

Child Custody Evaluation: Domestic Violence & Cultural Contexts in Asian Families

Tip Sheet from Asian Pacific Institute on Gender-Based Violence

Introduction

As domestic violence allegations have surfaced more frequently in custody-litigating families, child custody evaluation has become increasingly challenging, and competing paradigms and research claims have contributed to gender bias in the process. The volume of unrepresented litigants has also strained the system. For legal and social service advocates serving domestic violence victims, mitigating gender bias in the system is essential.

Concerns that gender inequality is not adequately understood in the context of domestic violence are borne out by custody procedures that seem to privilege fathers over abused mothers in applying the 'best interests of the child' standard. In fact, the presence of domestic violence tells us about the presence of inequality in a relationship; the extent of the abuse tells us about the extent of the inequality. Domestic violence is a systematic pattern of abusive behaviors that includes physical battering, coercive control, economic abuse, emotional abuse and/or sexual violence. It is intended to gain or maintain power and control over a romantic or intimate partner to intimidate, frighten, terrorize, humiliate, blame or injure. Domestic violence is more than a series of incidents. It is about living in a climate of fear and disempowering restrictions that threaten and affect one's selfhood, psychological well-being, health, economic security, and the physical and emotional labor of parenting.

To provide guidance on identifying intimate partner violence and examining the effects on children, parenting and co-parenting, the Association of Family and Conciliation Courts, in 2016, published [*Guidelines for Intimate Partner Violence: A Supplement to the AFCC Model Standards of Practice for Child Custody Evaluation*](#), which we strongly recommend to all evaluators and advocates. This Tip Sheet identifies the differing dynamics of domestic and family violence in Asian homes and how a deeper understanding of these cultural contexts can guide and improve practice in child custody evaluations when there are allegations of domestic violence.

1. Culture is more than ethnicity; culture is context.

Culture defines the spaces within which power is expressed, gender and other relations are negotiated, and traditions are re-designed. There are three intersecting cultures that affect everyone because we all have cultural identities: a societal culture of violence that makes domestic abuse, sexism, and the devaluation of women normative; the culture of ethnic communities that enforce gender roles; and the culture of systems that domestic violence victims/survivors and their advocates have to contend with. Culture is responsible for how domestic violence is viewed, but it is used by communities and families as a convenient excuse or justification for abuse, or as encouragement to racial stereotyping by systems. Domestic violence must be understood within these intersecting cultural contexts for professionals to design meaningful interventions that acknowledge how survivors negotiate the barriers and gateways in these three domains of culture.

2. Domestic violence is gendered; it is not gender-neutral.¹

Women are disproportionately affected by gender-based violence. The Centers for Disease Control report the following lifetime prevalence rates: 1 in 5 women and 1 in 71 men have been raped, 1 in 4 women and 1 in 7 men have experienced severe physical violence by an intimate, and 1 in 6 women and 1 in 19 men have been stalked.² A compilation of community-based studies estimates domestic violence prevalence rates at 21-55% for Asian women.³ In a 6-year period, 160 Asian intimate homicide cases resulted in 226 fatalities; 83% of perpetrators were men.⁴ In many Asian communities, women who use physical violence and coercive control usually target other women, i.e., their daughters-in-law or sisters-in-law. Asian families that subscribe to very traditional ideas of women's role and place in society compound the gender inequality that domestic violence is rooted in. Professional neutrality is imperative: it does not, however, mean overlooking the disproportionality of women's victimization.

3. Assess if physical violence includes abuse by in-laws.

The dynamic of multiple perpetrators against a single victim is present in some Asian families (similar to elder abuse in all communities). So, in addition to her husband, a woman's mother-in-law, father-in-law, sisters-in-law and/or brothers-in-law may abuse her—employing a range of violent, coercive, and/or controlling tactics.

