U.S. ASYLUM LAW APPLIED TO BATTERED WOMEN FLEEING ISLAMIC COUNTRIES

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Every year, millions of men and women flee their homelands to seek refuge in any country willing to accept them.\(^1\) In 1997 alone, the United States received 84,776 applications from individuals seeking asylum with the Immigration and Naturalization Service (INS).\(^2\) Some of these applicants are women escaping countries not willing to protect them from their husband’s infliction of physical abuse.\(^3\) When these women finally leave their homes, they do not always leave alone; sometimes they take their children with them.\(^4\) For women who escape Islamic states, such an act may not only break the law, but it could also place their lives and freedom in danger if they return.\(^5\)

This Comment analyzes U.S. asylum laws and procedures as applied to battered women who escape Islamic states. Part II provides a brief overview of U.S. asylum law and history. Part III

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2. See Hiram A. Ruiz, Bill Frelick et al., Americas and the Caribbean, in WORLD REFUGEE SURVEY 1998, 222, 237 (reviewing the number of refugees seeking asylum in the United States, the refugee resettlement programs, the granting of temporary protection status, the expedited removal procedures enacted in 1996, and other statutory changes).

3. See generally Patricia A. Seith, Note, Escaping Domestic Violence: Asylum as a Means of Protection for Battered Women, 97 COLUM. L. REV. 1804, 1810 (1997) (arguing that economic and political institutions combined with a patriarchal belief system make abusive relationships appear natural, morally just and sacred, and when the government is unwilling or unable to stop the violence and the subordination of women, domestic violence becomes public persecution); Judith Armatta, Getting Beyond the Law’s Complicity in Intimate Violence Against Women, 33 WILLAMETTE L. REV. 773, 782 (1997) (analyzing the effects of laws on women in different areas of the world when the laws embody social mores that promote and sanction wife abuse).

4. See Armatta, *supra* note 3, at 794-99 (stating that abusive husbands often use child custody and economic considerations to control women). In addition, “laws designed to prevent custodial kidnapping can be used as tools of control ... [when] the laws do not take domestic violence into account.” *Id.* at 798.

5. See Iran’s Constitution, in 9 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1 (Albert P. Blaustein & Gisbert H. Flanz eds., 1992) [hereinafter *Constitution*] (detailing laws relating to women and the family, and the government’s sanctions for those who do not abide by the laws); see also Kristin J. Miller, Comment, Human Rights of Women in Iran: The Universalistic Approach and the Relativist Response, 10 EMORY INT’L L. REV. 779, 783-86 (1996) (describing the changes in the law once the Ayatollah Ruhollah Khomeini came into power and instituted Islamic law as the law of the country, how these changes affected women in Iran, and how the government responded to women who did not conform with the new Islamic laws governing the state).
analyzes the application of U.S. asylum laws to battered women in general. Part IV discusses the application of these laws to battered women fleeing Islamic states. Because of the varying degrees in which different governments apply Islamic law, this Comment focuses on battered women escaping the Islamic State of Iran. Finally, Part V provides suggestions for the direction the United States should move when dealing with asylum cases involving battered women who flee their countries with their children.

II. ESTABLISHING ASYLUM IN THE UNITED STATES


The Act defines "refugee" as:

Any person who is outside any country of such person's nationality, or in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself of the protection of, that country because of persecution

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9. The President determines the annual admission of refugees "before the beginning of the fiscal year and after appropriate consultation . . . ,[the] admission [of] a specific number of refugees in excess of such [predetermined] number is justified by humanitarian concerns or is otherwise [found to be] in the national interest." § U.S.C. § 1157 (1994). See generally ALEINIKOFF & MARTIN, supra note 8, at 735-39 (discussing the executive branch's use of its parole power to grant asylum to refugees). Prior to the enactment of the Refugee Act, this power was discretionary and quotas were set on the number of refugees allowed to enter the United States. Id. This power, however, did not technically grant admission to the alien, who constructively remained at the border and was subject to exclusion at any time. Id.
or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.  

The Act's definition of refugee is almost identical to the 1951 Convention definition.  

Currently, individuals seeking asylum in the United States can do so under two different provisions, either section 241(b)(3) or section 208 of the Immigration and Nationality Act ("INA"). Under these provisions, an applicant can file either a defensive or affirmative application. Once an alien is in the United States, and the INS finds him or her out of status, the INS initiates deportation proceedings against that individual. In this instance, the alien can file a defensive application for a withholding of removal under section 241(b)(3) of the INA. Aliens who enter the United States can make affirmative applications by filing for a discretionary grant of asylum.

10. INA § 101(a)(42)(A); 8 U.S.C. § 1101(a)(42)(A) (1994). "The Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Attorney General under this section if the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A)." 8 U.S.C. § 1158(a) (also referred to as INA § 208(a)).

11. The 1951 Convention defines "refugee" as any person who:

Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization... 

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

19 U.S.T. at 6261, 189 U.N.T.S. at 138. The distinction in the Refugee Act between the 1951 Convention definition and Congress' is the inclusion of "past persecution" as a factor in determining refugee status.

12. See 8 U.S.C. § 1251(b) (conforming U.S. law to the 1967 Protocol and 1951 United Nations Convention by creating a provision that restricts the removal of an alien to a country where the alien's life or freedom will be threatened); 8 U.S.C. § 1158 (detailing the definition of refugee and the standard used for a discretionary grant of asylum); see also Cardoza-Fonseca, 480 U.S. at 421 (invoking a Nicaraguan citizen who entered the United States and filed for withholding of deportation and a grant of asylum due to the persecution she would face on account of her political views if returned to Nicaragua).

13. ALEINIKOFF & MARTIN, supra note 8, at 764.


15. See 8 U.S.C. § 1251 ("[T]he Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.").
under section 208 of the INA.16

However, before an alien can apply for either form of relief, she must overcome the expedited removal procedures of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA).17 This means that when an alien enters the United States and seeks asylum, an asylum officer must first determine whether the alien has a "credible fear of persecution."18 Since the acceptance of domestic violence as a form of persecution is novel and not yet widely recognized, this new procedure creates an insurmountable obstacle for battered women seeking asylum.19

A. Withholding of Removal

When an alien applies for withholding of removal, the alien must establish that her life or freedom is threatened in the country of origin on account of one of the following five factors: (1) race, (2) religion, (3) nationality, (4) membership in a particular social group, or (5) political opinion.20 Once an applicant establishes a threat to her life or freedom pursuant to the principles of nonrefoulment,21

16. See 8 U.S.C. § 1158 ("An alien who is physically present in the United States . . ., irrespective of such alien's status, may apply for asylum . . .").
18. See generally Seith, supra note 3, at 1817 n.75 (discussing the impact of new procedures). The INS guidelines issued in 1995 should assist asylum officers in making determinations during expedited removal procedures, which are more sensitive to female applicants whose asylum claims are based on gender related persecution. Id. These guidelines, however, are only recommendations and asylum officers continue to make determinations based on stereotypes and biases. See, e.g., Gender Guidelines, infra note 58, and accompanying text; Angoucheva v. INS, 106 F.3d 761, 793 n.2 (7th Cir. 1997) (commenting on the INS's argument that sexual assault is attributable to sexual attraction); Matter of Sharmin, I. & J. Dec. (Sept. 27, 1996), reported in 75 INTERPRETER RELEASES 174 (Jan. 27, 1997) (reviewing INS's closing arguments, which referred to domestic violence as a "family matter" and noting that the statement was in direct contradiction to the INS gender guidelines).
21. See Aleinikoff & Martin, supra note 8, at 765 (stating that the concept of nonrefoulment obligates countries to provide or find a safe country for persons seeking asylum when it is proven that return to the applicant's home country of origin will result in hardship). According to the Refugee Convention, "[n]o Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a
the Attorney General is required to withhold deportation and either grant asylum, or deport the applicant to any other country where the applicant will be safe.\textsuperscript{22}

Since granting withholding of deportation\textsuperscript{23} is mandatory, the applicant must demonstrate that a "clear probability" of persecution exists.\textsuperscript{24} In making this determination, objective evidence is utilized to establish that if returned, "it is more likely than not that he/she will be subjected to persecution."\textsuperscript{25} To establish this likelihood, the applicant must present evidence demonstrating that: (1) through punishment, the persecutor seeks to overcome a belief or characteristic held by the applicant; (2) the persecutor is aware of the belief or characteristic, or "could easily become aware"; (3) the persecutor is capable of enforcing the punishment; and (4) that the persecutor is inclined to punish the alien.\textsuperscript{26}

When an applicant establishes the truth of her allegations by a preponderance of the evidence, she only procures the right not to be sent back to the persecuting country (nonrefoulment).\textsuperscript{27} Therefore,

\begin{itemize}
  \item The Attorney General is required to withhold deportation and either grant asylum, or deport the applicant to any other country where the applicant will be safe.\textsuperscript{22}
  \item Since granting withholding of deportation\textsuperscript{23} is mandatory, the applicant must demonstrate that a "clear probability" of persecution exists.\textsuperscript{24} In making this determination, objective evidence is utilized to establish that if returned, "it is more likely than not that he/she will be subjected to persecution."\textsuperscript{25} To establish this likelihood, the applicant must present evidence demonstrating that: (1) through punishment, the persecutor seeks to overcome a belief or characteristic held by the applicant; (2) the persecutor is aware of the belief or characteristic, or "could easily become aware"; (3) the persecutor is capable of enforcing the punishment; and (4) that the persecutor is inclined to punish the alien.\textsuperscript{26}
  \item When an applicant establishes the truth of her allegations by a preponderance of the evidence, she only procures the right not to be sent back to the persecuting country (nonrefoulment).\textsuperscript{27}
\end{itemize}
applicants who apply for withholding of deportation concurrently apply for a discretionary grant of asylum to ensure that they will be able to remain in the United States and not be deported to a safe third country.28

B. Discretionary Grant of Asylum

Section 208 of the INA authorizes the Attorney General to grant asylum to aliens.29 Unlike withholding of removal, section 208 is a discretionary grant of asylum that also gives an alien the right to apply for permanent residency in the United States under INA section 209.30 To qualify for asylum under section 208, the Attorney General must first deem the applicant a refugee as the term is defined in section 101(a)(42) of the INA.31 The Supreme Court's interpretation of the statutory procedures and standards for qualifying as a refugee under this section requires both a subjective and objective demonstration of a "well-founded fear" of persecution.32

specific county while asylum allows him to have his status adjusted to that of a lawful permanent resident").

28. See 8 C.F.R. § 208.3(b) ("An asylum application shall be deemed to constitute at the same time an application for withholding of removal . . . . Where a determination is made that an applicant is ineligible to apply for asylum under § 208(a)(2) of the Act, an asylum application shall be construed as an application for withholding of removal."); see also Canas-Segovia, 902 F.2d at 722 (declaring that asylum and withholding of deportation are sought at the same time and that relief under each is different).

29. See 8 U.S.C. § 1158 (stating that the provision applies only to aliens who are physically present in the United States).

30. Id. § 1159.

31. See supra note 11 and accompanying text (defining refugee).

32. See INS v. Cardoza-Fonseca, 480 U.S. 421, 427-28 (1987) (disagreeing with the BIA ruling in Matter of Acosta, and ruling that the "well-founded" standard for asylum under § 208 is more generous than the "clear-probability" standard found in § 241(b)(3); therefore, the more likely than not requirement does not govern applications for asylum under § 208); Matter of Mogharrabi, 19 I. & N. Dec. 439 (BIA 1987) (ruling that the two standards are different, Congress intended to make a distinction between the two, and the Supreme Court overruled portions of Matter of Acosta through its decision in Cardoza-Fonseca). Prior to the Supreme Court's decision in Cardoza-Fonseca, the courts were split on the issue. Cf. Yousif v. INS, 794 F.2d 236, 243 (6th Cir. 1986) (stating that the well-founded fear standard is more generous); Bolanos-Hernandez v. INS, 767 F.2d 1277, 1282 (9th Cir. 1985) (declaring "well-founded fear" to be more generous); Matter of Sanchez & Escobar, 19 I. & N. Dec. 276 (BIA 1985) (denying asylum because the evidence presented only pointed to the general conditions of violence in El Salvador and not to the applicant's persecution based on any of the statutorily defined factors, but accepting the Ninth Circuit's distinction between "well-founded fear" and "clear probability"). But see Kashani v. INS, 547 F.2d 376, 379 (7th Cir. 1977) (stating that the two standards converge); Sotto v. INS, 748 F.2d 832, 836 (3d Cir. 1984) (agreeing that no difference exists between the standards for asylum and those for withholding of deportation); Matter of Acosta, 19 I. & N. Dec. 211 (BIA 1985) (applying the case law and standards used prior to the enactment of the Refugee Act of 1980 and deciding that the two standards converge). To prove "well-founded" fear, an applicant must establish that there is a real chance of her becoming a victim of persecution. See Cardoza-Fonseca, 480 U.S. at 430 (reviewing the different phrases used in the withholding of removal versus the granting of asylum to interpret the language that sets the standard for determining eligibility found in § 208).
The Supreme Court discussed and adopted the subjective and objective standards in *Cardoza-Fonseca v. INS*. The Court stated that the "subjective mental state of the alien" is an element of the "well founded fear of persecution" standard. Therefore, even when the practical chances of an applicant's persecution are less than fifty percent, the fear may still be well-founded. Both the objective and subjective evidence is used to make the determination. The Court, however, did not define "well-founded fear." Instead, the Court urged for a case by case determination.

In determining what evidence is admitted and how much evidence is sufficient to establish refugee status, courts review the legislative history of the Refugee Act as well as the wording and history of the United Nations (U.N.) provisions on which the Refugee Act is based. The factors found within these documents assist courts in determining whether a subjective or objective fear of persecution is applied. Asylum is then granted only if the applicant also proves that the persecution is based on one of the five factors delineated in the INA. Therefore, whether a battered woman qualifies for asylum

34. Id. at 431.
35. Id.
36. Id. The subjective element requires a showing that the applicant's fear is genuine, and the objective element requires a showing by credible, direct, and specific evidence in the facts to support the applicant's claim that she fears persecution. See Díaz-Escobar v. INS, 782 F.2d 1488, 1491-92 (9th Cir. 1986); Guevara Flores v. INS, 786 F.2d 1242, 1249 (5th Cir. 1986) (holding that "fear is a state of apprehension or anxiety not subject to rational measurement" but rather on some basis in reality; thus, an irrational apprehension is insufficient to meet the burden of proof); see also Yousif, 794 F.2d at 243-44 (holding that an applicant can gain asylum based on a subjective fear of persecution, but the assertions of fear must be supported by objective evidence); Garcia-Ramos v. INS, 775 F.2d 1370, 1374 (9th Cir. 1985) (stating that the subjective fear must be based in reality or in the reasonable possibility of persecution).
38. Id. at 448. See also Matter of Mogharrabi, 19 I. & N. Dec. 439, 441 (BIA 1987) (agreeing with the Supreme Court on determining the definition of the standard on a case by case basis).
40. See *Cardoza-Fonseca*, 480 United States at 436-40 (making determination after discussing current legislation and its basis on U.N. documents and their history).
41. The changes the Refugee Act makes are used to show the purpose of the new asylum section. The courts also refer to the refugee definition used in the Refugee Convention and the Protocol, as well as the language and guidelines of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status (the Handbook). See *Cardoza-Fonseca*, 480 U.S. at 428-43; McMullen v. INS, 658 F.2d 1312, 1319 (9th Cir. 1981). But see Fatin v. INS, 12 F.3d 1233, 1239 (3d Cir. 1993) (stating that it was clear that Congress intended to bring the United States into conformity with the Protocol, but that the history of the Protocol was not very helpful in this instance because "membership in a particular social group" was added to the Protocol as an afterthought).
42. See generally *Cardoza-Fonseca*, 480 U.S. at 428-43.
43. See supra note 20 and accompanying text; see also Sharif v. INS, 87 F.3d 932, 935 (7th
will depend on a court's assessment of the woman's characteristics, environment, situation, and the basis of her persecution.

