific societal norms" (Bookey, 2013).

The following are examples of three types of political opinions that have or could form the basis of an asylum claim.

**1) Beliefs.** Asylum has been granted to IPV survivors based on their beliefs opposing male domination and resisting traditional women's roles. Some rulings were influenced by the B.I.A.'s decision in *Matter of S-A-*, which granted asylum to a woman whose father persecuted her on account of her relatively liberal Muslim beliefs about the role of women in Moroccan society (*In re S-A-*, 22 I. & N. Dec. 1328 (B.I.A. 2000)). In an IPV asylum case, an immigration judge granted asylum to the survivor because "her boyfriend beat her in response to her assertions of independence, establishing an imputed political opinion motive for the persecution" (Bookey, 2013).

**2) Actions.** Bookey (2013) summarizes the rulings of some immigration judges that women's actions

[S]upport feminist P.O. as a ground for asylum. The judges found that the applicants demonstrated their political opinion against male dominance through their actions—engaging in physical resistance of abuse, filing for protective orders, and seeking help—and that the motive of the persecutor was established by the fact that the abuse escalated after a woman asserted such resistance.

One judge explained that such actions are "counter to cultural traditions of male dominance and third-party non-involvement in the personal affairs of couples." The judge concluded that by "taking advantage of the protective measures theoretically available to domestic violence victims under the law . . . she had asserted her support for such measures recognizing women as equals." (p. 131). In the case of *Lazo-Majano v. I.N.S.*, flight from the abuser was considered an assertion of political opinion (813 F.2d 1432 (9th Cir. 1987)).<sup>6</sup>

**3) Increased Status.** Certain actions that women take to increase their social or economic

status can be viewed as an “opinion” that may trigger abuse. Working “outside the home,” pursuing an education, or advancing oneself in other ways are examples of how a woman might be seen as asserting this form of political opinion.

Social science evidence consistently supports these three forms of “opinion” as risk factors for persecution. Survivors’ actions and beliefs may threaten their partner’s patriarchal position, sense of control, and masculine identity, the only identity perpetrators likely feel is worth having in a patriarchal society. As a result, counseling and support programs for survivors who remain in their relationships sometimes caution against the use of assertiveness training that might place the survivor at risk (O’Leary et al., 1985). Survivors’ physical or verbal resistance and self-protection during an assault have been shown to lead to an escalation of violence (Feld & Straus, 1989), and in one study, led to injury at twice the rate of assaults by a stranger (Bachman & Carmody, 1994).

Evidence shows that many survivors continue to face threats, stalking, harassment, and other forms of abuse after separation and abuse may escalate in response to separation (e.g., Hardesty & Chung, 2006; Tjaden & Thoennes, 2000). The risk of homicide increases for some time, with possessive jealousy as a primary motive (Saunders & Browne, 2000). Abusers may also threaten to hurt or kidnap their children when a survivor indicates she wants to leave the relationship (e.g., Jaffe, Johnston, Crooks, & Bala, 2008). Perpetrators of IPV often try to maintain control after separation through litigation, such as filing false child abuse reports, frivolous motions in family court, and false restraining order applications (Campbell, 2017; Douglas, 2018). Lastly, the “relative resource” theory of IPV suggests that a woman’s higher status relative to her partner can threaten him. Studies find IPV rates are higher when the woman has higher occupational status, income, or educational level (Hotelling & Sugarman, 1986). Perhaps, for this reason, abusers often attempt to sabotage their partner’s employment (Showalter, 2016).

### **Summary and Conclusion**

In this article, we apply social science evidence to a legal framework to show that survivors of IPV seeking asylum meet many of the necessary criteria for asylum. Our conclusion counters that of former U.S. Attorney General Sessions, who stated in *Matter of A-B-* that asylum claims by survivors do not “generally” qualify. Although asylum may have been conceived originally to protect those suffering state-sponsored persecution for political opinions, there is

substantial legal precedent and scientific support for so-called “private acts” of persecution meeting asylum criteria, including persecution by an intimate partner. It is the views and treatment of women, as both individuals and a group, that create the conditions for persecution in the form of IPV. “Women” as a particular social group meets the criteria of “immutability, particularity, and social distinction” needed to establish a valid P.S.G. In addition, survivors of IPV typically meet the asylum criteria of experiencing “persecution.” Not only does most physical abuse qualify as persecution, but so do threats, stalking, sexual assault and psychological abuse.

