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Table of Contents

Editor's Introduction

Cover story:

**Feminist Jurisprudence and a New Perspective; Culture and Gender** 5

Siffat Khan

**Women's Situation in Afghanistan in 2012** 15

Nasim Rahmani

**Australia's leadership in Asia – Conscious Capitalism** 18

Diann Rodgers-Healey

**Safe at Home, Safe at Work Campaign** 21

Ludo McFerran

## Editor's Introduction

Siffat Khan's article, *Feminist Jurisprudence and a new perspective: Culture and Gender* is insightful and thought provoking as it steers a deeper appreciation of feminist perspectives and analyses their influence on legal reform.

Khan's questions challenge on many fronts: What role do legal institutions play in gender and gender reform? How does gender influence the law? How are such questions analysed through the different strands of feminism? What issues ensue for legal justice if one makes gender the single axis of differentiation between men and women? Does the legal system allow women to make autonomous decisions in raising issues of domestic violence? Should the law have a cultural understanding of the role of women in a society? What gender competencies should those in the judiciary and justice system have for judging men and women?

Khan's 'new perspective' based on her analysis is a valuable contribution to the legal profession and to considerations for the post modern feminist.



*Siffat Khan*

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She has a special interest in the way that legal systems are affected by patriarchy and cultural bias. She provided volunteer services as a student advisor to the Legal Advice Centre Queen Mary University of London. She is currently on the threshold of commencing her career as a barrister. She lives in Fiji.

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## **Feminist Jurisprudence and a New Perspective; Culture and Gender** **By Siffat Khan**

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*"To be a feminist ... is to believe that we belong to a society, or even civilisation, in which women are and have been subordinated by and to men, and that life would be better, certainly for women, possibly for everybody, if that were not the case"<sup>1</sup>.*

The idea behind feminism is simple. That idea is that we as women deserve the same advantages as men in both the private and public realms.

Feminism is a broad topic, covering social, political, economic and philosophical schools of thought. For the purposes of this article, I will discuss feminism in the context of legal jurisprudence. This article will focus on difference feminism, and the disadvantages which surround other strands of feminist thought when making gender the centre of analysis.

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<sup>1</sup> Dalton. C. (1988) "Where We Stand: Observations on the Situation of Feminist Legal Thought" 3 Berkeley Women's Law Journal 1-13, Page 2.

This article will question whether laws which purport to promote gender equality are of substance rather than of form, particularly when it comes to protecting the rights of women holding different cultural identities. Since we live in a dynamic and diverse world encompassing many different cultures and backgrounds, do concepts like feminism and culture work well together? And if they do, do the laws on feminism and cultural sensitivities adequately recognise the inequalities which result from the interaction between these two very different concepts?

### **I. The Feminist Legal Agenda**

Feminist discourse has developed over centuries, so it would be a mistake to believe that feminism drew only from intellectual debate in the 1960s and 1970s. Some argue that even Plato was a feminist. He said that “... differentiation between gender should be based on difference of talent and not on the difference of sex”<sup>2</sup>.

Feminism has however come a long way since Plato. It was the different strands of feminism which contributed to those in the justice system and those holding political power, to question the way in which the law has come to view women. An example would be sex discrimination law, which developed as a central part of civil rights law<sup>3</sup>. Legislators have discovered that neutral language does not always reflect the inequalities between men and women in society. O'Donovan argues that sex-neutral language only encourages institutions like the judiciary to interpret neutral language in light of their own beliefs about gender roles<sup>4</sup>. An example would be in family law, where “although spouses come neutrally and equally before the divorce court, there is a ready prescription about their gender roles”<sup>5</sup>.

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<sup>2</sup> Plato (540C 5-9) et al “Plato's Philosophy of Sex” accessed 10<sup>th</sup> October 2012 (<http://users.ox.ac.uk/~jrlucas/libeqsor/platsex.html>)

<sup>3</sup> Penner, Schiff and Nobles (2005) “Introduction to Jurisprudence and Legal Theory: Commentary and Materials” Oxford University Press, New York, page 780.