III. SEEKING ASYLUM AS A BATTERED WOMAN

Asylum involves a two step process. An applicant must first show eligibility for asylum, and then she must prove that the INS should use its discretion in favor of granting her asylum. When a battered woman applies for asylum, she can show eligibility by claiming persecution on the basis of her political opinions or her membership in a particular social group. The applicant must then establish that she has a "well-founded fear" of being subjected to persecution. To do so, she must present specific facts establishing that she is actually a victim of persecution or that she has a good reason to fear being singled out for persecution on account of one of the five factors listed in the INA.

The first step of the process requires evidence that the applicant meets the definition of refugee. In Matter of Acosta, the Board of Immigration Appeals ("BIA") defined some of the language used in this definition. "Fear" is defined as the "genuine apprehension or

Cir. 1996) (asserting that in addition to the burden of showing a subjective fear that is objectively reasonable, an applicant for asylum must also establish that the persecution stems from one of the five motives); Sanchez-Trujillo v. INS, 801 F.2d 1571, 1575 (9th Cir. 1986) (denying asylum because petitioner did not show that the particular social group he defined was cognizable under the INA or that the petitioner qualified as a member of that social group).

44. For purposes of this Comment, a battered woman is one who has experienced violence as it is defined in Article One of the Declaration on the Elimination of Violence Against Women (DEVAW), "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993).

45. See ALENIKOFF & MARTIN, supra note 8, at 764-67 (discussing the asylum procedure).

46. See generally Seith, supra note 3, at 1819 (reviewing asylum procedures and stating that social group and political opinion are the two categories on which domestic violence claims are usually based); Patricia F. Warren, Comment, Women are Human: Gender-Based Persecution is a Human Rights Violation Against Women, 5 HASTINGS WOMEN'S L.J. 281 (1994) (discussing the limitations of U.S. immigration and asylum as it is applied to victims of gender-based persecution).

47. ALENIKOFF & MARTIN, supra note 8, at 764-67.

48. See Carvajal-Munoz v. INS, 743 F.2d 562, 572-79 (7th Cir. 1984) (reviewing in detail the burden placed on an applicant and the type of evidence needed to establish persecution: must be specific, show reasonable probability, and good reason to fear persecution); Matter of Mogharrabi, 19 I. & N. Dec. at 443 (applying the standard set by Munoz).

49. 8 U.S.C. § 1158; INA § 101(a)(42).


51. 19 I. & N. Dec. at 212.
awareness of danger in another country . . . ,\textsuperscript{52} and “persecution” as “harm or suffering inflicted on an individual to punish him for possessing a belief or characteristic a persecutor seeks to overcome . . . .”\textsuperscript{53} In addition, the reasonable person standard is most likely used to determine the woman’s fear.\textsuperscript{54} This standard creates an additional problem when judges are not aware of the psychological effects of battering or of the social values inherent in cultures that subordinate women through economic and governmental institutions.\textsuperscript{55} Therefore, a battered woman who seeks asylum after escaping the violence in her home has a difficult time proving that she meets the definition of refugee under INA section 101(a)(42).\textsuperscript{56}

In addition to presenting evidence of her fear and persecution, the applicant must also prove the existence of a nexus between the persecution and the persecutors grounds for punishing her.\textsuperscript{97} In an

\footnotesize{\textsuperscript{52} Id. \textsuperscript{53} Id. Some courts have defined persecution in even greater detail as:

\begin{quote}
[t]he infliction of suffering or harm, under government sanction, upon persons who differ in a way regarded as offensive . . . , in a manner condemned by civilized governments. The harm or suffering need not be physical, but may take other forms, such as the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment or other essentials of life . . . .
\end{quote}

Matter of Laipenieks, 18 I. & N. Dec. 433, 456-57 (BIA 1983). See also Abdel-Masieh v. INS, 3 F.3d 579 (5th Cir. 1996) (adopting Laipenieks definition of persecution); Sharif v. INS, 87 F.3d 932, 935 (7th Cir. 1996) (accepting and applying the Acosta definition of persecution, and adding that the acts constituting persecution do not have be life threatening to be considered persecution); Fisher v. INS, 79 F.3d 955, 961 (9th Cir. 1996) (holding that persecution is the infliction of suffering or harm based on what is regarded as offensive, including mental and physical suffering); Rodriguez-Roman v. INS, 98 F.3d 416 (9th Cir. 1996) (discussing whether punishment the petitioner will face if he returns to Cuba can constitute “persecution”).

\textsuperscript{54} See Matter of Mogharrabi, 19 I. & N. Dec. at 445 (setting the reasonable person standard in asylum proceedings); In re Fauziya Kasinga, I. & N. Dec. 3278 (BIA 1996), available in 1996 WL 379826 (adopting the standard set in Mogharrabi and declaring that the burden is on the applicant to establish that a reasonable person in her circumstances would fear persecution. The BIA granted asylum to the applicant, who claimed persecution based on membership in the social particular group of women in her tribe who had not undergone the process of female genital mutilation (FGM)); Guevara Flores v. INS, 786 F.2d 1242, 1249 (5th Cir. 1986) (holding that the BIA had to review the petitioner’s application for asylum based on new evidence that enabled her to establish the reasonableness of her fears if she returned to El Salvador due to the publicity her case had generated in her home country).

\textsuperscript{55} See Isabel Marcus, Terrorism in the Home, in THE PUBLIC NATURE OF PRIVATE VIOLENCE 11, 20 (1994) (discussing the prevalence of domestic violence in all cultures and society, and its support through political and economic theory that reinforces the family as a hierarchical entity in which the man is the “designated head . . . whose will prevails . . . .”); see also supra note 3 and accompanying text (discussing culture and the construction of abusive relationships); infra Part III and accompanying notes (detailing the position of women in Iran).

\textsuperscript{56} 8 U.S.C. § 1158.

\textsuperscript{57} The applicant must fulfill the “on account of” requirement of the INA definition of refugee. See supra note 10 and accompanying text; see also INS v. Elias-Zacarias, 502 U.S. 478, 482 (1992) (discussing the requirement in the context of a political opinion claim, the court emphasized that prosecution must be threatened or inflicted “on account of the victim’s
attempt to improve the adjudication of these types of cases and assist in the development of a nexus, the INS recently issued guidelines for Asylum Officers adjudicating such claims. In these guidelines, domestic violence is included as a basis for establishing that a woman experienced “past persecution on account of one or more of the five grounds...” delineated in the INA. However, whether or not asylum officers will utilize these guidelines when adjudicating the claims of battered women has yet to be determined. In addition, the Board of Immigration Appeals (BIA) is not required to apply or enforce these guidelines when they review the asylum determinations of immigration judges and asylum officers. Further, even when the political opinion...”); Matter of Acosta, 19 I. & N. Dec. 211, 226 (BIA 1985) (stating that the harm inflicted on the victim was for the purpose of punishing the victim for having one or more of the protected characteristics found in the INA).

58. The guidelines are intended to ensure consistency and “enhance the ability of U.S. Asylum Officers to more sensitively deal with substantive and procedural aspects of gender-related claims, irrespective of country origin.” Memorandum from Office of International Affairs, to All INS Asylum Officers and HQASM Coordinators, Phyllis Coven (May 26, 1995) [hereinafter Gender Guidelines] (on file with author). The Gender Guidelines state that gender-based claims must be evaluated through existing international human rights instruments. Id. at 1. Specifically, the Gender Guidelines refer to the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Declaration on the Elimination of Violence Against Women, the United Nations High Commissioner for Refugees adopted in 1985 (UNHCR), and the 1993 Canadian Guidelines. Id. at 1. The INS memorandum used the Office of United Nations High Commissioner for Refugees (UNHCR) Guidelines on the Protection of Refugee Women (Geneva, July 1991) and Canada’s guidelines issued in 1993. See id. at 1. The guidelines advise asylum adjudicators to consider an applicant’s country of origin, the treatment of women by the law, the political, social and economic rights of women, the incidence of reported violence against women, and the consequences of returning. See id. at 4; U.N. Convention on Elimination of All Forms of Discrimination against Women, 1249 U.N.T.S. 13 (declaring that discrimination against women violates principles of equality of rights and serves as an obstacle for women’s participation in political, social, economic, and cultural life); U.N. Declaration on the Elimination of Violence Against Women, G.A. Res. 104, U.N. GAOR, 48th Sess., Supp. No. 49, at 2, U.N. Doc. A/RES/48/104 (1994) (recognizing effects of violence on women that lead to the domination and discrimination of women and detailing the definition of violence in all its forms, and women’s entitlement to equal protection of rights and fundamental freedoms); Angoucheva v. INS, 106 F.3d 761, 793 n.2 (7th Cir. 1997) (concurring opinion) (admonishing the BIA decision that denied asylum to a sexual assault victim because the assault was attributed to sexual attraction); Fisher v. INS, 79 F.3d 955, 968 (9th Cir. 1993) (Noonan, J., dissenting) (stating that the INS guidelines are intended to develop asylum laws in the United States “with special attention to the problems of women oppressed on account of their nonconformity with the moral codes of a rigorous regime,” and that there are still elements within the INS that have not assimilated to the spirit of these guidelines).

59. Gender Guidelines, supra note 58, at 8. Other examples of events that are directed at girls and women that can be used to show persecution under the guidelines include rape, sexual abuse, infanticide, and genital mutilation. Id.

60. See supra note 19 and accompanying text (analyzing impact of new procedures); infra notes 148-53 and accompanying text (discussing a recent BIA denial of asylum to a battered woman from Guatemala).

61. See In re R-A-, Interim Decision 3402 (1999 BIA), available in 1999 WL 424964 (overturning the Immigration Judge’s grant of asylum to a Guatemalan woman who was a victim of domestic abuse). The Immigration Judge accepted the respondent’s arguments in favor of asylum on the basis of the woman’s political opinion and membership in a particular social
BIA applies these guidelines or recommends their application through its decisions, the determinations are not binding precedent unless expressly stated in the opinion. 62

A. Establishing Refugee Status

1. Political Opinion

To gain asylum on the basis of political opinion, an applicant must show that there is a connection between the persecution she suffers and her political opinion. 63 The applicant must present direct or circumstantial evidence proving the causal connection between the persecution and the political opinion. 64 Even though in the case of a battered woman where the persecutor is a private actor, the woman can still claim persecution on account of her political opinion when the government refuses to, or is unable to control the private actor. 65

_Matter of Pierre_ 66 was one of the first BIA decisions to accept the theory that an alien can qualify for relief as a refugee even when the persecution is at the hands of an individual who is not connected with the government. 67 However, the respondent must first show that the government is unwilling or unable to control the persecuting individual or group. 68 In _Matter of Pierre_, the respondent was unable to gain asylum because the BIA decided that she did not present

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62. See Scith, supra note 3, at 1807 n.13 (discussing decisions of the BIA and the fact that they are not binding precedent of future cases); see also Matter of A– and Z, IJ Dec. (Dec. 20, 1994) (Arlington, VA), reported in 72 INTERPRETER RELEASES 521 (Apr. 17, 1995) (full text of decision on file with author) [hereinafter Matter of A and Z] (declaring decision not binding after granting asylum to a mother and son who suffered emotional and physical abuse at the hands of the petitioner's husband).

63. The burden is on the petitioner to demonstrate through objective evidence her reasonable fear of persecution. See supra note 36 and accompany text (discussing the requirement of both objective and subjective evidence to demonstrate that the applicant possess a "well-founded" fear of persecution); supra notes 57-62 and accompanying text (discussing the nexus requirement in asylum claims).

64. See Sanchez-Trujillo v. INS, 801 F.2d 1571, 1574 (9th Cir. 1986) (requiring applicant to establish fear of persecution "through specific, direct, and concrete evidence that he personally would be singled out for persecution on account of one of [the] statutory factors, or that there is a reasonable possibility of such persecution."); see also Part II.A (discussing the requirement of basing an asylum claim of withholding of deportation on one of the five grounds found in the INA, and the clear probability standard for demonstrating persecution or fear of persecution); Part II.B (reviewing the "well-founded fear" standard of persecution requiring subjective and objective evidence for a discretionary grant of asylum).

65. See McMullen v. INS, 58 F.3d 1312 (9th Cir. 1981) (holding that the actions of a group that a government cannot or is unwilling to control can be considered in asylum claims).


67. Id. at 462.

68. See id.
enough evidence to support her claim that the government of Haiti would not intervene to prevent or punish her husband for threatening and attempting to kill her. 69 In addition, the BIA concluded that even if the respondent could show that the government was unable or unwilling to stop her husband, she still would not qualify for asylum because “[n]ot every unlawful act of individual harassment will amount to persecution within the meaning of” the statute. 70 Because the husband’s motivation was considered strictly personal, the respondent could not be protected. 71 This public/private distinction created a justification for the lack of government protection; therefore, it is imperative that violence against women is recognized as a violation of women’s human rights. 72 Such violent acts constitute persecution regardless of whether the government or a private actor, who the government does not control, is committing the act. 73

Some courts also describe politically motivated persecution as a government’s infliction of harm, or suffering on an individual in an effort to overcome his or her political opinion. 74 The individual’s belief causing “him to be the object of persecution,” and not the specific political end the persecution serves is the motivation

69. See id. The BIA arrived at this conclusion even though there was evidence that the respondent’s husband was a deputy in the Haitian Government and petitioner’s cousin testified to hearing respondent’s husband threaten to physically harm her. Id.
71. Id. at 461.
72. See Donna Sullivan, The Public/Private Distinction in International Human Rights Law, in WOMAN’S RIGHTS HUMAN RIGHTS 126, 126 (Julie Peters & Andrea Wolper eds., 1995); see also Karen Bower, Recognizing Violence Against Women as Persecution on the Basis of Membership in a Particular Social Group, 7 GEO. IMMIGR. L.J. 173, 186 (1993) (discussing the violence many women encounter in countries where the government condones or ignores domestic violence, dowry-deaths, and wife burning because they are considered private matters, or because the laws making the abuse legal are not enforced). The violence women experience is often equal to, if not worse than, the persecution and torture those in detention face. Id. Yet, the state and the international community do not see the violations against the physical and psychological integrity of these women as violations of the women’s basic human rights. Id. at 188.
73. Id.
74. See In re Matter of Acosta, 19 I. & N. Dec. 211, 212 (BIA 1985) (declaring persecution as a broad concept that could include governmental measures compelling individuals to engage in conduct not physically harmful, but abhorrent to the individual’s beliefs); Fatin v. INS, 12 F.3d 1233, 1242 (3d Cir. 1993) (considering whether an Iranian woman who had to wear traditional Islamic dress faced persecution because of the harshness of the requirement and penalties for violation; the court declared that the penalties could constitute persecution if she in fact broke the code and the punishments were inflicted on her); see also Hernandez-Ortiz v. INS, 777 F.2d 509, 516 (9th Cir. 1985) (stating that when an individual or group has not engaged in criminal activity or conduct that creates a legitimate basis for a government to punish, then one can presume that politics are motivating the government’s actions); Bolanos-Hernandez v. INS, 749 F.2d 1316 (9th Cir. 1984) (declaring that an applicant’s political choices and beliefs are not necessary in an analysis of his request for asylum).
initiating these efforts. 75 In Lazo-Majano v. INS, 76 the Ninth Circuit, for the first time, recognized the resistance of a woman to the male domination prevalent in her country as an expression of a political opinion. 77 The action of an individual or a government that reveals the goal of suppressing opposition to social norms is an act of persecution based on the woman's opposition to her status and treatment. 78 In addition, the Third Circuit indicated in Fatin v. INS 79 that harsh penalties for disobedience of gender-specific laws or repressive social norms could amount to persecution on account of one's beliefs. 80

