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Case Analysis: *Minister for Immigration and Multicultural Affairs v Khawar*

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The judgment of the High Court of Australia in *Minister for Immigration and Multicultural Affairs v Khawar* ostensibly represents a victory for Mrs Khawar and her three daughters specifically, and for the female victims of domestic violence in foreign states more generally, in providing recognition of their persecution as a legitimate ground for foreign state protection. Behind this outcome, however, the judgment is more problematic. The majority judges — Gleeson CJ, McHugh and Gummow JJ and Kirby J — differ in the reasoning they apply to bring Mrs Khawar's circumstances within the terms of the Refugee Convention and the *Migration Act 1958* (Cth). Gleeson CJ finds in favour of Mrs Khawar. However, he bases his reasoning upon the presumption that the acts of violence are private. He is able to bring her claim within the definition encapsulated in the refugee Convention and enacted within the *Migration Act 1958* only by deeming the non-intervention of the state agents to be systemic discrimination against women. Kirby J avoids relying on the masculinist presumption that the persecution of Mrs Khawar is 'private'. He engages specifically with the brutal reality of the criminal acts perpetrated against her by her husband and his family in Pakistan, and recognises the need to consider the socially constructed context within which these acts of persecution occur. For Callinan J dissenting, reliance upon the private nature and motivations of the marital 'disharmony' suffered by Mrs Khawar places her claim beyond the reach of the state's international obligation to provide asylum to victims of persecution in a foreign state.

State control over territorial borders has assumed an increasing significance in the globalised international forum. In the Australian context, it is both a contentious and topical issue. The case of *Minister for Immigration and Multicultural Affairs v Khawar*[1] seems, *prima facie*, to be concerned with this issue of state border control, and the related question of when a right to remain in a foreign state may be granted to a non-citizen satisfying the legal criteria of 'refugee'. The judgment of the High Court of Australia ostensibly represents a

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[1] [2002] HCA 14 (11 April 2002), hereafter *MIMCA v Khawar*.

victory for Mrs Khawar and her three daughters specifically, and for the female victims of domestic violence in foreign states more generally, in providing recognition of their persecution as a legitimate ground for foreign state protection. Beneath this surface, however, the judgment is more problematic, obscuring the role of legal methodology and jurisprudence in maintaining and legitimating a patriarchal status quo privileging male power over women, all the while employing a rhetoric of justice, neutrality and objectivity. Mrs Khawar's claim — and indeed the claims of all women to justice as freedom from gendered oppression and violence — is tenuous in this legal narrative.

Background to the High Court Case: *Minister of Immigration and Multicultural Affairs (MIMCA) v Khawar* [2002]

Mrs Khawar and her three daughters arrived in Australia from Pakistan in 1997, lodging applications for protection visas in September of that same year. The ground upon which they were seeking asylum was that the failure of the authorities in Pakistan to protect Mrs Khawar from repeated domestic violence and attempts upon her life by her husband and his family constituted systematic discrimination or persecution of female victims of such violence. The Department of Immigration and Multicultural Affairs refused the visa applications. The Refugee Review Tribunal ('the Tribunal') subsequently affirmed the Department's decision.[2] It held that, even if the claims of abuse were true (although it did not make a determination with respect to this), the application must fail as the persecution alleged by Mrs Khawar occurred in a familial context and related to personal factors within her marriage. The alleged failure of the state authorities to respond to her appeals for protection could not be construed as state-based 'persecution', and did not occur as the result of her membership of a particular social group, however constituted.[3]

Mrs Khawar appealed to the Federal Court, where Branson J overturned the Tribunal's decision, holding that it had made two significant errors of law: first, in its interpretation of the Refugee Convention definition of 'refugee' as incorporated into the *Migration Act 1958* (Cth), and second in failing to make findings on certain matters of fact, including whether the alleged abuse had occurred, and the reality for women in Pakistan based upon a number of international reports. The minister appealed to the Full Court of the Federal Court, which dismissed the appeal by a majority.[4] The minister then appealed to the High Court.[5]

In the High Court, Gleeson CJ outlined the issues for determination as follows:

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2 For summaries of the findings of the Refugee Review Tribunal, see *MIMCA v Khawar* per Gleeson CJ para 13 and per Callinan J paras 135–45.