<sup>4</sup> O'Donovan. K. (1985) “Sexual Divisions in Law” Weidenfeld and Nicholson, London, pages 79-80.

<sup>5</sup> Penner, Schiff and Nobles (2005) “Introduction to Jurisprudence and Legal Theory: Commentary and Materials” Oxford University Press, New York, page 784.

The relationship between feminism and legal language is important when it comes to ensuring that justice is done. Terms such as 'date rape', 'domestic violence' and 'sexual harassment' are a result of the acknowledgement of wrongs done to women, which brings about a broader public consciousness in that inequalities stem from both the public and the private realms<sup>6</sup>. Arguably, there is no divide between the public and private anymore in the justice system. If justice is said to be done, then laws must impact a woman's life in both the public and private spheres.

### **III. The Shortcomings of the 'Autonomous Individual' and the 'Objective Viewpoint'**

'The autonomous individual' is the term which liberal feminists heavily propagate, meaning that women are 'self made creatures'<sup>7</sup>. This would be ideal if all women were completely isolated and removed from all forms of social context. We as women however, do not live in a vacuum. We live in different social contexts with principles, values and morals which come into contact with others. Therefore, liberal feminists often fall victim to "making gender the single axis of differentiation" between men and women<sup>8</sup>. Can we separate sexual difference from one's whole identity, which includes age, race, religion and/or disability<sup>9</sup>? When one suffers discrimination as a woman of colour, can one really tell whether the source of that discrimination is prejudice in relation to gender, or whether it is in relation to religion, or colour? Are stereotypical beliefs different in relation to women of different cultural backgrounds? In my view, they can be markedly different. Do the media portray Muslim women as women who are invariably in a hijab, subject to the constant fear of honour killing? Is the media-generated image of women of Anglo-Saxon origin different, and more empowered? What then is the effect of such an image on the ability of Muslim women, or Anglo- Saxon women to access social services, jobs and promotions? Gender discrimination and differences cannot be assessed or studied in isolation. Culture, religion and colour affect the way we see ourselves, and the way others see us. Discrimination is rarely based on a single ground of prejudice. Orientalism may affect the Asian

<sup>6</sup> Naffine. N (2002) "In Praise of Legal Feminism" 22 Legal Studies 71-101.

<sup>7</sup> Nedelsky. J (1989) "Reconceiving Autonomy: Sources, Thoughts and Possibilities" 1 Yale Journal of Law and Feminism 1-36.

<sup>8</sup> Cornell. D (1995) "The Imaginary Domain: Abortion, Pornography and Sexual Harassment" London, Routledge.

<sup>9</sup> Penner, Schiff and Nobles (2005) "Introduction to Jurisprudence and Legal Theory: Commentary and Materials" Oxford University Press, New York, page 788.

woman's relationships with her employer. Women of other cultures will have their own cultural prejudices to deal with. How is the law to protect against the combination of prejudices?

Some radical feminists insist that the law reflects only the male agenda and perspective, and that legal reasoning reinforces men's' power over women. They argue that the objective legal viewpoint which is perpetuated in the law is male and does not reflect the female perspective since women do not occupy positions of power in order to change these laws<sup>10</sup>. Catherine Mackinnon is of the view that women should be treated like men, in that women should also meet the male norm in the law<sup>11</sup>. There is an argument however, as to why the masculine is the norm women should revert to in the first place<sup>12</sup>. Rather than focussing on women being treated exactly like men, we should ensure that women's reasoning is adequately reflected in the law<sup>13</sup>.

However it can be said that placing gender as the sole axis of differentiation, divorces the feminist approach from reality. This is because laws should substantively protect and empower women in their different spheres of life. The justice system must always be able to reform itself in order to implement a greater gender justice.

There has been an academic shift away from the strands of liberal and radical feminism to difference feminism, and arguably the laws too should reflect difference feminism.

### **III. Difference Feminism; An Introduction**

Difference feminism engages in "multiple identities and subjectivities"<sup>14</sup>, which critiques the liberal model of "gender neutrality" and instead embraces the differences between men and women in order to produce true equality from a realistic standpoint rather than taking a 'one size fits all' approach' to structuring laws.