Therefore, a battered woman who challenges her husband and seeks protection from the government can argue fear of persecution based on her political opinion. 81 She can do this when her actions lead to her persecution because they are viewed as a threat to the social norms of society, to the legitimacy of her husband's power, and to the governments' explicit or implicit approval of that position. 82

76. 813 F.2d 1432 (9th Cir. 1987).
77. Id. at 1435. The court stated that when the petitioner, Olivia, fled her male persecutor who raped her, she asserted a political opinion, and exposed herself to persecution for that assertion. Id. Therefore, the “[p]ersecutor threatened her because of her political opinion.” Id. But see Campos-Guardado v. INS, 809 F.2d 285, 290 (5th Cir. 1987) (denying petitioner's claim because the threats to the petitioner and her rape were personally motivated, and no indication was given that the attacker acted from an interest in the petitioner because of her political opinions; instead, the incident was a “type of civil strife” not covered by the statute).
78. See Lazo-Majano v. INS, 813 F.2d 1432 (9th Cir. 1987) (holding that the persecutor, a sergeant who raped the applicant, asserted the political opinion “that a man has a right to dominate” a woman, and that she may not hold an opinion contradictory to his). The actions and statements of the sergeant were also considered to reflect a general animosity towards women and the assertion of the desire to suppress opposition to that animosity. Id.
79. 12 F.3d at 1233 (3d Cir. 1993).
80. See id. at 1241-43 (deciding that an Iranian woman who objected to the gender-specific laws restricting women did not show a likelihood of persecution because she was willing to abide by the laws, but declaring that “if a woman's opposition to the ... laws in question is so profound that she could choose to suffer the severe consequences of noncompliance, her beliefs my well be characterized as 'so fundamental to [her] identity or conscience that [they] ought not to be required to be changed.'” (quoting Acosta, 19 L. & N. Dec. at 234)); cf. Sharif v. INS, 87 F.3d 932, 936 (7th Cir. 1996) (denying Iranian woman's claim for asylum even though she claimed that returning to Iran would result in her persecution because of her family status and her status as a westernized woman; the court concluded that because she lived in conformity in the past and would probably do so in the future, there was no fear of future persecution).
81. The UNHCR Handbook defines “political opinion” as “opinions not tolerated by the authorities, which are critical of their policies or methods.” Office of the United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status, in 10 IMMIGR. L. & PROC. 28, at para. 80 [hereinafter Refugee Handbook]. Thus, a woman's opposition to laws that do not provide her with a remedy could be considered a political opinion. Id.
82. See Pamela Goldberg, Anyplace But Home: Asylum in the United States for Women Fleeing Intimate Violence, 26 CORNELL INT'L L.J. 565, 598 (1993) (arguing that fleeing intimate violence is an expression of a woman's rejection of the social norms that justify and grant the man the
The treatment she receives in response to her "rebellious" actions, which can lead to harsh penalties and opposition from private and public actors, equate to persecution on account of her political beliefs. 83

In a male-dominated society, the actions of a woman who leaves her husband, reports her husband to the authorities, or disobeys her husband in the home, can constitute violations of deeply rooted beliefs in the sacredness of the family and the subordinate position of women within the family and society in general. 84 In addition, even though the woman is only requesting assistance in stopping the physical abuse, her society and her peers may view her as someone who opposes the government and its laws, or holds political beliefs contrary to the current system. As a result of seeking help outside the confines of the family, and of disobeying the male figure, the

right to dominate his wife or female companion).

83. Id.
84. See Chang v. INS, 119 F.3d 1055, 1063 (3d Cir. 1997) (stating that political opinion is expressed though words as well as action; therefore, an act defying the laws of the government are a manifestation of political opinion). For a battered woman, this action could be disobedience of her husband, refusal to perform her "wifely duties," or calling the police. See Goldberg, supra note 82 (fleeing or seeking help regarded as opposition); see also supra notes 65-68 and accompanying text (reviewing the reasons for the government attribution of political opinion to a woman who challenges or does not conform to the social norm); Julie Mertus, State Discriminatory Family Law and Customary Abuses, in WOMAN'S RIGHTS HUMAN RIGHTS 135 (1995) (discussing the states' use of separate sphere ideology to maintain the status quo, whereby women are not protected from domestic violence and other inequalities in marriage). The obligations of a woman in the family often define the more general obligations of women in society. Id. at 135. State family laws affecting the social and economic status of women by limiting their functions within society to reproduction and other family duties, thus supporting the image of women that strengthens the state goal. Id. at 136. See also Marsha A. Freeman, The Human Rights of Women in the Family: Issues and Recommendations for Implementation of the Women's Convention, in WOMEN'S RIGHTS HUMAN RIGHTS 149 (Julie Peters & Andrea Wolper eds., 1995) (discussing specific articles within CEDAW and the implementation of their proposals). The author argues that many states use preservation of family and culture to justify the denial of human rights to women. Id. at 149. "[W]omen's roles, responsibilities, and recognized capacities within the family are frequently limited by law and by culture and affect the exercise of their capacities outside the family as well..." Id. at 149-50.

85. If the persecutor punishes the woman who seeks government protection—either by not protecting or by imposing a penalty for her transgressions—because the persecutor believes she possesses political opinions whether or not she actually possesses those political opinions, then the persecutor imputes a political opinion on the woman. See Hernandez-Ortiz v. INS, 777 F.2d 509, 517 (9th Cir. 1985) (stressing that "it is irrelevant whether a victim actually possesses any of these opinions as long as the government believes that he does"); Gender Guidelines, supra note 58, at 11 (accepting and discussing the application of imputed political opinion as a basis for persecution because of political opinion); Refugee Handbook, supra note 81, para. 80 (stating that persecution based on political opinion may include situations in which "such opinions have come to the notice of the authorities or are attributed by them to the applicant"). If an applicant tries to show that her persecution is based on an imputed political opinion she must demonstrate that the persecutor attributed a political opinion to her and that the persecution feared is a reasonable possibility. See, e.g., Aruta v. INS, 80 F.3d 1389, 1395 (9th Cir. 1996); Huaman-Cornelio v. BIA, 979 F.2d 992, 1000 (4th Cir. 1992); Matter of R-, 20 I & N. Dec. 621 (BIA 1992); Estrada-Posadas v. INS, 924 F.2d 916, 919 (9th Cir. 1991).
woman faces reprisal from her husband, her family, her friends, and even the government from which she seeks help because she is now endangering the status quo.

2. Membership in a Particular Social Group

In *Matter of Acosta,* the BIA defined membership in a particular social group as "persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic." The Board stated that the shared characteristics would be determined on a case by case basis and that innate characteristics like sex, color, kinship ties, or shared past experience can be included in this category. Some courts also take

86. See infra Part IV and accompanying notes (discussing the position of women and the consequences of stepping out of the private realm).

87. The Refugee Handbook states that

A "particular social group" normally comprises persons of similar backgrounds, habits or social status... Membership of such a particular social group may be at the root of persecution because there is no confidence in the group's loyalty to the Government or because the political outlook, antecedents, or economic activity of its members, or the very existence of the social group as such, is held to be an obstacle to the Government's policies.

Refugee Handbook, *supra* note 81, paras. 77-78. See generally Bower, *supra* note 72, at 199 (reviewing the different interpretations of a particular social group after the enactment of the 1980 Refugee Act and arguing that the Refugee Act adopted the international interpretation of particular social groups found in the UNCHR Handbook (discussing memorandum from UN High Commissioner for Refugees to Mr. I. Jackson, Division of Refugee law and Doctrine) (Dec. 29, 1988) (on file with author). The memorandum discusses the test the UNHCR advocates for considering internal and external cohesion factors in determining whether there is an identifiable social group. *Id.* The factors include: (1) a group consisting of a distinct entity within the broader society; (2) a group definable by non-arbitrary characteristics that the members share; (3) identified characteristic must be innate (a shared past experience, shared values, attitudes, or behavior); (4) integrity of the group existing in the perception of the group members or from the viewpoint of the society or segments of it; (5) characteristics existing independent of the persecution, but playing a significant role in the persecution of the group members; (6) demonstration of a risk of individual persecution; and (7) examination of the historical, social, legal, and political realities relevant to identifying the group and the persecution they are likely to suffer. *Id.*


89. *Id.* at 233. The BIA used the doctrine of *ejusdem generis,* which states that general words used in an enumeration with specific words should be defined in a way that is consistent with the specific words. *Id.* Since the other grounds of persecution enumerated in the INA and the Protocol restrict refugees to those who are unable, or should, as a matter of conscience not be required to change their status, the ground of particular social group should also be based on immutable characteristics. *Id.*

90. See *id.;* Lwin v. INS, 144 F.3d 505, 512 (7th Cir. 1998) (reviewing the different approaches courts take when defining particular social group membership, and deciding to follow the *Acosta* approach because it preserved the concept that the "term refugee is restricted to those unable by their own action, or as a matter of conscience should not be required, to avoid persecution."); *Matter of Sanchez & Escobar,* 19 I. & N. Dec. 276, 285 (BIA 1985) (explaining that identifying common characteristics of a statistical grouping of the population at risk is not enough to establish membership in a particular social group, and that petitioners must show that the claimed persecution is on account of the group's identifying
into account voluntary associations and external perceptions of groups when determining an asylum claim based on membership in a particular social group.91

To assist in the adjudication of asylum claims based on membership in a particular social group, the Ninth Circuit in *Sanchez-Trujillo v. INS*92 established a four-part test.93 According to the court, to satisfy the four-part test, an applicant must: (1) identify a cognizable social group; (2) prove that she is a member of the group; (3) prove that the aim of the persecution is one of the group’s unifying characteristics; and (4) show that “special circumstances” exist.94 Currently, there is no clear or internationally recognized definition of a particular social group. Therefore, the likelihood of a battered woman gaining refugee status and the right to a discretionary grant of asylum will depend first on each court’s interpretation of particular social group, and second, on the court’s application of the *Sanchez-Trujillo* four part test.95

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91. See *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1576 (9th Cir. 1986) (finding that voluntary associations impart a common characteristic fundamental to the identity of a member within the discrete social group); *Martinez-Romero v. INS*, 692 F.2d 595, 595-96 (9th Cir. 1982) (stating that in special circumstances, individuals of similar backgrounds, habits, or social status could fall under the category of a particular social group); *see also Refugee Handbook*, supra note 81, para. 79 (allowing membership in a particular social group to substantiate a claim of refugee status when special circumstances exist); *Gomez v. INS*, 947 F.2d 660 (2d Cir. 1991) (denying asylum to women previously beaten and raped by Salvadoran guerrillas because the women did not possess a “recognizable and discrete” characteristic distinguishing them for their persecutors from other young women). Using the Second Circuit’s construction, asylum seekers can claim asylum based on this category if from the viewpoint of the persecutor or the outside world, individuals in the group possess a fundamental and distinguishing characteristic. *See Gomez*, 947 F.2d at 664. 92. 801 F.2d 1571 (9th Cir. 1986). 93. *Id.* at 1574. 94. *Id.* at 1574-75. 95. Generally courts will consider gender as one characteristic in a combination with others that will define a protected social group. *See Gomez v. INS*, 947 F.2d 660 (2d Cir. 1991) (finding that a woman who was raped and beaten in El Salvador did not demonstrate that guerrillas were inclined to harm her based on her defined particular social group of women previously battered and raped by Salvadoran guerrillas). The court concluded that “the attributes of a particular social group must be recognizable and discrete. Possession of broadly-based characteristics such as youth and gender will not by itself endow individuals with membership in a particular group.” *Id.* at 664. This definition suggests a “gender plus” requirement for the application of particular social group grounds for asylum; therefore, a woman will be required to identify a particular social group that includes characteristics other than gender. *See Gender Guidelines*, supra note 58, at 13; *see also Fatin v. INS*, 12 F.3d 1233, 1240 (3d Cir. 1993) (holding that an Iranian woman fearing persecution because of her gender would be a member of a particular social group under the INA, but the statute requires more than the assertion of membership in a particular social group of women because one could not reasonably conclude that all Iranian women had a well-founded fear of persecution based solely on their gender, unless they were able to demonstrate that their inability and unwillingness to conform leads to punishment); *Safaie v. INS*, 25 F.3d 636, 639 (8th Cir. 1994) (rejecting as over broad the particular social group of Iranian women who, due to their innate characteristic of
Pursuant to these requirements, when seeking asylum as a battered woman, the applicant must first define a cognizable social group. Failure to define one will result in an adverse judgment. Without an identified group, the adjudicator cannot complete his analysis of the applicant's refugee status. Defining a particular social group is difficult because domestic violence does not necessarily apply only to specific types of women who share distinguishing and identifiable characteristics. In addition, when identifying this social group, women must distinguish the persecution they personally encounter from the suffering of the general population.

One commentator states that a social group can include women subjected to harsh or inhumane treatment when that treatment is the result of a failure to voluntarily or involuntarily conform to cultural or religious norms. This category of women includes those who as a result of uncontrollable circumstances or conscious choices cannot conform and are not able to comply with cultural expectations, religion, or society.

Other factors to consider when identifying this social group include a country's laws and customs based on gender. Discriminatory laws and practices depriving women of their fundamental rights, or substantially affecting their right to earn a living or obtain an education, constitute persecution. Important being women and the harsh restrictions placed on them because of this characteristic, were persecuted).

96. See supra note 94 and accompanying text (explaining the requirements of the four part test).

97. Sanchez-Trujillo, 801 F.2d at 1577.

98. See id. (denying petitioner's claim for asylum because the particular social group the petitioners identified encompassed individuals who have different lifestyles, varying interests, diverse cultures, and contrary political ideals). The threshold question when adjudicating asylum claims based on membership in a particular social group is whether or not the group identified should be regarded as indicative of refugee status under the applicable immigration statutes. Id. at 1575. In addition, the category of particular social group was not intended to be applied to an all-encompassing group; instead it was intended to apply to a cohesive, homogenous group. Id. at 1577.

99. See Sharif v. INS, 87 F.3d 932, 935 (7th Cir. 1996) (stating that harsh conditions suffered by everyone does not constitute persecution).

100. See David L. Neal, Women as a Social Group: Recognising Sex-Based Persecution as Grounds for Asylum, 20 COLUM. HUM. RTS. L. REV. 293, 235 (1988) (arguing that women persecuted on account of their sex should be able to use the framework available within the category of particular social group).

101. Nancy Kelly, Guidelines for Women's Asylum Claim, 71 INTERPRETER RELEASES 813, 819 (1994) (analyzing the application of asylum law to gender based persecution; which was later used in creating the INS Gender Guidelines).