- (a) *Do not assume there is no domestic violence because the intimate partner is not abusive.*
Battered women may be viewed as denying, minimizing or not co-operating because a professional's questions assume the intimate partner is the batterer.
- (b) *Explicitly gather additional information about who other abusers are.*
Systems may respond inadequately, given a lack of understanding or training about multiple batterers. Practitioners, therefore, should rely on getting this information directly because it may not appear in regular documents such as police or medical reports.
- (c) *Do not assume that accompanying female or male relatives are part of a support system.*
Greater family collusion accompanies multiple abusers. Male or female relatives from the extended family or the family of origin are not necessarily a battered woman's allies or friends. Even if they are not actively violent, they may collude with the other abusers.
- (d) *Do not assume that the paternal extended family home serves the best interest of the child.*
Children who have witnessed maternal abuse perpetrated by members of the extended family can be fearful of them – the level of exposure and its impacts need to be assessed by evaluators.

4. Identify if emotional abuse includes 'push' factors that coerce women to leave the relationship.

Asian women may more frequently experience 'push' factors out of a relationship than 'pull' factors that draw her back into the relationship—signaled, for example, by an abuser's apology/contrition. Push factors by abusers (e.g., 'get out; I never wanted you anyway') constrict autonomy and decision-making. Women experiencing push factors early on in the relationship will not be in a position to make decisions, and what may look like an inexplicable decision, e.g., to leave without her children, could in fact be a

¹ Given the differing dynamics of domestic violence prevalent in many Asian communities, this Tip Sheet does refer to mothers as the victims of domestic violence - recognizing that that may not always be the case.

² Centers for Disease Control. *National Intimate Partner and Sexual Violence Survey (NISVS)*. Atlanta: 2010.

³ Yoshihama M, and Dabby C. *Facts & Stats Report: Domestic Violence in Asian and Pacific Islander Homes*. Oakland, CA: Asian Pacific Institute on Gender-Based Violence, Updated 2015.

⁴ Dabby C, Patel H, and Poore G. *Shattered Lives: Domestic Violence, Homicides & Asian Families*. Oakland, CA: Asian Pacific Institute on Gender-Based Violence, 2009.

function of push factors exerted by a single batterer and reinforced by multiple batterers. This framework means that professionals can better understand the context for a survivor's poor decision-making skills, lack of agency, difficulty at asserting autonomy, and/or anger at being pushed out of her home.

5. Evaluate how maternal authority and child safety are compromised by multiple abusers.

An extended family home may be viewed as a better environment for children, but multiple abusers in the home have increased children's exposure to domestic violence and their access to maternal nurturing. Mothering in an abusive extended family home can be severely undermined by multiple perpetrators and maternal decision-making inhibited by push factors. Custody evaluators should identify these factors pre-separation to assess for them in post-separation parenting arrangements and scrutinize paternal and familial allegations of child abuse, neglect or abandonment against the mother, in light of multiple abuser dynamics. In addition, because multiple individuals collude to give the same story of maternal culpability and paternal scrupulousness, the credibility of mothers, and even their children, is jeopardized or dismissed. Professionals should assess the effects on children exposed to domestic violence by multiple perpetrators within the extended family.

6. Consider a range of sexual violence perpetration.

In a study that interviewed 143 domestic violence victims, 56% of Filipinas and 64% of Indians reported sexual violence by an intimate.⁵ Asian women's experiences of sexual coercion and violence can include being forced to watch and mimic pornography, bodily humiliation/body shaming, forced (*contra* arranged) early marriage, being forced to marry one's rapist, and/or sexual harassment or assault by male in-laws. Asian women's reluctance to discuss sexual violence may be stereotyped as prudery, but it is influenced by the tight nexus of visiting shame on the family through public disclosure, by significant histories of sexual abuse (sexual violence starts early in all cultures⁶), and by victim-blaming attitudes from communities and systems. Given these cultural contexts, professionals cannot limit their inquiry to intimate/marital rape and need to build a repertoire of sensitive questions to gather a sexual violence history.

7. Be alert to abuses that exploit victims' immigration status and refer them to immigration lawyers/services.

Asian immigrant women face particular vulnerabilities when their immigration status is insecure. Most often, they fall out of status because abusers make false declarations to immigration authorities, refuse or delay filing paperwork that converts temporary status (e.g., a 3-month fiancée visa) to permanent residency, or hide important documents like birth certificates or passports so they cannot prepare their own applications. Abusers may threaten deportation and loss of access to children if mothers report domestic violence, abandon mothers abruptly in their home countries or the U.S., or severely isolate them from family and friends. Domestic violence victims might behave compliantly in the mistaken belief that their immigration problems will be resolved, and that at least they will not be forced out of the country and permanently lose access to their children. Practitioners should collaborate with or refer immigrant battered women to programs that help them obtain legal relief through U-Visas.