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<sup>10</sup> Ibid.

<sup>11</sup> Cornell, D (1993) "Transformations: Recollective Imagination and Sexual Difference" Routledge, London, pages 141-142.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid, Page 813.



Anthony Robbins said "The difference in people is how they reason"<sup>15</sup>. So perhaps it is time that we allow for laws to reflect the different reasoning processes which men and women employ. How differently do men and women reason?

#### **IV. Kohlberg's Study**

A famous study conducted by Kohlberg shows how moral judgements in the law, confirm differences in legal reasoning when it comes to men and women. In this case study, young 11 year olds (Amy and Jake) were both placed in a scenario of a character named Heinze. In this particular scenario, Heinze considers whether or not to steal a drug which he can not afford to buy in order to save his wife's life. Jake and Amy were asked separately whether Heinze should steal the drug. Jake took a clear position of valuing the priority of life over the value of property and stated that Heinze should steal the drug. Amy on the other hand, answered by considering first how the theft could impact the relationship Heinze would have had with his wife. Amy therefore initially attempted to solve the problem by using the values of "human connection". Amy concluded by stating that Heinze should attempt to get the sympathy of the pharmacist towards Heinze's dilemma and to provide the drug, provided that Heinze would reimburse the money owed to the pharmacist at a later date. Failing that, Amy also suggested that Heinze should appeal to others who may be able to help his wife.<sup>16</sup>

What can we deduce from Kohlberg's study? Women speak a different voice, which would therefore result in different legal solutions. A failure to recognise this difference would result in an incorrect assumption in the law, that there is only a single solution to any given legal problem<sup>17</sup>. We must in no way assume that ALL women will share the same response as Amy, otherwise we will run the risk of being 'essentialist'. The idea that we can take away from Kohlberg's study is that the views of women should be reflected in the laws and in the justice system, since they are valid in their own right and reflect the different perspectives which we as human beings contribute.

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<sup>15</sup> Robbins. A (2012) from "A Seminar on Unlimited Power" accessed on 10<sup>th</sup> October 2012 ([www.quoteswise.com/anthony-robbins-quotes-5.html](http://www.quoteswise.com/anthony-robbins-quotes-5.html))

<sup>16</sup> Gilligan. C (1982) "In a Different Voice" Harvard University Press, Massachusetts, pages 25-31.

<sup>17</sup> Penner, Schiff and Nobles (2005) "Introduction to Jurisprudence and Legal Theory: Commentary and Materials" Oxford University Press, New York, page 820.

Let us consider the possible ways of including different approaches to the problem of domestic violence. Traditional law decided that in an assault case, the victim either gave evidence against the perpetrator (which would generally lead to punishment for the perpetrator) or withdrew her complaint, thus leading to a dropping of the case. A different approach which has found its way into the laws of many countries is to ask what the real problem is, and to find a solution tailored to the problem. If the problem is violence in a family, as a result of patriarchy, then a better solution is to find a non-conviction based result. This is where the victim does not have to give evidence but where the courts must seek to achieve a greater balance of power within the family. This then is more likely to lead to less violence being used in that family. Whether this is by ordering restraining orders with non-contact conditions or whether it is by making orders that the perpetrator pay urgent monetary relief to the victim, depends on the individual needs of the parties.

Such a regime is less likely to lead to a one size fits all agenda, and is far more sensitive to individual needs than the traditional legal approach of “charge the perpetrator or reconcile with him”. These laws provide evidence that differential feminist thinking can have a closer and more real relationship with gender justice.

#### **V. Difference Feminism, Gender and the Female Identity**

It is almost impossible to set universal and neutral standards, given that no woman is identical<sup>18</sup>. In a multicultural and diverse world, cultural factors play an increasingly important role when it comes to the decisions women make in different contexts.

Should feminism reflect the intersection between race, religion, culture and gender? Critics would argue that stereotypes would thereby be perpetuated, in that there may be a belief that culture is a characteristic exclusively available to women of colour, when in fact people of all ethnicities have a culture<sup>19</sup>. There may also be a risk of stereotyping all women of any one culture.