3 A number of attempts were made to formulate possible social groupings from 'women' to 'women in Pakistan' or even 'married women in Pakistan'. See particularly *MIMCA v Khawar* per Callinan J paras 151 to 156.

4 Mathews and Lindgren JJ, Hill J dissenting.

5 Gleeson CJ, McHugh, Gummow, Kirby and Callinan JJ.

1 Whether the failure of a country of nationality to provide protection against domestic violence to women, in circumstances in which the motivation of the perpetrators of violence is private, can result in persecution of the kind referred to in Article 1A(2) of the Refugee Convention.[6]

2 Whether women (or for present purposes women in Pakistan) may constitute a particular social group within the meaning of the Convention.[7]

Applying varied reasoning in three separate judgments, the majority of the High Court answered both questions affirmatively.

Viewing *MIMICA v Khawar* through the Lens of Feminist Legal Scholarship

Feminist legal scholars have criticised the role of legal methodology and characterisation in maintaining the invisibility of women's concerns within society.[8] Their questions remain pertinent in this instance. Catharine MacKinnon asks: 'What is state power? What is the law for women? Can law do anything for women? Does how the law is used matter?'[9] Mari Matsuda sees the attainment of justice via law as crucial, asking: 'What is justice and what does the law have to do with it?'[10] These questions cannot be answered simply by considering the potentially favourable outcome in *MIMCA v Khawar* in isolation from its narrative. A more detailed scrutiny and analysis of the text is warranted. There is much more than a discourse on state sovereignty, citizenship and membership taking place.

Law has multiple objectives and functions, only one of which is the attainment of justice. Legal discourse creates a 'normative universe, a hermeneutic linking society with its future visions'.[11] It is 'a resource in signification that enables us to submit, rejoice, struggle, pervert, mock, disgrace, humiliate or dignify.'[12] Within this narrative, judges select and privilege meaning from among the competing alternatives. Feminist legal scholars have argued that the presumptions inherent in legal discourse locate women within an abstracting, objectifying narrative that is removed from their lived experiences of subjugation and oppression. Their reality is consequently discounted or ignored. Where such experiences cannot be accommodated within the existing legal categories, they are rendered invisible. This minimisation and discounting of their lived experiences is in itself a form of oppression and subjugation.[13]

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6 *MIMCA v Khawar* per Gleeson CJ para 5.

7 *MIMCA v Khawar* per Gleeson CJ para 6.

8 See, for example, Graycar (1996); Graycar and Morgan (1990).

9 MacKinnon (1989), p 159.

10 Matsuda (1996), p 6.

11 Cover (1992), p 101.

12 Cover (1992), p 100.

13 Graycar (1996), p 79.

This minimising and objectifying discourse is explicit in the court's judgment in *MIMCA v Khawar*. The High Court, while not ignoring the plight of Mrs Khawar, nonetheless strives to fit it within the constraints of the legal definition of 'refugee' incorporated in the *Migration Act 1958* (Cth), which provides that a criterion for the granting of a protection visa is that the applicant is a non-citizen, to whom Australia has protection obligations under international law. The state's right to border control is pre-eminent in this discourse. The special plight of women as refugees[14] is not a central concern, nor is the attainment of justice for abused women the pre-eminent motivation.