⁵ Yoshihama M, Bybee D, Dabby C, Blazeovski J. *Lifecourse Experiences of Intimate Partner Violence and Help-Seeking among Filipino, Indian and Pakistani Women: Implications for Justice System Responses*. Washington, DC: National Institute of Justice, 2011.

⁶ In the United States, almost half of female victims experienced their first rape before age 18, and a quarter of male victims were age 10 or younger.

8. Do not accept culture as an explanation for domestic violence or as a barrier to solutions; sometimes, a gender lens is more applicable.

When someone justifies domestic violence by claiming “this is how women are treated in my culture,” what is being described is the culture of patriarchy, the culture of gender oppression, the culture of sexism. Cultures of patriarchy differ from place to place and in how rigidly they are maintained over time—the culture of patriarchy on an army base in Kentucky is different from the culture of patriarchy in rural Chile, or in metropolitan London, etc. Cultural explanations of domestic violence can help professionals understand how tightly prescribed and rigid gender relations are within the community, how their interventions will challenge conventional practices, what battered women are up against (e.g., tradition requires silence), and what risks they may encounter (e.g., from disclosure).

Because we are talking about domestic violence, a gender lens is at times equally or more illuminating than a cultural one. For example, a rural shelter frames an Indian woman’s reluctance to use common bathrooms as a function of her cultural attitudes to nudity and contrasts them to American women’s attitudes to nudity. The more appropriate question is: what would any abused woman in this situation want? (privacy for sure); and not whether an Indian woman’s attitude to nudity impinges on her ability to shower in front of others. Practitioners should ascertain if the lens of gender answers a question or suggests a solution more effectively than the lens of culture.

9. Use an understanding of cultural differences to prompt better interventions, rather than confirm or sensationalize stereotypes.

Clearly, whilst domestic violence is a universal phenomenon, the cultural expressions of it differ, and some types of violence can be more horrific than others based on what people are exposed to in their own culture. For example, burning a woman to death may seem more disturbing than shooting her dead, and our cultural stereotypes step in to confirm this view, but in fact both acts are equally awful. If practitioners do not adequately guard against cultural biases, they might risk misunderstanding their client’s narrative. So in the above example, asking if a batterer has threatened to use a gun does not rule out homicide risk by other means. While it is not possible to understand or learn all cultural contexts, it is possible, as professionals, to be trained and guided by best practice standards that mitigate cultural bias.

10. Considerations in serving clients with Limited English Proficiency (LEP)

(a) **Interpretation:**⁷ Arrange for professional in-person or telephonic interpreters for parties with limited English proficiency for all meetings and interviews. Allow extra time for each session to familiarize yourself and all parties on how to work with an interpreter. The same applies to working with sign language interpreters for a deaf client. Do not have adult or child family members, friends, or other bilingual individuals interpret for a client—especially not an alleged abuser. Such practices can violate practitioner-client confidentiality. Fluent bilingual professionals can, of course, practice in a foreign language (and produce a report in English).

(b) **Test Instruments:** Standard psychological tests for individuals with limited English proficiency are contra-indicated. They would require every item to be sight translated and every response interpreted from the foreign language to English—introducing unknowable degrees of error and jeopardizing the integrity of assessment methods and test result validity.

⁷ To learn more on interpretation (‘translation’ refers to rendering *written* text from one language into another), go to <http://www.api-gbv.org/download/InterpretationResourceGuide-Updated2016-ByAPI-GBV.pdf>

(c) **Bias:** Immigrant or refugee individuals who lack proficiency in English should not be considered uneducated (most people are, after all, educated in the language of their home county) or disadvantaged at parenting, and greater credibility should not be attached to more acculturated, English-speaking fathers and extended family members.

For training and technical assistance on child custody evaluation and Asian families, contact info@api-gbv.org.



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