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<sup>18</sup> Young, I (1990) “Justice and the Politics of Difference” Princeton University Press, Princeton, pages 163-166.

<sup>19</sup> Penner, Schiff and Nobles (2005) “Introduction to Jurisprudence and Legal Theory: Commentary and Materials” Oxford University Press, New York, page 839.

However, an intersection between feminism and culture may occur in the justice system thus creating a danger that the justice itself perpetuates culture or gender prejudice. For instance, often in some traditional cultures, community leaders are male and may provide a conservative and patriarchal account of their culture when being placed before a court of law<sup>20</sup>. Another example would be if a man testified that he raped a woman due to genuine belief in the women's consent as a result of cultural or religious practices specific to him, which could very well lead to a resurgence of patriarchy in the justice system<sup>21</sup>. This is because an honest and reasonable belief in consent is a defence to rape in most countries.

Importing a dialogue between the law, religion, race and culture should be used with discretion. This is because such a dialogue could result in patriarchy and gender stereotyping, the two very monsters which feminism intended to destroy in the first place. In Okin's words, "We must not let toleration for diversity run amok"<sup>22</sup>.

Culture and gender are related because women do not live in isolation. A cultural understanding of the role of women in a society is important for the law to understand the relationship between a particular woman and her conduct. However, such an understanding must never make assumptions about all women within that culture or those who are affected by it.

Cultural understanding is crucial to difference feminism, but must never lead to the de-humanising of women within any culture. How could such an understanding lead to a greater justice? The law on rape includes a rule of evidence that a woman who is raped may give evidence of a recent complaint about that rape. The rule is of course open to much criticism, because it is based on the "hue and cry" prejudice, that a woman who has not cried rape was not raped at all. However, while we live within a justice system that does have this rule of evidence; a cultural competence will help the judge understand what is "recent" in a complaint. In some traditional cultures, talking about sexual intercourse is taboo between fathers and daughters, brothers and sisters. If this is so, and a victim waits for three weeks before she tells her teacher at school, an understanding of the intersection between culture and

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Okin, S. M (2002) "Mistresses of Their Own Destiny: Group Rights, Gender and Realistic Rights of Exit" 112 Ethics 205-230.

gender roles will help the court to understand why she waited to complain. For the purpose of understanding the evidence of this particular rape victim, that understanding becomes necessary.

### **A New Perspective**

We live in a pluralistic world. Human beings have different values, morals, ethics, roles and identities. When in doubt about which guiding concept we should use in order to structure our laws, the overarching principle of 'justice' removes agenda, politics and inequality. As Cicero said, "Of all these things respecting which learned men dispute there is none more important than clearly to understand that we are born for justice, and that right is founded not in opinion but in nature."<sup>23</sup> Excluding an entire perspective from the law solely based upon gender or culture is simply unjust.

Feminism as a whole has contributed to political and legal discourse. Liberal feminism has been useful in the sense that it focuses on the importance of human beings as individuals in their own right, separate from a larger whole<sup>24</sup>. This is a forward looking concept, since women should be able to make decisions and excel in their own right.

Human beings however interact not only with other human beings, but with their own identities. Emotions of love and care exist as part of a family or even a society. Women will therefore inevitably be put into situations where different views, values, principles and norms will interact with their own 'self made' identity. It is therefore the duty of all free thinkers to refrain from becoming slaves to the idea that women are naturally obliged to accept their subordination to others when it comes to a larger unit such as the family, the workplace or society. Liberalism is therefore not completely lost in feminism, since liberal politics play their useful role in promoting equal worth and respect for women.<sup>25</sup>

### **Looking Ahead**

Jackson asserts that by approaching this issue conceptually, the question arises of when women have to make a choice between autonomy and interdependence. A further difficulty arises when we

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<sup>23</sup> Cicero, De Legibus 11, 4, 10. Viewed on 14<sup>th</sup> October 2012 (<http://www.quoty.org/quote/2644>)

<sup>24</sup> Nussbaum. M. (1999) "Sex and Social Justice" Oxford University Press, Oxford, pages 9-11.