102. Id.

103. Id. at 820.

104. Id.
factors considered are: (1) the position of the woman before the law; (2) her standing in court; (3) her right to file a complaint and provide evidence; (4) her rights to divorce and custody; (5) her right to own property; (6) her right to an education and a career; (7) her status as a divorcee or single woman; (8) her right to control her reproductive organs; (9) her right to travel, dress, and express herself; (10) the incidence of reported violence as well as the protection available; and (11) the sanctions or penalties imposed on the violators. 5

Finally, a woman can claim past or future persecution based on the fact that a private actor abuses her and the government cannot or will not provide protection from the abuse. 6 The combination of a country's laws, customs, religious practices, and social norms create an environment in which women's rights, health, and safety are not protected. 7 Therefore, women who are victims of domestic violence can define their identifiable social group as battered women who express their opposition to their constant subordinate position, and who because of their gender, lack the benefits and assistance of government agencies and of society in general. 8

Once a cognizable social group is identified, the woman must establish her membership in the identified social group. 9 She has to show that the persecuting government singled her out as a member of the identified particular social group solely on the basis of the identified distinguishing and immutable characteristics. 10 Therefore, a battered woman must show that private or public actors utilize the law, economic institutions and governmental institutions to overcome her right to live free from threats to her freedom and life. 11

105. Id.
106. Id. at 821.
107. See Part IV.A.2.a infra and accompanying notes (telling the story of one woman who could not find help or protection in her home country).
108. See Kelly, supra note 101, at 818-21 (discussing the different social groups into which women can fall); Fisher v. INS, 79 F.3d 955, 968 (9th Cir. 1996) (declaring that women, as a class, are eligible as persons who are persecuted due to their membership in the social group of nonconforming and harshly treated women); see also infra Part IV.A.2.a (discussing the stories of two battered women who were not protected by their government).
109. Sanchez-Trujillo v. INS, 801 F.2d 1571, 1574-75 (9th Cir. 1986). There are five statutory factors that can qualify an alien as eligible for "prohibition of deportation or a discretionary grant of asylum: race, religion, nationality, membership in a particular social group, or political asylum." Id. at 1574 (citing 8 U.S.C. §§ 1253(h), 1101(A)(42)(a)).
110. In Sanchez-Trujillo, the court held that the petitioners did not prove that the El Salvadorian government singled them out for persecution on the basis of the petitioners' status as young, working class, urban males, who did not serve or support the military or government. See 801 F.2d at 1577. The evidence presented only established the fact that young males in general are at risk of political violence due to the present conditions in El Salvador. Id.
111. Id.
As the BIA states in *Matter of Laipenieks*, economic deprivation and severe social and institutional disadvantages or deprivations do constitute persecution. Using the woman's own testimony, as well as reports on conditions within the persecuting country, an applicant can show that she is a member of the identified group who suffers from specific economic and social deprivations and disadvantages.

Finally, the applicant must show that the government targets this particular social group on account of the identified characteristics of the group members. Evidence of incidents of actual persecution can assist in establishing this fact. A review and analysis of the impact of the laws within the country of origin that promote or ignore domestic violence is also indicative of groups of people targeted on the basis of an innate characteristic like sex. As the BIA stated in *Matter of Acosta*, a refugee is "an individual in whose case the bonds of trust, loyalty, protection, and assistance, existing between a citizen and his country, have been broken and have been replaced by

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113. Id.
114. See INS v. Cardoza-Fonseca, 480 U.S. 421, 421 (1987). The evidence presented to show persecution must be "specific, objective facts supporting an inference of past persecution or risk of future persecution. That the objective facts are established through the credible and persuasive testimony of the applicant does not make those facts less objective." Id. See also Shoaee v. INS, 704 F.2d 1079, 1084 (1983) (stating that an applicant's assertion of possible fear is insufficient).
115. Applicants often utilize UNHCR reports and U.S. State Department reports, as well as other documents to illustrate the general conditions within a country. See *In re Fauziya Kasinga*, I. & N. Dec. 3278 (BIA 1996), available in 1996 WL 379826 (accepting letters from applicant's mother, a letter from an anthropologist, State Department Reports on conditions in Togo, and memoranda from the Office of International Affairs of the INS to show the conditions in that applicant's country of origin, and to provide the applicant's testimony with sufficient evidence in order to establish her credibility); *Matter of Sanchez & Escobar*, 19 I. & N. Dec. 276, 279 (BIA 1985) (reviewing the evidence the petitioners presented in regards to conditions in El Salvador; the evidence consisted of newspaper and magazine articles, the testimony of 13 witnesses, scholarly reports, news releases, letters and publications by individuals and international organizations involved or interested in the conflict in El Salvador).
116. Sanchez-Trujillo v. INS, 801 F.2d 1571, 1574-75 (9th Cir. 1986).
117. See id. at 1577 (concluding that the evidence the petitioners presented only indicated that the risk of persecution related to the existence of actual or imputed political opinion, which applied equally to all segments of the population in El Salvador, and agreeing with the BIA decision that the evidence was inconclusive in establishing that age and gender when combined with labor class, urban residence, or political neutrality had any relation to likelihood of persecution); *In re Fauziya Kasinga*, I. & N. Dec. 3278 (BIA 1996), available in 1996 WL 379826 (determining that applicant was able to demonstrate actual persecution by showing that she would be subjected to female genital mutilation (FGM) because she was a young woman who was just married).
118. See Bower, supra note 72, at 91 (analyzing the human rights violations of women facing domestic violence and concluding that when a government makes no laws prohibiting gender-based violence or fails to vigorously enforce such laws, then the government condones the violence, and the private person committing the abuse becomes an actor or an agent of the government).
the relation of an oppressor to a victim.” If a woman is not protected and does not feel safe because her government refuses to or is unable to control her husband’s actions, then she is the target of persecution. She is the victim of an oppressive husband who is supported by an equally oppressive government. When each requirement of the four-part test is satisfied, the battered woman is finally considered a refugee and is eligible for asylum.

B. Effects of Recent Decisions on the Definition of Membership in a Particular Social Group

In 1996, the BIA decision in In re Fauziya Kasinga provided a new twist to the definition of membership in a particular social group. While portions of this decision are beneficial to battered women seeking asylum, the decision and the narrow social group definition is riddled with new obstacles.

One result of this decision is that an applicant no longer needs to establish the alleged persecutor’s subjective intent to punish the members of the identified particular social group. The BIA designated this opinion as precedent, and the Ninth Circuit decision in Pitcherskaia v. INS later followed the principles set forth in Kasinga.

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119. 19 I. & N. Dec. at 235. See also Refugee Act, supra note 7 and accompanying text; Refugee Convention, supra note 8 and accompanying text; Protocol, supra note 8 and accompanying text.

120. See infra Part IV (applying asylum procedures and tests to battered women).

121. See infra Part IV and accompanying notes (discussing the oppressive nature of the Islamic Republic of Iran and the resulting persecution domestic violence victims must endure).

122. See Sanchez-Trujillo v. INS, 801 F.2d 1571, 1575 (9th Cir. 1986) (analyzing the four-part test).

123. I. & N. Dec. 3278 (BIA 1996), available in 1996 WL 379826 (reversing the decision of the immigration judge and granting asylum based on membership in a narrowly defined, particular social group).

124. After the death of her father Fauziya Kasinga was no longer protected from undergoing the traditional practice of female genital mutilation. Id. at *8. Fauziya ran away from her husband and native land of Togo due to her fear of undergoing FGM. Id. FGM, as the applicant's tribe practices, involves “cutting the genitalia with knives, extensive bleeding, and a 40 day recovery period.” Id. at *4. The BIA granted asylum based on her membership in the particular social group of “young women of the Tchamba-Kunsuntu Tribe who have not had FGM, as practiced by that tribe, and who oppose the practice.” Id.

125. See infra notes 126-47 and accompanying text.


127. Id.

128. 118 F.3d 641, 646 (9th Cir. 1997) (discussing the applicability of the decision in In re Fauziya Kasinga).

129. See id. at 643 (granting asylum to a woman who feared persecution on account of her membership in the particular social group of Russian lesbians and her political opinions in support of the rights of homosexuals in Russia). The court concluded that the definition of
Specifically, the court in *Pitcherskaia*, concluded that persecution is defined objectively and its analysis does not depend on the subjective intent of the persecutor, but on “what a reasonable person would deem ‘offensive’.” As a result of these decisions, the intent or motive of a persecutor is relevant only when an alien is establishing that the persecution is inflected on her “on account of” actual or perceived characteristics the alien holds. Therefore, a battered woman’s claim does not need to prove that the inactions of her government or the actions of her husband were intended to harm her. She will only need to show that from an objective standpoint, the government and her husband inflicted harm and suffering on her because she is a woman who does not conform to the social or religious norms of her society.

In addition, the *Kasinga* decision did not accept cultural tradition as a justification or legitimization of the subjugation of women in the applicant’s tribe. The Board’s analysis recognized that too often, violence against women occurs so frequently that society eventually views it as different from traditionally recognized forms of human rights violations. Therefore, the court concluded that the argument and inference that female genital mutilation (“FGM”) is used to control and oppress women’s sexuality in order to ensure the dominance of men and the exploitation of women is valid.

The persecution is objective, and that an applicant should not be required to prove an intent to harm or punish as an element of the persecution. *Id.* at 646. The majority opinion went on to say that “[n]either the Supreme Court nor this court has construed the Act as imposing a requirement that the alien prove that her persecutor was motivated by a desire to punish or inflict harm.” *Id.* at 646.

130. *Id.* at 647. *But see* Sharif v. INS, 87 F.3d 992, 935 (7th Cir. 1996) (denying asylum to an Iranian woman and concluding that “harsh conditions shared by an entire population do not amount to persecution”).

131. *Id.* See also Bahramnia v. INS, 782 F.2d 1243, 1248 (5th Cir. 1986) (reiterating the need for evidence establishing a nexus between membership in a particular social group and persecution or the reasonable foreseeability of future persecution).

132. *See infra* notes 144-47 and accompanying text (discussing the court’s interpretation of a particular social group).

133. *See Pitcherskaia*, 118 F.3d at 646-47.

134. *See In re Fauziya Kasinga*, 1996 WL 379826, at *8 (concluding that FGM could be considered persecution “without passing . . . the INS’s proposed ‘shocks the conscience’ test”). The court accepted reports indicating the lack of legal recourse, threats to freedom, acts of physical violence, and the social ostracization a woman will face for refusing to undergo the traditional practice of FGM. *Id.* at *5.

135. The violence is so prevalent that it is accepted and viewed as natural and part of the status quo, and it becomes an everyday accepted, and sometimes, promoted action even when the violence is comparable to the means of torture used against men. *See Bower, supra* note 72, at 182 (discussing membership in a particular social group as a basis for asylum for women who are the victims of violence).

court refused to accept arguments of social norms, culture, and tradition as reasons for ignoring and accepting the violence inflicted on women.\textsuperscript{137}

The same conclusions are drawn when one analyzes laws restricting a woman's ability to work, to obtain a divorce, to retain custody of her children, and to seek protection from her abusive husband.\textsuperscript{138}

Therefore, a woman's claim of persecution resulting from laws deeply rooted in culture and religion cannot validly be dismissed on the basis of cultural and social norms that a government refuses to modify.\textsuperscript{139}

Unfortunately, the \textit{Kasinga} decision also contains some harmful conclusions. The detrimental effects of the \textit{Kasinga} decision are found within the court's construction of the particular social group.\textsuperscript{140} According to the board, only women in the Tchamb-Kunsuntu Tribe of northern Togo, who oppose the practice of FGM, fall within the narrowly defined particular social group.\textsuperscript{141} Thus, a woman must show evidence of public acts or speech in opposition to a law or custom to demonstrate that the government is aware of her opposition.\textsuperscript{142} This requirement is detrimental to a battered woman's claim of asylum. Due to the nature of the abusive relationship from which she recently escaped, and due to the cultural norms and laws

\textsuperscript{137} See id. (determining that the plaintiff had met her burden of establishing the reasonableness and likelihood that the mutilation she faces is on account of her status as a tribal young woman, that she opposes the practice of mutilation, and that it will be inflicted in conformance with tribal customs or norms because of her status).

\textsuperscript{138} See Sullivan, supra note 72, at 128 (stating that the "law constructs and sustains power relations within private life through both active regulation of private life . . . and by the failure to regulate other conduct in private life."); Mertus, supra note 85, at 135 (arguing that states intrude on family life only when the intervention serves the states' larger political and social goals). The author also criticizes the ability of men to make all important decisions for women as a result of a state's laws. Id. at 137. Additionally, the failure of laws within a state to regulate the actions of husbands who physically abuse their wives and children sustains the power relations and hierarchical structure within the family. See Seith, supra note 3 and accompanying text (analyzing the effects that economic and political institutions have on abusive relationships).

\textsuperscript{139} See generally Neal, supra note 100, at 235 (deciding that women should fall under the category of "particular social group" because they are a cognizable class). Specifically, the author concludes that laws, regulations, government actions or inactions that intentionally target women for harsh and inhumane treatment based solely on their gender are not justifiable. Id.

\textsuperscript{140} In re Fauziya Kasinga, 1996 WL 379826, at *2.

\textsuperscript{141} See id. ("Young women who are members of the Tchamba-Kunsuntu Tribe of northern Togo who have not been subjected to female genital mutilation, as practiced by that tribe, and who oppose the practice, are recognized as members of a "particular social group" within the definition of the term 'refugee' under section 101(a)(42)(A) of the Immigration and Nationality Act . . . ").

\textsuperscript{142} Cf. Fatin v. INS, 12 F.3d 1233, 1240-41 (3d Cir. 1993) (denying applicant asylum because she did not present evidence of her intentions of opposing Iranian social codes to the point of being punished by the government).
that keep her in a subordinate position, the battered woman will rarely take action that will further endanger her life.\textsuperscript{145}

In 1997, the Third Circuit criticized the justification of generally applicable laws that persecute certain groups of people.\textsuperscript{144} The court refused to deny asylum on the basis of a generally applicable law because the law in question was only disguised as a generally applicable law.\textsuperscript{145} Such an analysis allows battered women to present evidence of laws that place them in a subordinate position based on their gender, and that are lacking in appropriate legal remedies.\textsuperscript{146} Such evidence specifically demonstrates persecution that is aimed at her due to her membership in a particular social group, regardless of the fact that her actions violated laws that are generally applicable to all persons in that country.\textsuperscript{147}

In spite of these recent developments, and in spite of the recently published INS Gender Guidelines, in the summer of 1999, the BIA overturned an Immigration Judge's decision granting a Guatemalan woman asylum based on her claim of persecution on the basis of the abuse her husband inflicted on her.\textsuperscript{148} This decision severely and negatively impacts the application of U.S. asylum laws to the claims of all battered women. In its opinion in \textit{In re R-A-}, the Board concluded that the applicant, a battered woman, did not satisfy the requirements delineated in U.S. asylum and refugee laws, and was therefore, not eligible for asylum.\textsuperscript{149} The Board stated that in the instant case, the

\textsuperscript{143} See infra Part IV and accompanying notes (discussing the social environment and status of Iranian women).

\textsuperscript{144} See Chang v. INS, 119 F.3d 1055, 1061 (3d Cir. 1997) (declaring that no exceptions should be made for generally applied laws if they are based on one of the five factors and if the punishment under these laws is so extreme that it constitutes persecution).

\textsuperscript{145} See id. at 1061 (deciding that courts should provide protection without “distinguishing between persecution disguised as ‘under the law’ and persecution not so disguised.”); Refugee Handbook, supra note 81, paras. 56 & 59 (stating that even though persecution is not considered the same as "punishment of a common law offense," prosecution under some laws can equate to persecution when it does not conform to accepted human rights standards). See also Sharif v. INS, 87 F.3d 932, 935 (7th Cir. 1996) (denying petitioner’s application for asylum even though she claimed fear of persecution due to Iranian laws that limit the rights and freedom of women, and impose harsh punishments for their disobedience). In spite of the gender-based laws that maintained and perpetuated the subordination of women in Iran, the court stated that “punishment which results from violating a country's laws of general applicability, absent some showing that the punishment is being administered for a nefarious purpose," does not amount to persecution. Id. at 934-35.