The *Migration Act 1958* (Cth) grants formal equality to the sexes. The paternalism of the state, extending its benevolence and protection to the dependant refugee, is ostensibly available to any person, male and female alike. Gendered inequality is rendered invisible. The danger of this legislative sleight of hand is that it fails to recognise that the conditions applying to women may not mirror those of the masculine context in which they were formulated.[15] It also legitimates axiomatic presumptions, notably those which characterise the violence suffered by Mrs Khawar as 'domestic', and belonging to the private realm of the family and intimate relations. As such, it is beyond the reach of the state and hidden from the public world of civil society. This axiom forms the basis of the appeal by the minister. It is accepted almost unproblematically by the High Court. In the dissenting judgment of Callinan J, this analysis of the violence as private places Mrs Khawar's claim beyond the reach of the municipal law such that there is 'no nexus between the harm ... suffered at the hands of her husband [and his family] and the convention ground of membership of a particular social group'.[16]

The Dissenting Judgment of Callinan J

Callinan J affirms the view of the Tribunal and endorses the dissenting judgment of Hill J in the Federal Court that 'the reason for the infliction of harm upon her is her husband's family's anger and shame that he should marry [her] for love, when [she] brought no dowry to the family, and he was already engaged to be married to a relative'.[17] He concludes that this 'disharmony'[18] was not 'influenced by her failure to carry out any role expected of women in Pakistani society',[19] but rather can be attributed *solely* to the fact of her marriage to him against the wishes of his family, given that her husband's family 'disliked her personally'.[20] The contradiction inherent in this reasoning is plainly evident when Callinan J states that Mrs Khawar *herself* conceded the

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14 For a detailed discussion of this, see Spijkerboer (2000).

15 MacKinnon (1989a), p 163.

16 *MIMCA v Khawar*, per Callinan J para 140.

17 *MIMCA v Khawar*, per Callinan J para 145.

18 *MIMCA v Khawar*, per Callinan J para 141.

19 *MIMCA v Khawar*, per Callinan J para 141.

20 *MIMCA v Khawar*, per Callinan J para 140.

personal and privatised motivations for the violence by putting forward, *inter alia*, the following as contributing factors:[21]

- her inability to produce a son;
- the absence of a dowry;
- her moral character (unexplained and unelaborated upon in the text); and
- her status as her husband's property.

His conclusion that these are not a result of her membership of a particular social group comprised of Pakistani women, or perhaps married Pakistani women, is surprising, and ignores the explicitly gendered and socially constructed bases of her plight. It is difficult to see how the 'fact' of her inability to produce a son and her status as her husband's 'property' can be understood as having only personal and not culturally and socially constructed significance. As Kirby J observes, this constitutes a failure to recognise that the same depersonalising characterisations would not be attributed to a man. Callinan J concludes that the fact of her 'vulnerability as woman in an abusive relationship may have contributed to the *reluctance* of the police to assist her',[22] and evidences in his judgment a misguided paternalistic protectionism.

Callinan J's narrative provides support for the truth of MacKinnon's proposition that the 'state is male jurisprudentially',[23] and as such deprives women of a voice by excluding them from the public domain and relegating their problems to the 'private' domestic realm. This is further evidenced in his endorsement of Hill J's rejection of Mrs Khawar's abuse as constituting 'persecution' on the grounds that Australian women who are victims of domestic violence face a similar difficulty due to the 'lack of enthusiasm in the authorities'[24] to come to their aid ... [and] it would not be suggested that the state is, or for that matter the police (as state agents) are, persecuting those women in Australia'.[25]

Yet this very argument has been *precisely* the focus of feminist scholars and activists in highlighting the problem of relegating male violence against their intimate female partners to the private sphere.[26] It is this argument which has provided impetus for the establishment of women's refuges, founded calls by women for changes to public policy and legislation in response to the reality that the home is not necessarily a haven for women, but rather is often 'a distinctive sphere of intimate violation and abuse [when] men's realm of private freedom [from state intervention] is women's realm of collective subordination'.[27] From this viewpoint, the 'objective masculine standpoint of the law' is so pervasive and dominant that 'it does not appear as a standpoint at

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21 *MIMCA v Khawar*, per Callinan J para 142.

22 *MIMCA v Khawar*, per Callinan J at para 152.

23 MacKinnon (1989a), p 163.

24 *MIMCA v Khawar*, per Callinan J at para 149.