<sup>25</sup> Ibid.

incorporate culture into this analysis. How can a woman exercise choice without falling victim to patriarchy? The answer is about a woman exercising meaningful choice. Joseph Raz's definition of autonomy is that a person must not only be given the ability to choose, but also to be provided with an adequate range of choices. The role of the law should be to ensure that women are able to exercise this ability.<sup>26</sup> New domestic violence and family laws often aim to provide such choices.

The first aim to which the laws should aspire to is that external constraints should be removed from laws to allow women to make truly autonomous decisions<sup>27</sup>. This is as much about economic power as it is about effective access to justice. How does a woman who is financially dependent on the perpetrator of violence, autonomously decide that she does not wish to complain about his violence? The law must set about removing her dependency in order to achieve autonomy.

The second would be for the law to provide resources and services for women to assist themselves in making educated decisions<sup>28</sup>. Examples would include community legal services which would promote women's interests, more government resources to legal aid and making judicial appointments available to women generally and women of ethnic minorities so as to ensure a balanced, representative and fair judicial system. A gender balanced judiciary creates a picture of a judiciary which is less patriarchal and less suggestive of male created barriers to equal justice.

Thirdly, safeguards must be placed in the form of gender competence training for those in the judiciary and justice system for men and for women. This must include an understanding of the relationship between culture and gender.

Finally, laws also need to take into account inherent gender inequalities. Such an example would be in the reporting of domestic violence cases to the police, where it should be mandatory for police to get a restraining order for the abused women. Failure to do so would result in disciplinary action against the police. To that end, laws should also reject the possibility of reconciliation in domestic violence cases. Real reconciliation can only be achieved when we have the ability to make truly autonomous decisions.

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<sup>26</sup> Jackson. E. (2001) "Regulating Reproduction: Law, Technology and Autonomy" Hart Publishing, Oxford, pages 850-852.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

To conclude, when developing new laws, reformists and governments would do well to understand how feminist perspectives have changed the reform agenda in the last 50 years. However, very little work has been done to consider how laws affect the right to access justice by women of different cultures.

Similarly, very little work is done to make judiciaries gender and culturally competent. A challenge for all legal systems and judiciaries is to understand how the law can be interpreted and imposed without entrenching patriarchy and racial prejudice. This challenge is also one for the post modern feminist.



*Nasima Rahmani*

Nasima Rahmani is a Lecturer of Law and the Director of the Women's Empowerment Center (WEC) in Gawharshad Institute of Higher Education (GIHE) in Kabul, Afghanistan. Her personal story in Afghanistan has been challenging, from both a family and professional perspective. She took 12 years to complete her law degree from 1991 – 2003 with a gap of 9 years due to internal conflicts in Afghanistan. Upon her return to Afghanistan she worked with ActionAID on women's rights providing access to paralegal support to women in the provinces. In March 2011, she visited Australia sponsored by ActionAID to promote their work. She has subsequently visited a number of countries by invitation to attend gender equity and human rights conferences. In 2011 Ms Rahmani was asked by Professor Sima Samar, the Independent Human Rights Commissioner in Afghanistan, to open the Women's Empowerment Centre (WEC) at the Garwashad Institute of Higher Education (GIHE). She is building a substantial scholarship program at GIHE and the [Indigo Foundation](#) in Australia.

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## Women's Situation in Afghanistan in 2012

By Nasima Rahmani

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Since the fall of Taliban, women's life is improved a lot in Afghanistan. It could be said that due to the presence of the international community and deep interest of donor countries in women's status, so much is achieved in the last decade, but major intervention has happened in Kabul and other big cities. 85% of Afghan women who live in rural areas have gained little from the opportunities enjoyed by women living in major cities, mainly in Kabul. Women's situation is particularly poor in the areas of education and literacy, protection against violence, health care facilities, economic productivity and public participation.<sup>1</sup>

### **Education:**

Women's education has faced significant obstacles in Afghanistan, yet there have been enormous gains since 2001 at the primary education level. In the early years after the fall of the Taliban,

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<sup>1</sup> NAPWA, (National Action Plan for Women of Afghanistan), Overview of the Women's Situation, page 6

education was a top priority for the government and donors. Much of the donor focus was on getting children back into school. However, there still remain various challenges which need to be tackled to provide women with education facilities. In rural areas, millions of girls are missing an education due to lack of schools, security barriers, lack of female teachers, poverty, and cultural obstacles. The situation goes from bad to worse in higher education, as women comprise only 22% of the students currently enrolled in public universities and higher education remains a dream for young women in most of remote provinces due to a lack of higher educational institutions.