\textsuperscript{146} See infra Part IV.B.1 and accompanying notes (analyzing an Immigration Judge’s decision to grant asylum to a battered woman based on the laws and customs of her country and her husband’s status).

\textsuperscript{147} See infra Part IV.B.1 and accompanying notes (applying this standard and discussing the Gender Guidelines).

\textsuperscript{148} In re R-A-, I & N. Dec. 3402 (BIA 1999), available in 1999 WL 424364.

\textsuperscript{149} See id. at *2 (illustrating the many factors that are considered in determining whether a particular group should be recognized as a basis for asylum). These factors include how the
victim of domestic violence “failed to introduce meaningful evidence that her husband’s behavior was influenced by his perception of her opinion...” and that “the existence of shared descriptive characteristics are not necessarily sufficient to qualify those possessing the common characteristics as members of a ‘particular social group.’” This finding contradicts the BIA precedent decision in Matter of Kasinga as well as Matter of Acosta’s immutability standards discussed above. As the minority opinion indicates, the victim in In re R-A- was opposed to and “resisted a practice ingrained in the culture, broadly sanctioned by the community, and unprotected by the state.” The societal objective of the cultural norm denying the victim protection was the assurance and promulgation of male dominance. Allowing this decision to control future asylum claims of battered women will only assist abusers and complacent governments to continue the oppression and degradation of women. When applying U.S. asylum laws to such cases, future adjudicators must continue to utilize the INS Gender Guidelines and precedents set in Matter of Kasinga, Pitcherskaia, and Matter of Acosta to provide international protection for women whose own country is not willing to provide them with protection.

IV. BATTERED WOMEN ESCAPING THE ISLAMIC REPUBLIC OF IRAN

A religious code of conduct covering all aspects of a Muslim’s life, the shar’ia, governs society in the Islamic Republic of Iran. Iran maintains its status as a theocracy and attempts to conform its laws, and the actions of its people, to the teachings of the Qu’ran and the

following parties perceive the group: (1) the potential persecutor; (2) the asylum applicant; and (3) other members of the society. Id.

150. Id. at *1.

151. In the last few years, the First, Third, and Seventh Circuits have also adopted Matter of Acosta’s immutability standard. See Lwin v. INS, 144 F.3d 505, 511-12 (7th Cir. 1998) (adopting the Acosta standard and accepting the social group of “parents of Burmese student dissidents”); Fatin v. INS, 12 F.3d 1233, 1239-41 (3d Cir. 1993) (concluding that Iranian women who refuse to conform to the government’s gender-specific laws and social norms could satisfy the Acosta standard); Ananeh-Firempong v. INS, 766 F.2d 621, 627 (1st Cir. 1988) (accepting that those associated with the former Ghanaian government could comprise a social group due to fears arising from characteristics they could not change).

152. In re R-A-, 1999 WL 424364, at *24. The minority opinion concluded that the respondent did present evidence of “a prolonged and persistent pattern of abuse designed to dominate the respondent and to overcome any effort on her part to assert her independence or to resist his abuse.” Id. at *21.

153. Id.

154. See KEITH HODKINSON, MUSLIM FAMILY LAW: A SOURCEBOOK 1 (1984) (discussing the validity of marriage, the rights and obligations of husband and wife, and the dissolution of an Islamic marriage). This divine law provides little distinction between moral, ethical, and legal conduct. Id.
codes of the *shar’ia*.

Iran also attempts to bestow some rights on women.

This is in part a result of Iran’s former secular regime that brought women to an almost equal footing with men.

More importantly, the former regime enacted family law legislation, granting women more influence over divorce and custody issues.

However, in the last twenty years, the new regime repealed most laws that aided the advancement of women.

The reforms began with the insertion of vague Islamic criteria in the constitution to provide justifications for infringing on the rights of all the people.

In 1979, through the Islamization process and the new national agenda of
protecting the family, the new regime took away the power and control the Iranian woman had gained two decades earlier.\(^1\)

The new codes leave women with limited options. If an Iranian woman finds herself in an abusive marriage, she is forced to either stay in the abusive marriage or request a divorce.\(^2\) If the woman chooses the latter, she risks losing her honor, reputation, status, and most importantly, her children. The shift to Islamization in Iran allows the government to use divine authority as a legitimization tool for rules and systems that exploit and oppress married and single women\(^3\) through unequal and discriminatory treatment.\(^4\) This shift has resulted in an increase in human rights violations, specifically against battered women.\(^5\) To understand the impact these laws and customs have on the rights and freedom of women, it is important to understand first, the concept of marriage, second, the position of each spouse within the marriage, and third, the laws governing the dissolution of marriage in Iran.

### A. The Effects of a Theocracy on the Treatment and Rights of Women

1. Islamic Law and Family

   The official Islamic ideology in Iran is "to override any conflicting human rights for women" and prioritize their roles within the family as wives and mothers.\(^6\) In Shi'i Islam,\(^7\) the obligations and rights of

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161. See generally Kian, supra note 159 (discussing the implementation of the shari'ah in Iran and the institutionalization of gender inequality). The author states that once the shari'ah became the principle source of law, a series of regressions ensued affecting women’s rights in the private and public realm. Id. See also Alexandra J. Zolan, The Effect of Islamization on the Legal and Social Status of Women in Iran, 7 B.C. THIRD WORLD L.J. 183 (1987) (arguing that under the new government, the official goal is to follow Islamic principles, resulting in the prohibition of activities and practices accepted by the Phalavi regime, and the change in the status of married women).

162. See Michael Dowd, Battered Women: A Perspective on Injustice, 1 CARDozo WOMEN’S L.J. 1, 19-31 (1993) (discussing the various reasons battered women do not leave their abusive husbands).

163. The discussion herein is limited to married women.

164. See MAYER, supra note 156, at 29 (discussing the opportunistic aspects of Islamization). In addition, the vagueness of Islamic criteria that limits women’s rights throughout Iranian society grants governments great leeway in choosing what kinds of discriminatory measures to impose. Id. at 124. One ideologue of the Islamic Republic, the Ayatollah Mutahari, states that “[t]he specific task of women in this society is to marry and bear children. They will be discouraged from entering legislative, judicial, or whatever careers may require decision making, as women lack intellectual ability and discerning judgment required for these concerns.” MIR-HOSSEINI, supra note 156, at 73 (quoting the Ayatollah) (citations omitted).

165. MAYER, supra note 156, at 28.

166. MAYER, supra note 156, at 85.

167. This is a minority sect in Islam, most Muslims follow the Sunni school of thought. See generally DAVID PEARL & WERNER MENSKI, MUSLIM FAMILY LAW 3-19 (1998) (discussing the
each spouse are based on a conglomeration of legal, biological, and
divine determinism that places the married woman in a subordinate
position. The state condones violent and discriminatory acts
against her in the name of protecting the family. The assumptions
made in each of these areas arise from several documents including
the Qu’ran, the *shar’ia*, and the Iranian Constitution. Today, the
Iranian Civil Code (“ICC”) governs marriage while the Special Civil
Court adjudicates its regulations.

a. Marriage

From a legal standpoint, the marriage contract marks the
beginning of the subordination of a woman within her family. The
marriage contract is a legal, religious, economic, and symbolic
transaction, during which the groom exchanges a dowry for the
ownership and right of the bride’s sexual and reproductive organs.
Upon the completion of the contract, the husband is responsible for
the control, authority, and protection of the woman. The
underlying assumptions of the contract are that of ownership and
purchase. As a purchaser, the man is the one “in charge” of the
woman because he has paid for her. Therefore, the husband has
the authority and right to control his wife’s activities. In turn, she
must submit and be obedient to her husband.

Biological determinism further entrenches the woman’s status in

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168. See SHAHLA HAERI, *Divorce in Contemporary Iran: A Male Prerogative in Self Will*, in ISLAMIC
FAMILY LAW 55, 56 (Chibli Mallat & Jane Connors eds., 1993) (comparing and analyzing
the institution of marriage in Iran and Morocco).

169. Id.

170. Id.

171. The ICC codified the standards set by the *shar’ia*. MIR-HOSSEINI, supra note 156, at 25.
The September 1979 Special Civil Courts Act created the new religious courts, which are
presided over by Islamic Judges and empowered to deal with family disputes. Id. These new
courts replaced the family courts of the former secular government and maintained the
requirement of allowing a divorce only with a wife’s consent or, in its absence, the court’s
permission. Id. at 53.

172. MIR-HOSSEINI, supra note 156, at 57.

173. See MIR-HOSSEINI, supra note 156, at 57-58 (discussing the similarities between the
marriage contract and a contract of sale in which there is a “transfer of absolute property”).

174. See MIR-HOSSEINI, supra note 156, at 53 (reviewing the rights and obligations the
marriage contract bestows on husband and wife).

175. MIR-HOSSEINI, supra note 156, at 57.

176. See MIR-HOSSEINI, supra note 156, at 58; see also Qu’ran 4:34 (discussing the man’s right
to control what he has paid for).

177. See HAERI, supra note 168, at 58 (analyzing symbolic interaction of an Islamic marriage
contract and its implications on the status of the wife within the new marriage).

178. HAERI, supra note 168, at 58.
the marital relationship. The concept of nature creates a unique assumption of the nature, function, and status of men and women, as well as their rights and obligations to each other. The Shi'i law allows and condones polygamy, concubinage, and unilateral divorce to accommodate male sexuality. The Constitution, however, relegates women to the position of maintaining the household and obeying their husbands. In an attempt to return women to a domestic role, the Constitution's preamble places an emphasis on family and the woman's role in raising children and maintaining the family. This legally and divinely prescribed role combined with the marriage contract creates an obligation of obedience that is culturally acceptable as a social norm. When that norm is challenged, the country's legal institutions work to replace and maintain the power and control of the husband within the family.

Finally, a woman's second class status is further justified through arguments of divine decree. These arguments declare that the only way to achieve social order is through submission and obedience. When a woman is disobedient to her husband, she is considered rebellious and must be punished because her disobedience causes

179. HAERI, supra note 168, at 58.
180. See HAERI, supra note 168, at 59 (discussing the effects of biological determinism on the concept of marriage). Individuals governing the state use psychological differences to justify the existing sexual inequalities. See id.
181. See HAERI, supra note 168, at 60 (indicating that the ICC somewhat curtails a man's right to a unilateral divorce); see MIR-HOSSEINI, supra note 156 and accompanying text (discussing the legal codes and judicial procedures in Iranian family courts).
182. The preamble to the Constitution states that the family is the fundamental unit of society and women are an imperative and central figure in its protection. Constitution, supra note 5, at 11. According to the preamble, women now recover their "momentous and precious function of motherhood... [and at the same time] assume a pioneering social role..." Constitution, supra note 5, at 11-12.
183. Article 10 of the Iranian Constitution states that "[s]ince the family is the fundamental unit of Islamic Society, all laws, regulations, and pertinent programs must tend to facilitate the formation of a family, and to safeguard its sanctity and the stability of family relations on the basis of the law and ethics of Islam." Constitution, supra note 5, at 21; see also MAYER, supra note 156, at 114 (emphasizing that the family is a tool used to create programs to keep women in domestic roles and dependent on the husband).
184. HAERI, supra note 168, at 61.
185. See HAERI, supra note 168, at 61 (discussing the implications of a bride price and the connection of a woman's obedience to the payment of the bride price and future maintenance of the wife).
186. HAERI, supra note 168, at 62.
187. HAERI, supra note 168, at 62. According to the author "Islam means submission and obedience." Id. Therefore, social order is maintained if man is obedient to God, people are obedient to the supreme leader, women are obedient to their father or husband, and children are obedient to their fathers. Id. at 65. In addition, any disobedience within this chain leads to a world of chaos. Id.
disorder and chaos in society as a whole. Therefore, to avoid social chaos the Qu'ran condones and expects the husband to ensure obedience through physical means. As a result, in an Islamic state where the underlying assumptions of the laws are derived from the Qu'ran, the government can use religious edicts to justify the social and cultural norms that place women in a subordinate position.

Two key assumptions affecting the treatment of women are found in Islamic teachings: (1) the submission and obedience of all people; and (2) a man's right to do what is necessary to take possession of the object of a sale, in this case, the wife. The result is a set of religious and legal doctrines that legitimize beatings and physical violence to ensure the obedience of the woman and maintain her subordinate position in the domestic sphere.

b. Divorce

Throughout the marriage, a woman remains economically dependent on her husband, thus creating an insurmountable obstacle when she is emotionally ready and able to leave the marriage. The combination of legal, biological, and divine determinism provides men with an economic function on which women are forced to rely. The husband's authority over the woman

188. See HAERI, supra note 168, at 62; see also MIR-HOSSEINI, supra note 156 (discussing reciprocal obligations as well as those owed by one spouse to the other).

189. See Courtney W. Howland, The Challenge of Religious Fundamentalism to the Liberty and Equality Rights of Women: An Analysis Under the United Nations Charter, 35 COLUM. J. TRANSNAT'L L. 271, 377 n.169 (quoting ABUL A 'LA MAUDUDID, THE MEANING OF THE QU'RAN 321 (1971)). Maududi interprets the Qu'ran to grant men this authority with the verse "[a]s for those women whose defiance you have cause to fear, admonish them and keep them apart from your beds and beat them." Id. See also PEARL & MENSKI, supra note 167, at 182-84 (discussing actions that are considered disobedient that will result in a husband's right to withhold food, clothing, and housing until the wife obeys). Some of these disobedient acts include: "a woman who acts superior to her husband, disobeys his orders, leaves her marital home . . . without permission, works outside the home without permission, . . . [or] borrows money without the permission of a judge or her husband." Id.

190. See Howland, supra note 189, at 307 (stating that a central theme in Muslim fundamentalism is that "women harbor the seeds of destruction of all society and that to avoid this they and their sexuality must be carefully controlled").

191. See Howland, supra note 189, at 308-09 (stating that obedience requires submission to the husband in all matters, including those relating to sexual and social matters).

192. See Howland, supra note 189, at 309 ("If a wife is disobedient, a proper husband is first to 'appeal to her good sense, and if she does not improve, then he may abandon her in her marital bed. Thereafter, it is permissible for him to give her a good, but gentle, beating.'").

193. See Howland, supra note 189, at 310 (indicating that fundamentalists look unfavorably upon any economic independence for a woman because it would free her of her father's and husband's authority).