25 *MIMCA v Khawar*, per Callinan J at para 149.

26 See, for example, Graycar (1996), p 80, discussing this issue in the context of the law's response.

27 MacKinnon (1989a), p168.

all'.[28] The allegedly apolitical and gender-neutral language of legal jurisprudence allows men to dominate women and children, and the law's role in women's oppression is obscured, allowing an implicit complicity in the perpetuation of violence against them.[29] These same gendered assumptions are present also in a number of the majority judgments, despite the favourable outcome for Mrs Khawar.

The Judgments of the Majority: Gleeson CJ and Kirby J Compared

The majority judges also generally accept as a legal presumption that the abuse perpetrated upon Mrs Khawar is 'domestic' and privately motivated. Gleeson CJ, relying on this presumption, avoids coming to the same conclusion as Callinan J, however, by asserting that the state has a legitimate role of intervention in the family when it purports to have in place laws governing the protection and enforcement of human rights. Refusal to uphold them, or non-action by state agents, can be construed as selective law enforcement comprising systematic discrimination. This can potentially be viewed as 'persecution', as defined in the Refugee Convention and enacted in the *Migration Act 1958* (Cth). Where the selectivity is directed towards women as a group, then there is nothing in either the Convention or the Act that would preclude the group from fitting the requisite criteria for 'membership of a particular social group'. As Gleeson CJ notes, 'it is power *not* number that creates the conditions in which persecution may occur'.[30] Gleeson's judgment weaves Mrs Khawar's claim into the narrative of state rights to border protection weighed against its international obligations, while avoiding any need to confront the consequences of his characterisation of the alleged violence as private.

While the Chief Justice's judgement provides a 'victory' for Mrs Khawar, it remains problematic. It renders the future prospect of surrogate protection for non-citizen women in a foreign state uncertain. Where violence against women by their husbands or intimate partners is not illegal or against public policy in their own state, or where it *is* but the non-response by the state is due to corruption,[31] incompetence and ineptitude,[32] maladministration[33] or lack of resources,[34] then there is no mandate for intervention, and correspondingly no ground for the granting of asylum by a foreign state. This construction, privileging state rights, allows continuing economic exploitation, domestic slavery, enforced reproduction, physical abuse, silencing, disenfranchisement

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28 MacKinnon (1989b), p230.

29 Graycar (1996).

30 *MIMCA v Khawar*, per Gleeson CJ para33. Cf the judgment of Callinan J para 153, where he disputes the possibility that Pakistani women constitute a 'particular social group'.

31 *MIMCA v Khawar*, per Gleeson CJ para 25.

32 *MIMCA v Khawar*, per Gleeson CJ para 26.

33 *MIMCA v Khawar*, per Gleeson CJ para 26

34 *MIMCA v Khawar*, per Gleeson CJ para 25.

and exclusion from public life[35] to remain invisible in the international forum. The ostensible neutrality and objectivity of the rule of law (formal equality for all persons before the law) and the formalist jurisprudence of the judiciary obscures the social construction of the private/public divide. As MacKinnon aptly notes, the epistemological becomes the ontological[36] without exposing its masculinist underpinnings, or the consequences for women. The state, as a masculinist entity, reproduces and maintains 'the power of men over women in the home ... in the bedroom ... in the street, throughout social life'[37] unproblematically.

Deconstructing the Legal Narrative

Is there an answer to this dilemma, a methodology for refocusing the jurisprudential lens to expose women's inequality and oppression? It seems that, for such an outcome to be possible, a number of conditions must be met:

First, there must be a realisation that the state is neither monolithic nor located in a single site. Rather, it is a diffuse web of socially constructed power relations that may serve to reinforce and reproduce inequality in multiple locations. On this view, the divide between the public and private realms occurs in a multiplicity of forms and relationships. In *MIMCA v Khawar*, the characterisation of the violence against Mrs Khawar as 'domestic' and personally motivated informs her relationship with the executive arm of the government through the minister and the Tribunal, and is also the basis of the minister's judicial appeal. It is mirrored and reinforced by the generally unproblematic acceptance of this presumption by the High Court. It also informs the lens of the Australian state as focused upon another foreign state.