**Violence against Women and Access to Justice:**

Women in Afghanistan continue to suffer wide spread discrimination, abuses and domestic violence, the causes of which are rooted in the country's customs and traditions, weakness of the rule of law, and lack of knowledge and awareness about the rights of women guaranteed by national and international laws. The frequent unjust treatment of the victims of violence deter people from reporting cases of violence and violations of women's rights and a culture of impunity benefits the perpetrators. In addition, a shortage of female judges and prosecutors in the provinces discourages women from reporting incidents.

**Health Care Problems Affecting Women:**

Access to health facilities are to some extent improved for women living in the major cities, in particular, Kabul. However, the situation remains catastrophic in rural areas and remote districts. Afghanistan is ranked as one of the countries with the highest maternal mortality rate. Frequent pregnancies often prevent Afghan women from pursuing an education or from taking part in economic activities.

**Economic Conditions and Women's Issues:**

The majority of Afghan women do not have income-raising opportunities. Their main activities are unpaid agriculture labour, livestock management and family care giving. Due to severe poverty in rural areas, most families are now open to allowing female family members to undertake economic activities outside the home as long as these activities are provided through women-supervised services. However, apart from limited short term projects offered by some NGOs, there are no such opportunities available.



**Women' Public Participation:**

There are numerous challenges to women's presence in the public life. Cultural barriers and security and safety concerns come first. While some reports talk about decrease of security problems compared to the past years, several reported and unreported incidents happened to NGO workers, activists, journalists and government employees.



Life under a Freeway in Mumbai - 2011

## Australia's Leadership in Asia - Conscious Capitalism

By Diann Rodgers-Healey

India's growing attractiveness with its younger demographic and its growing wealthy middle class has recently captivated Australia.

*The Australia in the Asian Century White Paper*<sup>A</sup> a roadmap to guide Australia to become a more prosperous nation in the region does to a certain extent reflect<sup>B</sup> on the unequal distribution of wealth in Asia: "living standards in China, India and ASEAN on the whole, remain considerably lower than those found in Australia and that South Asia, in particular, has the world's largest concentration of poor people, with more than 1 billion people living on less than \$2 a day."

A <http://asiancentury.dpmc.gov.au/white-paper>

B <http://asiancentury.dpmc.gov.au/issues-paper/what-is-happening-in-asia>

More broadly, the OECD<sup>C</sup> and the WorldBank<sup>D</sup> indicate that whilst the Indian economy grew at a robust pace since its economic liberalization in 1991, achieving significant reduction in poverty, this was also associated with a rise in inequality. The benefits of economic growth were concentrated in urban areas, thus widening the rural-urban gap.

Today, poverty is still prevalent in India. In 2010, the World Bank<sup>E</sup> stated that 29.8% of the Indian population fall below the international poverty line of US\$ 1.25 per day.

India's gender balance in economic participation and entrepreneurship remains among the lowest in the world<sup>F</sup>.

The divide grows vigorously. A study<sup>G</sup> found that between 1996 and 2008, the wealth holding of the Indian billionaires increased from 0.8% of GDP to 23%, before declining to 14% in 2010. Forbes in 2012<sup>H</sup> showed that 48 of the 1,153 billionaires are from India, accounting for a little over 4 percent of the total.

The *Corruption Perceptions Index*<sup>I</sup> which ranks countries and territories according to their perceived levels of public sector corruption on a scale of 0 - 10, ranks India a with a score of 3.5. The issue of corruption resonates in other Asia countries with scores between 0 and 4 predominating.