194. See Kian, supra note 159, at *5 (claiming that although the civil code grants women the right to control their property, they are still considered financially dependent on their husband).
in both public and private legitimizes his role as the breadwinner and decision-maker.\textsuperscript{195} The privileges that the \textit{shar\'ia} grants to men, and the Iranian government enforces, further justify this function.\textsuperscript{196}

In addition to economic dependence, the country's divorce laws and judicial system also strengthen the husband's control over his wife's life, freedom, and daily activities. The Iranian divorce laws and judicial system do not provide the woman with any economic support when she is the petitioner in a divorce proceeding.\textsuperscript{197} According to the Qu'ran, the husband has the unilateral right to divorce his wife at any time and without cause.\textsuperscript{198} This leaves the wife at the mercy of her husband, who can use threats of divorce as a form of coercion when the wife is "disobedient."\textsuperscript{199} While the ICC places a condition on this divine right, the husband ultimately maintains his right to revoke the marriage contract at any time.\textsuperscript{200}

Under the ICC, both the husband and wife have the right to petition for a divorce; however, for the wife, the process is more complicated and the burden much higher.\textsuperscript{201} As delineated in the \textit{shar\'ia}, the ICC accepts four types of divorce: (1) \textit{talaq}, which occurs when the husband repudiates the wife; (2) \textit{khul} and \textit{mubarat}, which the wife initiates and the husband accepts or the court orders; (3) \textit{tatliq}, which is divorce by court decree; and (4) \textit{faskh}, which is the annulment of the marriage.\textsuperscript{202}

It is the third type of divorce, \textit{tatliq}, that plays a significant role in a battered woman's ability to gain protection from the country's legal institutions.\textsuperscript{203} When a husband does not consent to his wife's request
for a divorce, she can acquire a *tatliq* through a court order.\textsuperscript{204} However, before the court considers her request, she must prove the grounds for the request.\textsuperscript{205}

The post-revolutionary Iranian marriage contract establishes several grounds for a wife-initiated divorce.\textsuperscript{206} One of the grounds includes a husband's maltreatment of his wife to the extent that the marriage is intolerable.\textsuperscript{207} Article 1130 of the ICC authorizes the courts to grant a wife-initiated divorce as long as she is able to prove that the continuation of the marriage will result in hardship or harm.\textsuperscript{208} Unfortunately, the grounds for divorce are inserted into the marriage contract as conditions and are only valid if both husband and wife sign the conditions.\textsuperscript{209}

The judicial process involved in a *tatliq* divorce also serves as an obstacle to a battered woman attempting to leave the abusive environment of her marriage. Such a petition is filed in one of only sixteen Special Civil Courts in Iran.\textsuperscript{210} In addition to the minimal number of courts available and accessible throughout the country, a woman escaping the violence in her home must also find a way to generate the money needed for the filing fee.\textsuperscript{211} Generating the filing fee, however, is difficult for many women who are not allowed to

\begin{itemize}
\item \textsuperscript{204} See HAERI, supra note 168, at 67 (discussing the barriers women face when they cannot provide sufficient responses to the threshold question involving the grounds for requesting the divorce).
\item \textsuperscript{205} While a husband can simply accuse a woman of disobedience and obtain a judicially decreed divorce without any proof, a woman must prove some type of ill treatment before she is able to get the court's attention. See HAERI, supra note 168, at 67. The author discusses a case reported in an Iranian woman's magazine, *Zan-i-Ruz*. See id. The case involved a young wife whose husband abused her and was told that she must provide evidence of the abuse before the court would issue a warning to the husband. Id. The wife first had to convince the judge that her husband was harming her before she could proceed to file for divorce. Id. In the meantime, her husband refused to consent to a divorce and filed a petition claiming disobedience on her part and refused to provide her with maintenance. Id.
\item \textsuperscript{206} For a comprehensive list of these grounds included in the marriage contract as conditions see MIR-HOSSEINI, supra note 156, at 57.
\item \textsuperscript{207} MIR-HOSSEINI, supra note 156, at 57.
\item \textsuperscript{208} See THE CIVIL CODE OF IRAN 170 (M.A.R. Taleghany trans., 1995) [hereinafter ICC]; MIR-HOSSEINI, supra note 156, at 65. Seven out of the sixteen courts are located in the capital city of Tehran. Id. This creates an accessibility obstacle for women who do not live in the city or near one of the other courts. Id. This lack of accessibility is another example of the inadequate protection of women's life, freedom, and physical dignity. Id.
\item \textsuperscript{209} See HAERI, supra note 168, at 67 (finding that men and women do not negotiate a marriage contract from a position of social, psychological, economic, or social equality). As a result, women often do not insist on the signature of the husband and validation of the conditions fearing that he will seek another wife rather than consent to the limitations of his rights and power. See id. It is reported that in a one-month period, up to 100 engagements are broken off because of disputes over these conditions. See id. (quoting an article in the IRAN TIMES, June 3, 1986, at 1).
\item \textsuperscript{210} MIR-HOSSEINI, supra note 156, at 25.
\item \textsuperscript{211} MIR-HOSSEINI, supra note 156, at 25.
\end{itemize}
work or control household finances.\textsuperscript{212}

If the woman is able to reach one of the courts, and if she is somehow able to obtain the necessary money, either through her friends or family, the case will appear in court anywhere from a few days to a few months after the application is filed.\textsuperscript{213} The proceedings are conducted informally in the judge’s chambers with no attorneys present.\textsuperscript{214} The husband and wife file separate applications.\textsuperscript{215} The wife will most likely file a petition claiming lack of maintenance, and the husband will respond or initiate a petition claiming disobedience.\textsuperscript{216}

The husband’s application, whether an initiation of divorce or a response to the wife’s request, has two purposes. First, it is intended to ensure that the court will order the dowry returned to the husband.\textsuperscript{217} Second, if the divorce is granted, the claim ensures that the court will not require the husband to provide the wife with maintenance or pay her any portion of the income he acquired during the marriage.\textsuperscript{218}

Once the applications are filed, a court clerk meets with both parties and attempts to reconcile the couple.\textsuperscript{219} This meeting occurs outside the courtroom, with the parties ordered to discuss the matter in the presence of the clerk.\textsuperscript{220} If an agreement is not reached, the couple then goes before the judge.\textsuperscript{221} This time, the judge attempts to reconcile the couple.\textsuperscript{222} If the judge fails, he assigns an arbitrator who again attempts to reconcile the couple.\textsuperscript{223} At the end of this session, the arbitrator submits a report assessing the nature of the

\textsuperscript{212} See generally MIR-HOSSEINI, supra note 156, at 25 (acknowledging that obtaining the money, transportation, and time necessary to go to court is extremely difficult when friends and family may be unwilling to help in the dissolution of a family).

\textsuperscript{213} MIR-HOSSEINI, supra note 156, at 25.

\textsuperscript{214} MIR-HOSSEINI, supra note 156, at 25.

\textsuperscript{215} MIR-HOSSEINI, supra note 156, at 25.

\textsuperscript{216} See MIR-HOSSEINI, supra note 156, at 35 (stating that the marriage contract creates an obligation of maintenance for the husband as long as the wife upholds her duties and obligations of obedience).

\textsuperscript{217} HAERI, supra note 168, at 66.

\textsuperscript{218} See HAERI, supra note 168, at 66 (indicating that at the time of the divorce, a woman has the right to keep her dowry and to receive up to one-half of the husband’s income, provided that she is not the one requesting the divorce, and the court decides that the husband’s request is not a result of the wife’s ill-temper or behavior).

\textsuperscript{219} MIR-HOSSEINI, supra note 156, at 60-61.

\textsuperscript{220} MIR-HOSSEINI, supra note 156, at 60-61.

\textsuperscript{221} MIR-HOSSEINI, supra note 156, at 60-61.

\textsuperscript{222} MIR-HOSSEINI, supra note 156, at 60-61.

\textsuperscript{223} MIR-HOSSEINI, supra note 156, at 60-61.
dispute and the possibility of reconciliation. The judge can then set a date for a hearing or start another cycle of reconciliation efforts.

The judicial process is detrimental to the safety and welfare of a battered woman who has reached an intolerable point in her home. Battered women who seek a divorce in a country like Iran believe that in order to survive, they do not have any other options. It is difficult to imagine that married women in Iran are willing to fight for a divorce simply on account of inconvenience. These women live in a country where their society and government take intentional steps, through custom and the implementation of their laws and procedures, to discourage the separation of families, reinforcing the privacy of marital and familial relationships. In spite of the stigma of divorce and the risk of losing their only source of income, their only home, and their children, these women turn to the Special Civil Courts in Iran—their only resource.

c. Custody

The judicial process is not the only obstacle affecting a battered woman’s accessibility to divorce. In Iran, divorce often equals the loss of a child, which further explains the low incidence of divorce. Custody laws, therefore, keep many women in the marriage and in danger because they are not able or willing to give up their children.

The ICC places the child’s guardianship in the hands of the father and paternal grandfather. According to the ICC, the mother has

224. MIR-HOSSEINI, supra note 156, at 60-61.
225. MIR-HOSSEINI, supra note 156, at 60-61. Article 1130 of the ICC gives the judge the discretionary power to withhold or issue a divorce requested by a woman. See id. at 67.
226. See MIR-HOSSEINI, supra note 156, at 29 (indicating that there is a social stigma attached to taking private marital conflicts into the public arena of the court). When a woman resorts to requesting assistance from the courts, it is most likely after all other attempts to resolve conflicts within the marriage are exhausted. See id.
227. In fact, since the abuse often entails a lack of maintenance in conjunction with the husband’s refusal to allow his wife to work outside of the home, a majority of female petitioners come from the popular classes where material need outweighs honor. See MIR-HOSSEINI, supra note 156, at 29; see also infra Part IV.A.2.a and accompanying notes (reviewing the effects of divorce on custody rights).
228. See supra Part IV.A.1 and accompanying notes (noting the legal structure of Iran’s family law).
229. See infra notes 230-36 and accompanying text (reviewing the ICC as it relates to child custody).
230. MIR-HOSSEINI, supra note 156, at 160.
231. See infra notes 244-94 and accompanying text (describing the struggle of women who risked losing their children when they filed for divorce).
232. See ICC, supra note 208, at 169 (stating that the “child born during marriage belongs to the husband”); see also MIR-HOSSEINI, supra note 156, at 134 (discussing custody rights in Iran
the right to keep her son until the age of two and her daughter until the age of seven. Custody is never transmitted through the maternal line and the guardianship rights of the father are incontestable. Unless the woman negotiates custody rights prior to signing the marriage contract, and includes the conditions in the contract, she has no custody claim when she seeks a divorce. Due to the ICC’s restrictive scope of custody, if a woman leaves her marriage, she must also be willing to leave her children.

Whether or not a woman is able to obtain custody will depend on the husband’s good will. To maintain control over the woman, husbands often deny a mother access to her children. The courts are unable to intervene because the shari‘a and the ICC give the husband complete authority over guardianship. Husbands are aware of these rights and unwilling to negotiate. This results in the court’s failure to facilitate agreements between divorcing couples. The combination of custody rules and the Iranian family structure makes the single mother and child unit impossible. If the woman somehow manages to obtain custody, her own family may not welcome her; and if she chooses to remarry, she risks losing her children.

Recently, Iran modified its custody laws in response to the death of a nine year old girl, Ariane, whose mother lost custody upon her

under the civil code). These rights derive from the shari‘a and the Qur’an. See PEARL & MENSKI, supra note 167, at 410-12.

233. ICC supra note 208, at 170. Article 1169 states that “[t]he Mother enjoys priority in maintenance of her child up to two years form the child’s birth; after the expiry of this period the custody is with the Father except in the case of daughters whose custody is with her mother up to the seventh year.” Id. See also MIR-HOSSEINI, supra note 156, at 154 (discussing Art. 1170 of the civil code).

234. MIR-HOSSEINI, supra note 165, at 153-54.
235. MIR-HOSSEINI, supra note 165, at 154.
236. Even if the mother is granted custody of children under the ages of two and seven, pursuant to Article 1170 of the ICC, if she remarries before the threshold age of two and seven, she automatically loses her custodianship right to the father. See ICC supra note 208, at 170; MIR-HOSSEINI, supra note 156, at 154; see also Strong, supra note 156, at 170 (stating that in practice mothers are never given custody of their children under Islamic law).

237. MIR-HOSSEINI, supra note 156, at 157.
238. MIR-HOSSEINI, supra note 156, at 157.
239. MIR-HOSSEINI, supra note 156, at 157.
240. MIR-HOSSEINI, supra note 156, at 158.
241. MIR-HOSSEINI, supra note 156, at 158.
242. MIR-HOSSEINI, supra note 156, at 196.
243. See MIR-HOSSEINI, supra note 156, at 196; see also PEARL & MENSKI, supra note 167, at 412 (stating that in a Muslim state when a mother marries a man related to the child within the prohibited degree, her child is removed from her care).
After her divorce, which was based on allegations of abuse, Ariane's mother attempted to obtain a court order granting her custody. The court ignored the mother's petition and allegations of abuse by her child's father. A few months later, Ariane died of abuse by her father and stepbrother. Following Ariane's death and subsequent public demonstrations, custody laws were modified to allow women to secure custody if they can prove that the husband is an addict, a child abuser, or has a "bad reputation." Although this reform provides women with some support for gaining custody, it still does not take into account the "best interest of the child." In addition, the woman still faces the technical and practical problems of proving one or more of these grounds.

2. Consequences of Islamic Doctrines That Place Women in a Subordinate Position

Due to the value of privacy placed on the marital relationship, gaining an understanding of the impact these laws have in a country like Iran is very difficult. The grounds used to petition for divorce and the time periods during which the petitions are filed serve as indicators of the problem's magnitude. One indicator is that women file the highest number of divorce petitions on Saturdays and Sundays—this number decreases as the week progresses. Women who spend all weekend with their abusive partners are often

244. See Kathy Evans, Challenges to Islam: Child Who Led Small Revolution in Iran, GUARDIAN, Dec. 9, 1997, at 14, available in 1997 WL 14745682 (reporting on the death of an abused girl that lead to revisions in family laws).
245. See id.
246. See id.
247. See id.
248. See id. Even with these new laws, women and children are not adequately protected because of the difficulty in prosecuting men. Neal, supra note 100, at 217 (analyzing Islamic criminal laws that require the family of the victim, who is female, to compensate the family of the murderer or assailant for the loss of the male). Ariane, for example, suffered abuse at the hands of her father and stepbrother. See id. Her father and the courts failed to protect her, and now that her stepbrother is sentenced to death, and before the sentence is carried out, Ariane's mother must pay his family to compensate them for the loss of a male relative. See id.
250. See Evans, supra notes 244-48 and accompanying text.
251. MIR-HOSSEINI, supra note 156, at 25-27.
252. MIR-HOSSEINI, supra note 156, at 25-27.
253. Thursdays and Fridays are the weekends in Iran and the workweek begins on Saturday. See Z. MIR-HOSSEINI, supra note 156, at 25 (conducting a study on the court system and its procedure in Iran and concluding that after a six-month period during which 35-70 applications were filed in the courts in Tehran, the highest number occurred after the weekend).
motivated to separate and seek protection after an incident that occurred while the couple was together for an extended time period. Stories in women's magazines also highlight the issues abused women face in a country where the dynamics of a violent relationship are not taken into account, where the woman is not protected, and where the husband has the necessary tools to maintain and increase his dominance.