Carol Pateman's[38] analysis of the public and private distinction in liberal jurisprudence provides a necessary and illuminative tool for deconstructing the High Court's judgment and exposing the weaknesses inherent in failing to recognise the diffuse multiplicity of power relations between the state and its subjects. It is not safe to assume that addressing any single aspect will guarantee a concomitant weakening of the hermeneutic of the privacy of the home and family as distinct from the public sphere. In this light, the fragility and uncertainty of the victory for Mrs Khawar, and for other female victims of violence, becomes disconcertingly apparent.

Pateman argues that the gendered divide between the public and private spheres remains vital in contemporary liberal ideology, the dominant language of legal discourse.[39] Drawing on the theories of Hegel, she postulates a duality in the public/private divide. On one hand, there is the division between the public state and private enterprise. It is this distinction that perhaps motivates the conclusion that women in Australian society can no longer claim to be

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[35] MacKinnon (1989a), p 160.

[36] MacKinnon (1989b), p 230.

[37] MacKinnon (1989a), p 169.

[38] Pateman (1989).

[39] Pateman (1989).

oppressed or have an unequal social status. From this standpoint come the assertions that women have attained the right to participation in the workforce. They have achieved recognition of their role as mothers in entitlement to welfare support as sole parents or parenting allowances for low-income families. They can choose, therefore, to participate in the economic life of civil society or to take on the role of mother, or even choose dual roles, having the best of both worlds. This perhaps provides a rationale for the statement by Callinan J that the ambivalence of Australian police to male violence against women does not constitute persecution, but rather provides examples of sporadic failure or minor aberrations in an otherwise equal society.

Pateman cautions against prematurely drawing such conclusions, noting the 'double separation of the private and the public'.[40] The *class-based* division between civil society and the state is only one of the dually constituted divisions between the public and private realms. The *patriarchal separation* between the *private family* and the *public world of civil society joined with the state*[41] is the other, where the public sphere is 'constructed and gains meaning through what it excludes — the private association of the family in which women, naturally lacking the capacities for public participation, remain within an association constituted by ties of blood, natural subjection and particularity, in which they are governed by men'.[42]

The central criterion for citizenship, or membership in the public realm, within liberal discourse is 'independence', historically based upon masculine attributes and abilities of self-protection, minimal state intervention and private property ownership.[43] The corollary is that, for women, their construction as 'dependent' means that they exist in the private realm of family, reliant on the benevolence of another for their livelihood and out of sight of the public gaze. In Mrs Khawar's case, she is also defined as the private property of her husband,[44] the value of which is determined by familial ties, the dowry she brings and her capacity to give birth to male offspring. Mrs Khawar endures double subjugation in this social context.

Finally, judicial methodology must be able to cut through any false presumption of legal equality between men and women created by the use of formalist language which renders women's marginalisation and oppression invisible. This is necessary in order to promote the attainment of *genuine* justice by enlivening a concrete engagement with the lived reality of injustice, oppression and marginalisation. This must necessarily entail a 'deliberate choice to see the world from the standpoint of the oppressed',[45] avoiding abstraction and objectification as a way out of the discomfort of direct confrontation with the ugliness of oppression.[46]

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40 Pateman (1989), p183.

41 Pateman (1989), p183 (author's emphasis).

42 Pateman (1989), p 183.

43 Pateman (1989), p 185.

43 *MIMCA v Khawar*, per Callinan J para 142 citing the Refugee Review Tribunal.

45 Matsuda (1996), p 8.

46 Matsuda (1996), p 8.

The Judgment of Kirby J: More Certain Justice?