The issue of poverty also resonates in Asia. Despite, many of the world's fastest growing economies are located in Asia, Asia is home to two-thirds of the world's poor and more than 60% of the world's undernourished population.

With the majority of the region's poor living in rural areas, the Asian Development Bank<sup>J</sup> urges that a key challenge to reducing poverty is rural development. It adds that rural economic growth and stable food prices, are crucial in developing countries, where a "spike in prices could catalyze greater hardship and social instability."

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C <http://www.oecd.org/eco/48108317.pdf>

D [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/05/02/000158349\\_20120502150008/Rendered/PDF/WPS6055.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/05/02/000158349_20120502150008/Rendered/PDF/WPS6055.pdf)

E <http://www.data.worldbank.org/country/india>

F [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2012/10/15/000158349\\_20121015135312/Rendered/PDF/wps6228.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2012/10/15/000158349_20121015135312/Rendered/PDF/wps6228.pdf)

G Walton, M (2010). Inequality, Rents and the Long-run Transformation of India, Working Paper, KSG, Harvard University;

[http://isbndb.com/d/book/perspectives\\_on\\_poverty\\_in\\_india\\_stylized\\_facts\\_from\\_survey\\_.html](http://isbndb.com/d/book/perspectives_on_poverty_in_india_stylized_facts_from_survey_.html);

H [http://www.forbes.com/billionaires/list/#p\\_1\\_s\\_a0\\_All%20industries\\_All%20countries\\_All%20states\\_](http://www.forbes.com/billionaires/list/#p_1_s_a0_All%20industries_All%20countries_All%20states_)

I <http://cpi.transparency.org/cpi2011/results/>

J <http://www.adb.org/sites/default/files/pub/2012/food-security-poverty.pdf>

Yashwant Sinha, a former finance minister observes that carrying out economic reforms despite political consequences is the challenge for India: "... there is no consensus on economic reforms within the various political parties and across the political spectrum... Every government, therefore, adopts a minimalist approach and does only what is pressing and unavoidable... Economic reforms have no doubt brought economic growth, prosperity, increased per capita income and improved living conditions, but these benefits have not been shared widely amongst the people and regions of the country. Economic reforms have only accentuated regional disparities, income disparities and caste and class disparities.<sup>K</sup>" According to Sinha, shifting the concentration of the planning process on the village rather than the individual is a solution.

For Grameen Bank Founder and Noble Prize winner Muhammad Yunus<sup>L</sup> "Social Consciousness Driven Companies<sup>M</sup>," a perspective "missing in economic theory", does provide "an opportunity of solving the problems that we see around us." Bangladesh is still one of the poorest countries in the world, with tens of millions of people living at a level barely above subsistence where Inequality has changed only from 0.30 in 1995 to 0.31 in 2005. A "Social Business" works according to Yunus because it is a business that is sustainable where investors are sacrificing personal profit, as they are not interested in making money, but in the impact of their business in people's lives.

It is clear that Australia is at the threshold of shaping its identity to capitalise on a "tsunami of new spending power building on our doorstep<sup>N</sup>." As Australia begins to plan its increased involvement in our unique region, will its vision for economic prosperity be underlined with a social consciousness, a consciousness of regional systemic disadvantage and how it can partner with Asian countries to contribute to enhanced growth that is inclusive?

Will its role in making our region a better place for all, also define Australia in the Asian Century?

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K Sinha, Yashwant, January 9 2012. Reforms and the Great Divide: Economic reforms have only served to widen disparities of region, income and class. For political parties, the risk is in carrying them out, not in avoiding them. India Today (Cover story)

L <http://www.muhammadyunus.org/Articles-by-Prof.-Yunus/the-problem-of-poverty-in-bangladesh/>

M <http://www.muhammadyunus.org/Speeches/social-business/>;

<http://www.muhammadyunus.org/Speeches/7th-nelson-mandela-annual-lecture/>

N <http://www.theage.com.au/opinion/political-news/ambitious-goals-will-demand-big-change-20121029-28dso.html?skin=text-only>