In spite of these obstacles, women continue to file petitions for divorce. However, obtaining a final order or any type of maintenance is almost impossible if one of the delineated grounds for divorce is not established. Although thirty-four percent of these divorce petitions are filed on the grounds of maltreatment, this is the most difficult ground to establish and women use it only when all other grounds fail. Due to the implications of the marriage contract and divorce procedures, women who need and seek assistance and protection will not find either one in the existing legal or social structure. If and when a woman finally petitions the court for a divorce, her success or failure will completely depend on the judge's values and outlook. The judge decides what type of physical and/or mental cruelty is harmful and to whom it is harmful.

a. Mina and Fatima's Story

An example of the typical consequences of the Special Civil Court's codes and procedures is the case of Mina, a twenty-three year old woman who petitioned the court for a divorce. Mina was married

254. MIR-HOSSEINI, supra note 156, at 25.
255. See supra Part IV.A.2 and accompanying notes (discussing the court procedures for obtaining a divorce).
256. See MIR-HOSSEINI, supra note 156, at 25 (presenting data gathered from a study of divorce courts in Iran).
257. See supra Part IV.A.1.b and accompanying notes (reviewing divorce procedures in Iran).
258. See MIR-HOSSEINI, supra note 156, at 67 (presenting this as another factor contributing to the difficulty of obtaining reliable data on the number of women who have attempted to leave their husband because of abuse).
259. See infra Part IV.A.2.a-b and accompanying notes (providing examples of the lack of protection and assistance).
260. See MIR-HOSSEINI, supra note 156, at 25 (reviewing the structure of the ICC and the qualifications of the judges and clerks within the system).
261. The decision-making process is one that is completely subjective, made by judges who are trained in Islamic law and whose goal is to uphold and promote the sanctity of the family as required by the Qu'ran and the Iranian Constitution. See Constitution, supra note 5, at 11 (stating that "[t]he family is the fundamental unit of society and the main center for the growth and edification of human being .... It is the duty of the Islamic government to provide the necessary facilities for the attainment of this goal.").
262. Ziba Mir-Hosseini followed Mina's case, among several others, while conducting a study of marriage laws in Iran and Morocco. MIR-HOSSEINI, supra note 156, at 67.
for four years and had a two-year old son when she first filed her divorce petition in March of 1985.\footnote{263} In her petition, Mina claimed that her husband was a suspicious man who beat her regularly and locked her out of their home.\footnote{264} Mina stated that in February of 1984, she finally left her home and went to live with her father.\footnote{265} The first court hearing was set in June of 1985, three months after Mina filed her first petition.\footnote{266} After going through the first round of court directed reconciliation meetings, Mina decided to return to her husband, who at the time admitted to abusing his wife and in court agreed to stop the abuse.\footnote{267} One year later, Mina returned to her father's home and petitioned for divorce a second time.\footnote{268} This time her husband denied the claims of abuse and requested a court order demanding Mina's return.\footnote{269}

In response to the husband's demand, the court requested that Mina prove her claims of abuse through witnesses or medical reports.\footnote{270} Mina was not able to produce either one so the court referred the case to arbitration instead of making a final determination on Mina's request for divorce.\footnote{271} The third court hearing was set for September of 1986.\footnote{272} In the meantime, Mina's husband took their two-year old son and refused to return him to Mina.\footnote{273} However, he provided Mina with two options that would result in the return of her son.\footnote{274} Mina could have her son back if: (1) she returned back home to her husband; or (2) if she stopped her petition for dowry.\footnote{275} At this point Mina asked the court to intervene, but the court could not do so because under ICC custody law, the child belonged to the father and he could do what he liked with their son.\footnote{276} Since the court was not able to help Mina or protect

\begin{footnotes}
\footnotetext{263}{MIR-HOSSEINI, supra note 156, at 67.}
\footnotetext{264}{MIR-HOSSEINI, supra note 156, at 67.}
\footnotetext{265}{MIR-HOSSEINI, supra note 156, at 67.}
\footnotetext{266}{MIR-HOSSEINI, supra note 156, at 67.}
\footnotetext{267}{See MIR-HOSSEINI, supra note 156, at 67; supra Part IV.A.2 and accompanying notes (reviewing the divorce process). It is not uncommon for abusers to be apologetic and make promises to convince their spouses to stay or return after being beaten. Id.}
\footnotetext{268}{MIR-HOSSEINI, supra note 156, at 67.}
\footnotetext{269}{MIR-HOSSEINI, supra note 156, at 67.}
\footnotetext{270}{MIR-HOSSEINI, supra note 156, at 67.}
\footnotetext{271}{MIR-HOSSEINI, supra note 156, at 67.}
\footnotetext{272}{MIR-HOSSEINI, supra note 156, at 67.}
\footnotetext{273}{MIR-HOSSEINI, supra note 156, at 68.}
\footnotetext{274}{Mina's husband had the legal right to keep their child. See supra Part IV.A.3 and accompanying notes (discussing custody rights in Iran).}
\footnotetext{275}{MIR-HOSSEINI, supra note 156, at 68.}
\footnotetext{276}{MIR-HOSSEINI, supra note 156, at 68.}
\end{footnotes}
her from her husband's threats, Mina dropped her dowry claim to get her son back.\textsuperscript{277}

In March of 1987, the court finally reached a decision on Mina's second request for divorce.\textsuperscript{278} The court denied the divorce and ordered Mina to return to her husband's home because she had not proven the grounds for the divorce.\textsuperscript{279} On September 20, 1987, the court denied Mina's appeal, and on September 26, 1987, her husband requested an order requiring Mina to return.\textsuperscript{280} In October, she filed another petition in a different court and provided the court with a medical report indicating hearing loss due to a blow in the head, and two witnesses stating that they had seen bruises on her body.\textsuperscript{281} Her husband argued that there were no witnesses to the beatings, and thus, the court could not accept Mina's claims.\textsuperscript{282} In July of 1988, after three sessions, the court agreed with Mina's husband and once again denied the petition for divorce, reiterating that divorce is the right of the man.\textsuperscript{283} Mina exhausted her options with this court and was left with only two viable options, either of which would result in an unbearable loss.\textsuperscript{284} Her first option was to stay with her father and attempt to find employment.\textsuperscript{285} If Mina did this, she would risk losing her son again.\textsuperscript{286} Her second option was to return to her husband and risk being beaten to death.\textsuperscript{287} Neither option protected Mina's life or rights.\textsuperscript{288}

Like Mina, Fatima was also in an abusive relationship.\textsuperscript{289} Fatima married her second husband, not for love, but due to the stigma she faced as a divorced woman in the traditional Iranian society.\textsuperscript{290} Although Fatima's husband kept her in constant terror, she would

\begin{itemize}
  \item \textsuperscript{277} MIR-HOSSEINI, supra note 156, at 69.
  \item \textsuperscript{278} MIR-HOSSEINI, supra note 156, at 69.
  \item \textsuperscript{279} MIR-HOSSEINI, supra note 156, at 68.
  \item \textsuperscript{280} See MIR-HOSSEINI, supra note 156, at 69 (granting the husbands request).
  \item \textsuperscript{281} MIR-HOSSEINI, supra note 156, at 70.
  \item \textsuperscript{282} MIR-HOSSEINI, supra note 156, at 70.
  \item \textsuperscript{283} MIR-HOSSEINI, supra note 156, at 70.
  \item \textsuperscript{284} MIR-HOSSEINI, supra note 156, at 70.
  \item \textsuperscript{285} MIR-HOSSEINI, supra note 156, at 70.
  \item \textsuperscript{286} MIR-HOSSEINI, supra note 156, at 70.
  \item \textsuperscript{287} MIR-HOSSEINI, supra note 156, at 70.
  \item \textsuperscript{288} MIR-HOSSEINI, supra note 156, at 70.
  \item \textsuperscript{289} See Natasha Walter, Your Mullah Wouldn't Like It: There's a New Revolution Happening in Tehran, THE OBSERVER, Nov. 8, 1998, at 2 (reporting on the rebellion of Iranian women and the obstacles that lay ahead).
  \item \textsuperscript{290} Walter, supra note 289, at 2.
\end{itemize}
not leave him because she knew she would lose her six children. Eventually, Fatima died as a result of the customs, expectations, and laws that did not give her viable options. After Fatima's death, her sister took Fatima's husband to court where he was found guilty of her death. Unfortunately, Fatima's family had no way to pay the required compensation to his family, and the court could not compel him to serve his sentence without this remittance. Fatima's husband is now free and living with the six children that Fatima was not willing to give up to save her own life.

b. Widespread Abuse and Silence

Divorces are not always denied; but when divorce is granted, the husband is able to continue his abuse through the assistance of the laws. Custody laws allow husbands to use children to force wives to return home or to simply continue to abuse and control their ex-wives. Just to ensure that she would have no future contact with her ex-husband, one woman, whose request for divorce was granted, gave up custody and any right of access to her two—year-old son. Unfortunately, the husband did not give up so easily. Although his dowry was returned and he had full custody of his son, he found a way to maintain contact and control. On a regular basis, her ex-husband would take their son to her place of employment and would make sure that she saw her son, but not allow her to hold him. He just wanted to remind her that she could never have her son back nor hold him again.

Stories of men killing their wives, children, or in-laws and abducting their own children are commonly reported in Iranian newspapers. Silence from authorities and the general population

293. Walter, supra note 289, at 2.
294. Walter, supra note 289, at 2. See also supra note 248 and accompanying text (explaining compensation requirements for families losing a male family member found guilty of committing a crime against a woman).
296. MIR-HOSSEINI, supra note 156, at 158.
297. MIR-HOSSEINI, supra note 156, at 158.
298. MIR-HOSSEINI, supra note 156, at 158.
299. MIR-HOSSEINI, supra note 156, at 158.
300. MIR-HOSSEINI, supra note 156, at 158.
301. Nedah Agah, Justice or Injustice, 29 ZANAN MAG., at 146 (visited Jan. 11, 1999) <http://www.iran-e-azad.org/english/womenpr.html> (commenting on Iranian women's bitterness over the lack of response from authorities in cases involving the abuse and murder of women by their husbands). The author spoke with several women seeking divorce, protection,
in response to these stories are also common.\textsuperscript{292} Even women who go to the court for help do not expect much.\textsuperscript{303} One woman whose husband burned her with cigarettes stated that she did not know what she could do and that she had nowhere to go.\textsuperscript{304} Her friends and family were afraid of her husband’s reactions, hotels did not accept her as a single woman without a man in charge of her, and her husband kidnapped her children.\textsuperscript{305} She told the reporter questioning her that her only choice was to leave the country and seek refuge abroad because if she did not do so, her husband would kill her and no one would protect her.\textsuperscript{306} The remaining question is whether or not this other country she flees to will protect her or send her back.

\textbf{B. Applying U.S. Asylum Laws to Claims of Women Fleeing Islamic Countries}

The legal and cultural conditions in Iran create the perfect environment for sex-based persecution and oppression.\textsuperscript{307} The current sexual division and women’s subordination in all aspects of life create a degree of discrimination that escalates into overt persecution.\textsuperscript{308} Women are classified as the inferior sex and as second class citizens who are not protected from the oppression of male dominance.\textsuperscript{309} Until recently, women were either excluded or their participation restricted in all areas that fell outside of the private arena of the family.\textsuperscript{310} The result of this exclusion is the creation of a legal order that returns women to an isolated existence within the family.\textsuperscript{311} This new legal order controls the lives of women who were never given the opportunity to voice their views when the laws were

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and help from the court. \textit{Id.} One woman who was asked if she had started any legal proceedings against her husband responded by stating that under the current system, men are always assumed to be correct, and even if her case was investigated, it would only prolong her case and by then she “will have passed away.” \textit{Id.}

\textsuperscript{302} \textit{Id.}
\textsuperscript{303} \textit{Id.}
\textsuperscript{304} \textit{Id.}
\textsuperscript{305} \textit{Id.}
\textsuperscript{306} See \textit{Agah, supra} note 301, at 146.
\textsuperscript{307} See \textit{Neal, supra} note 100, at 254 (arguing that the current U.S. asylum framework is sufficient to allow the inclusion of women persecuted because of their sex).
\textsuperscript{308} See generally \textit{MAYER, supra} note 156, at 115.
\textsuperscript{309} \textit{MAYER, supra} note 156, at 115.
\textsuperscript{310} See \textit{MAYER, supra} note 156, at 115 (discussing the restrictions placed on women, including limitations on women’s participation in sports, education, work, politics, and government).
\textsuperscript{311} \textit{MAYER, supra} note 156, at 115.
created and implemented.  

Established Iranian court procedures, laws, and official reactions indicate that the Iranian government has refused to protect women when they initiate a divorce and seek custody of their children.  

As a result, some of these women resort to kidnapping their own children and leaving not only their homes, but also their country to find a safe place free of abuse.  

If these women are able to enter the United States, they should be permitted to make successful claims under current asylum laws based on the persecution they suffered in Iran as members of a particular social group.

1. Applying U.S. Standards to Battered Iranian Women Seeking Asylum

An Iranian woman entering the United States, either legally or illegally, should have a valid basis for asylum based on her claim of abuse. Evidence of persecution, based on her political opinion and her membership in a particular social group, provides the basis for her eligibility as a refugee.  

Based on the status and treatment of women by the Islamic Republic of Iran, a battered woman who seeks a divorce, and thereby challenges her status, is persecuted.  

She can argue that she has been persecuted by her husband, as well as her government, which failed to protect her from the actions of her husband, or directly assisted in her persecution though court order.  

An Iranian woman whose husband abuses her can present evidence proving her personal and well-founded fear of persecution based on specific events creating a reasonable fear for her life and freedom due to her government’s inactions and actions.

Two sources in particular create an acceptable framework for accepting battered women’s claims. The first source is the INS'
memorandum on the adjudication of gender-based claims. The second source is the United States Immigration Court decision in Matter of A- and Z. This framework will be applied to the situation and experiences of Mina, whose story was told earlier in this section.

The Gender Guidelines are intended to assist immigration officers in reaching accurate decisions in asylum cases brought by women. They are not intended to lower the standards for women seeking refugee status. To qualify for asylum, the applicant needs to prove that: (1) the domestic violence she suffers is not completely personal but that it relates to one of the enumerated grounds; (2) the harm she fears rises to the level of persecution as defined by the case law; and (3) there is absolutely no protection from the violence anywhere in the country of origin.

In Matter of A- and Z, the Immigration Judge ("IJ") granted asylum to a Jordanian mother and her twelve-year-old son based on her husband's abuse. Although the IJ declared the decision non-binding, his analysis serves as an example of how the Gender Guidelines should be applied, and the ways in which Iranian battered women can make credible and successful asylum claims. If INS officials and adjudicators are forced to adopt the opinions and conclusions presented in In re R-A, rather than those followed by the Immigration Judge who granted the respondent asylum and the standards followed in Matter of A and Z, countless women will continue to suffer persecution in their home countries with no hope of escape. The United States' commitment to providing refuge to

319. See Gender Guidelines, supra note 58 and accompanying text (discussing the memo).
321. See generally Gender Guidelines, supra note 58 and accompanying text.
323. Established grounds are race, religion, nationality, membership in a particular social group, or political opinion. See 8 U.S.C. § 1101(a)(42)(A) note 9 (quoting the definition of refugee).
326. Id.
327. See Matter of A- and Z, supra note 251, at 20 (declaring that "[i]f the respondent qualifies for a grant of asylum or withholding of deportation under the laws of the United States, there is no adverse precedent set—only a result with which the Service may disagree.").
328. Id.
329. In re R-A, Interim Decision 3402 (BIA 1999), available in 1999 WL 424364 (overturning the Immigration Judge's grant of asylum to a Guatemalan woman who was a victim of domestic abuse).
victims of persecution should not be mischaracterized out of a fear of the number of women who will flood the United States seeking asylum. Domestic violence is a powerful tool used to oppress women and sustain gender stereotypes that are used to control women.\textsuperscript{330} When a victim's government refuses to protect her, pursuant to international and domestic asylum and refugee law, the United States is obligated to provide her protection.\textsuperscript{331}

a. Establishing Grounds of Persecution

The harm an applicant suffers must be inflicted on her in order to punish her for possessing one or more of the protected characteristics enumerated in the statute.\textsuperscript{332} According to the Gender Guidelines, many women can claim persecution based on their political opinion, membership in a particular social group, or both.\textsuperscript{333} As discussed previously, the court in \textit{Fatin v. INS}\textsuperscript{334} concluded that a woman's disobedience of cultural norms in regard to the role and status of women in society does constitute political opinion.\textsuperscript{335} In addition, her government's reaction to the expression of these opinions can result in persecution on account of her beliefs.\textsuperscript{336}

An applicant's claim based in whole or in part on membership in a particular social group can also be defined by a combination of factors, the most important being gender.\textsuperscript{337} In defining this social group, the applicant must still satisfy the four-part test established in \textit{Sanchez-Trujillo v. INS}.\textsuperscript{338} Court decisions and UNHCR guidelines provide support for including social factors discussed above that lead to a woman's persecution. The court in \textit{Fatin} agreed that "Iranian women who refuse to conform to the government's gender-specific
laws and social norms” constitute a visible and specific group that can be targeted for persecution. In addition, the UNHCR Executive Committee recognizes and encourages a State’s adoption of an interpretation of social a group that includes women who have faced harsh and inhumane treatment as a result of the social mores of their society.