The relationship between the patriarchy and IPV is evident in both individual studies and meta-analyses: the patriarchy—in the form of women’s inequality and negative attitudes about women—is consistently related to the perpetration of IPV. This relationship occurs at both the socio-cultural and individual levels. Individual, family, and community risk factors play a role in IPV; however, beliefs about gender were relevant to our application of asylum criteria. Moreover, socio-cultural factors contribute to risk factors at lower levels of the socio-ecological system. For example, in one study, witnessing paternal domestic violence was related to being with peers who support violence, which in turn led to IPV (Silverman & Williamson, 1997).

Patriarchal norms and structures also help maintain IPV in ways that fit other asylum criteria. In many cases, the state, most notably the criminal justice system, is “unwilling or unable” to prevent violence and protect survivors. Patriarchal norms in the form of gender bias help explain the unwillingness to help and even the hostility and victim-blaming that occur across various professional groups and agency types. Some survivors’ “political opinions” also qualify them for asylum protection. Specifically, evidence shows there is often an escalation of violence by perpetrators when survivors assert their rights to be treated equally and with dignity.

Throughout this article, we give special attention to IPV asylum seekers from the Northern Triangle countries of Central America. The levels of gender inequality, approval of IPV, rates of IPV, and state reactions of impunity are exceptionally high in these countries. These factors contribute to recently increased migration to the U.S. from these countries. In addition, many precedent-setting asylum cases involving the “particular social group” criteria are cases of asylum seekers from the Northern Triangle, including the recent decision by then-Attorney General Sessions that cast doubt on the ability of IPV survivors to obtain asylum. As detailed in this article, proper legal analysis and social science evidence can be used to overturn ill-informed

rulings and create new, more equitable, and scientifically based precedents and laws. One example is the Refugee Protection Act proposed by the U.S. Senate in 2019. Jastram and Maitra (2020). concluded that “Congress must act to ensure that gender-based violence claims are adjudicated in a manner consistent with international law, by making simple clarifications to the Immigration and Nationality Act on the particular social group and nexus elements of the refugee definition”. Expert witnesses can also use the scientific evidence from this article in court cases, similar to the recent testimony before an appeals court in *Tornes v. Garland* (2021). These changes will bring much-needed asylum protections for IPV survivors.

### Notes

1. We recognize and acknowledge that gender is fluid and that current laws continue to focus on gender as a binary concept as noted in this article. Asylum-seekers with non-binary identities are likely to meet criteria as members of a particular social group subject to persecution on account of their non-binary status (e.g., UNHCHR, 2011).
2. The article explains that recognizing women fleeing gender-based persecution as refugees did not open the “floodgates” of asylum, as some had predicted it would.
3. Fitting the definition of “wife” in each society.
4. Although Attorney General Sessions claimed in *Matter of A-B-* that the standard for “state action” required an applicant to show that the government either “condoned” the harm or demonstrated “complete helplessness” to protect against this, Bishop (2019) notes that in the context of credible fear interviews, “[t]hese policies were subsequently challenged as violating the Administrative Procedure Act, the Immigration and Nationality Act, and case law, and were then permanently enjoined by the D.C. District Court from being enforced in *Grace v. Whitaker*.”
5. As indicated above, to qualify for asylum an applicant must demonstrate that she has faced persecution, or has a well-founded fear of future persecution, on account of at least one protected category – race, religion, nationality, political opinion, or membership in a particular social group.

6. One judge countered that divorce removes the immutable condition when marriage is integral to a PSG; however, one government brief explained that separation or divorce does not mean an abuser believes that it ends the relationship (DHS brief to AG, 2004).

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