*Ludo McFerran*

Ludo McFerran is the Project Officer for the Domestic Violence Workplace Rights and Entitlements Project, of the Centre for Gender Related Violence Studies at the University of New South Wales. This Project was funded by the Commonwealth Department of Education, Employment and Workplace Relations. The project informs Australian unions and employers about domestic violence issues in the workplace, and promotes the introduction of domestic violence provisions in enterprise. More information and resources is at [www.dvandwork.unsw.edu.au](http://www.dvandwork.unsw.edu.au)

## The Safe at Home, Safe at Work Campaign

### By Ludo McFerran

The past thirty years have seen a profound transformation in public awareness of the problem of domestic violence. Once seen as a private family matter, violence in the home is now recognised as serious human rights abuse.<sup>i</sup> Domestic violence is a social problem and it is also an industrial issue, affecting people getting to work, doing their job and staying safe. It is an issue that requires action by multiple stakeholders, and increasingly, governments, unions and employers are recognising the part they can play.

The 2011 National Domestic Violence & the Workplace Survey<sup>ii</sup> of around 3600 Australian workers found:

- 30% of respondents had experienced domestic violence over the course of their lifetime;
- of those who had experienced domestic violence, nearly half reported that it affected their capacity to get to work due to physical restraint, hiding/stealing keys or transportation money, refusal/failure to show up to care for children
- 19% reported the violence had impacted them in the workplace, most commonly via abusive calls and emails, or the abusive person showing up at work
- the overall impacts on victims included feeling distracted, tired or unwell, having to take time off and being late to work

There are various ways that impacts of domestic violence can affect work performance and safety, even jeopardising whether a person can hold onto their job. Yet we know that paid work can be a vital pathway out of violent relationships, giving victims a financial base to recover and move on with their lives.<sup>iii</sup> In addition, the workplace can be a safe place for people to seek assistance and support, away from their abuser.<sup>iv</sup>

Safe at Home, Safe at Work aims to secure domestic violence clauses through collective bargaining and for the inclusion of domestic violence provisions into Australian employment and discrimination legislation. Since 2009, a project team, based in the Centre for Gender Related Violence Studies at the University of NSW, has been actively working with unions, government and large employers to promote the introduction of domestic violence leave and other entitlements into Australian workplace conditions, to enable those affected by violence to be supported and stay safe at work. Strong support for these measures has come from the Australian Council of Trade Unions (ACTU), the Australian Government<sup>v</sup> and from the Australian Human Rights Commission.

As a result of the bargaining process thus far, over 700,000 Australian workers have access to dedicated, additional paid family / domestic violence leave and other provisions. There are 7 key principles endorsed by the ACTU for domestic violence workplace protections: dedicated paid family and domestic violence leave, confidentiality, protection against adverse action, workplace safety planning, referral to domestic violence professionals, trained contact people in the workplace and access to flexible work arrangements.

Initial monitoring of domestic violence clause implementation reveals that workers feel relieved to be able to discuss their experiences frankly with their managers and explain why their work is being impacted. Support from the workplace has enabled and empowered workers to take necessary legal steps to protect themselves.

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- i World Health Organisation (2005) Multi-country Study on Women's Health and Domestic Violence Against Women, Summary report: initial results on prevalence, health outcomes and women's responses, p1; Mitchell L (2011). Domestic Violence in Australia - an overview of the issues, Australian Parliamentary Library background paper, p37.
- ii Australian Domestic & Family Violence Clearinghouse (2011) Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey, available: <http://www.dvandwork.unsw.edu.au/research>.
- iii Costello M, Chung D & Carson E (2005) 'Exploring alternative pathways out of poverty: making connections between domestic violence and employment practices' Australian Journal of Social Issues vol 40, no.2, pp253-267; Swanberg J, Macke C & Logan T (2007) 'Working women making it work: intimate partner violence, employment and workplace support', Journal of Interpersonal Violence, 22(3), 292-311.
- iv Braaf R & Barrett Meyering I (2011), Seeking security: promoting women's economic wellbeing following domestic violence, Australian Domestic & Family Violence Clearinghouse, Sydney, p85.
- v Safe at Home, Safe at Work is funded by the Commonwealth Department of Education Employment and Workplace Relations.