In Matter of A and Z, Judge Nejelski granted asylum based on both of these grounds. The Judge concluded that the applicant believed in Western values and acted upon them. In addition, she belonged to the social group of women who were not willing to live “at the mercy of their husbands, their society, [and] their government.” The Judge concluded that the applicant expressed what her husband believed to be unacceptable Western views because of her attempts to gain her high-school equivalency certificate. The applicant challenged the system and her husband responded by physically and mentally abusing her. According to the Judge, the applicant was targeted for abuse because she believed in the Western values of her own integrity and worth. She wanted to get an education, to have her own career, and to have control of her own life. These ideals of freedom and equality of women are political opinions that the applicant held and expressed through her actions.

339. 12 F.3d at 1241. This social group was also accepted by the court in Safaei v. INS, 25 F.3d 636, 640 (8th Cir. 1994) (accepting the identified social group of women in Iran who refuse to conform with the moral codes but concluding that the applicant did not fall within the definition).

340. See Gender Guidelines, supra note 58, at 14 (quoting the Executive Committee conclusions).


342. Id.

343. Id.

344. Id. The facts leading to this conclusion included evidence showing the following:
(1) the applicant married at the age of 18, and for 32 years, she suffered physical and verbal abuse at the hands of her husband; (2) the applicant was isolated from friends and family; (3) at times the applicant’s husband placed her under house arrest; (4) the applicant was separated from her family; (5) the applicant was not allowed to travel without her husband’s permission; (6) her husband destroyed her passport on two occasions to show his power over her; and (7) the applicant had no personal economic resources, she was not allowed to have her own bank account, and she received money at the complete discretion of her husband. Id.


346. Id.

347. Id.

348. Id.

349. Id.
posed a threat to her husband, the Jordanian society, and the government. 350

Her escape from her country, and her pleas to the judicial system both in Jordan and in the United States, allowed the applicant to prove that an identifiable social group existed and that she was a member of that group. 351 The social group was defined as women unwilling to subject themselves to gender-specific laws and social norms. 352 The applicant cannot and should not be forced to change her immutable characteristic (her gender) or her actions. 353 It was the combination of her gender, her social status, and her actions in opposition to that status that created her particular social group, which deserved protection. 354

An Iranian woman escaping her country with her child can present the same claims based on political opinion and membership in a particular social group. 355 Mina also expressed her discontent in the subordination she faced as a woman in Iran. 356 When she sought help from the Iranian Special Civil Courts, she expressed her unwillingness to conform to the social norms and the customs. 357 Mina appealed the court's decision as far as possible, and even filed a third petition for divorce in a different Special Civil Court in the hopes of finding a sympathetic judge. 358 Once it was clear that the government would not provide assistance, Mina and other women in her situation may resort to kidnapping their own children and seeking refuge in the United States. 359 Such an action, combined with a woman's pleas to the court in Iran, places her within the group of subversive women who resist codified social and religious norms, and whose behavior must be punished. 360


351. Id.

352. Id. While in Jordan, the applicant consulted a judge who asked her if her husband worked for the government and if he was powerful. Id. He then advised her to be patient and remain in the marriage. Id. Once the applicant escaped to the United States, the applicant's husband made several attempts at imprisoning the applicant if she ever returned to Jordan. Id. See also Kelly, supra note 101 and accompanying text (explaining different factors involved in defining a gender-based particular social group).

353. See supra notes 87-91 and accompanying text.

354. See supra notes 87-122 and accompanying text.

355. See supra notes 87-122 and accompanying text.

356. See supra notes 63-122 and accompanying text.

357. See supra Part IV.A.2.a and accompanying notes (recounting Mina's experiences).

358. See supra notes 262-88 and accompanying text (reviewing the court decision in Mina's case).

359. See supra notes 296-306 and accompanying text.

360. See Neal, supra note 100, at 255 (detailing some of the ramifications of violating social
b. Establishing the Existence of Persecution

An applicant who identifies a visible social group and identifies herself as a member of that group, must then present evidence proving that she faces persecution as a result of that membership. The Gender Guidelines follow the BIA precedent set in Matter of Acosta. The guidelines also accept discriminatory practices and experiences as persecution when it is shown that over time there is an accumulation or an increase in the intensity of the discrimination rising to the level of persecution.

The persecutor's intolerance of the differences between the "persecutor's views or status and that of the victim" also constitute persecution when that intolerance results in the oppression and the infliction of suffering or harm on the victim. Additionally, in determining the objective reasonableness of an applicant's well-founded fear of persecution, the courts can consider the possibility of the applicant's "continued safe and undisturbed residence in [her] homeland after the occurrence of the event which" induced the fear. Once an applicant establishes that such conditions exist and that she suffered past persecution, the courts can presume that the applicant will face similar threats if she returns.

In Matter of A and Z, the applicant established persecution based on the beatings she endured at the hands of her husband whose goal was to achieve her submission to society's cultural and religious mores. The Judge concluded that the beatings were the means by which the applicant's husband attempted to overcome her sense of norms).

361. See supra Part III.A.2 and accompanying notes (discussing the four part test established in Sanchez-Trujillo as well as the other necessary factors in establishing refugee status and the right to asylum including the subjective and objective elements of persecution).

362. 19 I. & N. Dec. 222 (BIA 1985) (interpreting persecution to include confinement, torture, threats to life, and economic restrictions that are so severe that they constitute threats to life and freedom). See also supra notes 46-62 and accompanying text (discussing definition of persecution in detail).


364. See Kovac v. INS, 407 F.2d 102, 107 (9th Cir. 1969). But see Sharif v. INS, 87 F.3d 932, 935 (7th Cir. 1996) (declining to accept harsh conditions an entire population shares or generally applicable laws as persecution).

365. Castillo v. INS, 951 F.2d 1117 (9th Cir. 1991) (adjudicating the case of a Nicaraguan seeking asylum).

366. Singh v. Ilchert, 63 F.3d 1501, 1510 (9th Cir. 1995) (discussing the requirements set in 8 C.F.R. § 208.13(B)(1)(i)).


368. Id.
individuality and deny her the basic elements of life. Likewise, Mina was economically dependent on her husband, she sought the assistance of the courts and she feared losing her child under the Islamic custody laws. Even more frightening is an abusive husband’s ability to obtain court orders forcing his wife to return to him regardless of the violence she will face. As Mina’s story demonstrates, Iran’s laws sanction and tolerate the abuse and even execution of women who do not comply with social norms. The marriage contract, the Iranian Constitution, the Special Civil Courts, and the civil code work together to subordinate and enslave women to their husbands who can murder them without fearing legal consequences.

In a country like Iran, the agents of persecution are both public and private actors. The private actor is the husband who physically abuses his wife in order to ensure her compliance and subordination. According to a 1975 BIA decision, individuals not connected with the government can be the basis of a claim of persecution when the applicant is able to show that her government, the public actor, was unwilling or unable to control the individual.

The Jordanian justice system was not willing to assist the applicant in Matter of A and Z when she attempted to divorce her husband. Furthermore, once the applicant escaped to the United States with her youngest son, she was told that her husband obtained two court orders against her: one allowing him to take her and force her to live

369. Id.
370. See supra Part IV.A.2.a and accompanying notes (discussing Mina’s story).
371. See supra notes 219-25 and accompanying text.
372. See Agah, supra note 301, at 146 (listing crimes men commit against their wives and children). These crimes included a man killing his wife and three children, a man abducting his two children, and a man burning his wife, four sister-in-law, and children. Id. See also Neal, supra note 100, at 239 (discussing the impact of Iranian laws on women).
373. See supra Part IIIA.1.a-c and accompanying text (detailing laws and practices under the Islamic regime in Iran).
375. Matter of Pierre, 15 I. & N. Dec. 461, 462 (BIA 1975) (denying asylum to a Haitian woman who claimed persecution at the hands of her husband who abused her). See also supra notes 66-72 and accompanying text (discussing the government’s unwillingness to control the persecutor).
376. Matter of A- and Z, I.J. Dec. (Dec. 20, 1994) (Arlington, VA), reported in 72 INTERPRETER RELEASES 521 (Apr. 17, 1995) (full text of decision on file with author). A judge told the applicant that a divorce would be easier to obtain if her husband consented and if he did not, then she should be patient, otherwise if she left her husband he would not be required to financially support her or the children. Id.
with him, and the other barring her from exiting the country.\textsuperscript{377}

Like the Jordanian justice system, Iran’s justice system also fails to protect women and children who face domestic violence.\textsuperscript{378} Mina’s experience is a typical example. The combination of religious interpretation, customary norms, legal codes and religious judges created a system that denied Mina the right to divorce her abusive husband.\textsuperscript{379} In an attempt to remedy her “private matter,” Mina left her husband’s home and sought a judicial divorce.\textsuperscript{380} The consequences of her actions were the loss of her dowry, the loss of her child, a court order denying her a divorce, and finally, a court order forcing her to return to the man who physically abused her.\textsuperscript{381}

It is often argued that women like Mina can get protection and safety in other parts of their own country and that they do not need international protection.\textsuperscript{382} According to the UNHCR Handbook, when analyzing this factor, adjudicators must also consider whether, as a factual matter, protection was available in other parts of the country, in the law of the country, and whether, under all circumstances it would be reasonable to expect a woman to seek residency elsewhere in her own country.\textsuperscript{383} Once again, Mina’s story demonstrates that protection is not available for most women in any part of the country. After Mina’s first proceeding concluded, she tried to obtain a divorce in another court in Tehran, but once again was denied that right.\textsuperscript{384} Once again her husband’s unilateral right to divorce and custody was reinforced.\textsuperscript{385}

The Islamization of Iran created a Judiciary designed to conform the law and its administration with the standards of the \textit{sharia}.\textsuperscript{386} These changes eroded due process and injected arbitrariness in the justice system.\textsuperscript{387} The consequences of these changes are apparent in

\begin{itemize}
\item \textsuperscript{377} \textit{Id.} The order barring the applicant’s departure was obtained while she was still in Jordan so she had to be smuggled out of the country. \textit{Id.}
\item \textsuperscript{378} \textit{See supra} Part IV.A.2.a-b and accompanying text (discussing stories and reactions of several women seeking court ordered divorce or assistance).
\item \textsuperscript{379} \textit{See supra} Part IV.A.2.a-b and accompanying text.
\item \textsuperscript{380} \textit{See supra} Part IV.A.2.a-b and accompanying text.
\item \textsuperscript{381} \textit{See supra} Part IV.A.2.a-b and accompanying text.
\item \textsuperscript{382} \textit{Matter of Acosta,} 19 I. & N. Dec. 211 (stating that applicants must generally demonstrate that the danger of persecution exists nationwide). When private actions result in persecution evidence must be provided showing that the government does not offer protection or redress nationwide and that the risk of harm extends nationwide. \textit{Id.}
\item \textsuperscript{383} \textit{Refugee Handbook, supra} note 81, at para. 91.
\item \textsuperscript{384} \textit{See supra} Part IV.A.2.a-b and accompanying text.
\item \textsuperscript{385} \textit{See supra} Part IV.A.2.a-b and accompanying text.
\item \textsuperscript{386} \textit{MAYER, supra} note 156, at 28.
\item \textsuperscript{387} \textit{See MAYER, supra} note 156, at 28; \textit{see also} Part IV and accompanying notes (reviewing the
the stories of the women who are not able to obtain divorces or custody of their children.388

The government's reinforcement of a husband's rights and a wife's duties and obligations supports and becomes a part of the persecution husbands inflict on women.389 Through violence, the husband maintains his wife's subordinate status and suppresses her political opinions.390 When she takes any opposing action, she becomes a member of an identifiable group that is further subjected to violence.391 Violence and stigma are attached to women who cannot maintain their family matters privately.392 This is done to bring her into conformity with society's laws, norms, and social mores, even if it leads to separation from her children or to her death.393 Women in these situations do not have many options, as is evidenced by the reported stories.394 When an opportunity presents itself that leads her and her children to safety in the United States, she should not be forced to return to the country that just ordered her to return to the man who may eventually kill her.

V. RECOMMENDATIONS

The persecution that women face in Iran and other Islamic countries derives from laws that are directed at them because of their gender.395 Islamic countries claim to adhere to the basic tenants of human rights as the Qu'ran dictates.396 However, Islamic human rights relating to the principles of equal protection are modified and implemented in such a way as "to accommodate forms of discrimination mandated by tradition and by pre-modern rules of Islamic law... [under the assumption] that it is possible to have equal protection under a law that itself mandates unequal treatment."397

Islamization process occurring in Iran beginning in 1979). Although Article 34 of the Iranian Constitution declares the right to seek justice in competent courts and the right to access to these courts as indisputable rights, these factors are not reality for the battered woman who seeks help from courts in Iran. Constitution, supra note 5, at 29.

388. See supra Part IV.A.2 and accompanying notes (telling the stories of Iranian women).
389. See supra Part IV.B.1 and accompanying notes.
390. See supra Part IV.B.1 and accompanying notes.
391. See supra Part IV.B.1 and accompanying notes.
392. See supra Part IV.B.1 and accompanying notes.
393. See supra Part IV.B.1 and accompanying notes.
394. See supra notes 262-88 and accompanying text.
395. See supra Part IV and accompanying text.
396. See MAYER, supra note 156, at 89-90.
397. See MAYER, supra note 156, at 89.
These laws encourage and maintain women's subordination, thereby creating an identifiable and distinct social group in need of assistance. Currently, the BIA's narrow interpretation of a particular social group does not allow women who encounter violence to make successful claims. Instead, Immigration Judges are forced to make the facts fit into one of the other specific grounds of persecution. When a Judge finally decided to grant an abused woman asylum in Matter of A- and Z, he also declared the decision nonbinding to ensure that his conclusions and his opinions would not serve as precedent. Although the Immigration Judge limited the impact of his analysis, he was still unwilling to base his conclusion on the sole basis of the applicant's membership in a particular social group. Instead, he interpreted her actions as expressions of political opinion and stressed her husband's status in Jordan. When another Immigration Judge appropriately and accurately applied the Gender Guidelines to the claim of a battered woman from Guatemala, the BIA reversed the decision and once again adopted a restrictive interpretation of membership in a particular social group. Although asylum can be based on more than one ground, a battered woman should not be required to present evidence of actions that could be interpreted as political beliefs. It should be sufficient for women, like Mina and Fatima, to present evidence of unequal protection under the laws of their country, leading to violence and discrimination that rise to the level of persecution.

Equal protection is emulated and endorsed throughout international law. For instance, Article 7 of the Universal Declaration of Human Rights states that "[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law." When a nation's laws reinforce patterns of discrimination and inequality resulting in different treatment of similarly situated

398. Bower, supra note 72, at 190.
399. See Bower, supra note 72, at 190 (arguing for the recognition of violence against women as persecution on bases of particular social group).
400. Bower, supra note 72, at 190.
402. Id.
404. Id.
405. See supra notes 148-50 and accompanying text (discussing the BIA decision in In re R-A-).
persons, the equal protection principle is violated.\textsuperscript{407} When this violation results in the infliction of harm and suffering on women, then it is the duty of all nations to provide refuge for these women and their children. The United States should follow the framework Gender Guidelines initiated and precedent set in the Ninth Circuit, rather than the BIA's analysis in \textit{Matter of R-A}-. Women like Mina and Fatima should be allowed to make successful asylum claims based on their membership in a particular social group as it is defined throughout this Comment.

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\textsuperscript{407} MAYER, \textit{supra} note 156, at 88.