In the case of *MIMCA v Khawar*, only the judgement of Kirby J embraces these three requirements to potentially found a more certain outcome for female victims.[47] In his statement of the relevant facts, the 'domestic violence' and 'disharmony'[48] 'privately motivated'[49] are exposed as beatings, threats to her life, and on one occasion having petrol poured over her by her husband and his brother with the concomitant threat of being burned alive.[50] Kirby J does not shy away from the ugliness or brutality of Mrs Khawar's experience, or cloak it in minimising, formalist jargon. He is able to see that the acts of violence, in contradistinction from Callinan J's 'disharmony' and Gleeson CJ's 'private violence', are 'objectively *only* capable of being treated as *gravely criminal*'.[51]

Kirby J concedes that the Tribunal *may* be entitled to conclude that the violence perpetrated against Mrs Khawar is personally motivated, resulting from familial and relational causes. However, this is a matter of fact to be shown in all the circumstances of the case. It is not a legal presumption. He notes further, that the Tribunal is not entitled to draw this conclusion from decontextualised facts, failing to take into account the 'reliable', 'substantial' and 'consistent' material derived from significant international sources[52] which corroborate her personal experiences of neglect, indifference, discrimination and inaction on the part of the Pakistani police. These sources highlight the dangerous reality for Pakistani women in the denial of their human rights, the occurrence of numerous 'stove deaths'[53] and the failure of the state to investigate and bring to justice the male perpetrators of such violence. These acts, as substantiated by the international reports, are crucial to the determination of her case. They tie the familial criminal acts to a wider social context of the systematic discrimination and violence against women evidenced by the failure of the state to intervene, despite the existence of laws making these acts illegal. These facts can ultimately found a claim of persecution on the basis of membership of a particular social group. This analysis removes the acts from the realms of family problems and intrastate criminal law, to that of persecution in the context of international refugee law.

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47 McHugh and Gummow JJ in *MIMCA v Khawar* para 50 detail the concrete events, and are aligned with respect to the outcome favoured by Gleeson CJ and Kirby J. However, they remain focused on the issue of state rights, privileging the state's inherent right to border protection rather than the attainment of justice.

48 *MIMCA v Khawar*, per Callinan J para 141.

49 *MIMCA v Khawar*, per Gleeson CJ para 1.

50 *MIMCA v Khawar*, per Kirby J at para 94.

51 *MIMCA v Khawar*, per Kirby J at para 115.

52 *MIMCA v Khawar*, per Kirby J para 95. He delineates these documents, including those from the Australian Department of Foreign Affairs and Trade, the US State Department, the Canadian Immigration and Refugee Board and Amnesty International.

53 This term is used in the Report of the Department of Foreign Affairs and Trade, cited by Kirby J in para 95.

Kirby J also acknowledges the gendered nature of the harms, once he actively engages with their reality and highlights their criminal nature. He states compellingly: 'It is impossible to believe that a similar act directed to the husband or another male victim would have been treated by the police in Pakistan in such a dismissive manner.'[54] Yet this belief is precisely what the minister is prepared to assert, ignoring the evidence of the international reports.

For Kirby J, the error of law committed by the Tribunal was its failure to take into account the public and governmental reports and documents and thus 'address itself to the essential features of the case'.[55] This error is magnified by the Tribunal's failure to recognise the fact that the word 'persecuted' is located within an international treaty and thus is 'not as susceptible to exposition by reference to Australian ... standards' alone.[56] He notes that it is *crucial* to have regard to the context beyond the word itself, such that 'it is the purpose and content of the Convention that will illuminate the boundaries of the idea of persecution'.[57] The impetus for the Convention was the attainment of an humanitarian object — namely preventing oppression and persecution, and allowing asylum for victims beyond the borders of their own countries where this persecution occurs unchecked. On this analysis, there is no justification for the rejection of Mrs Khawar's persecution by comparison with the similar fate of the female victims of domestic violence in Australian society, whether or not constituting persecution.

Kirby J concludes that the failure of state protection, *per se,* is not capable of amounting to persecution. It must coexist with a 'threat or actuality of serious harm',[58] including harm from non-state agents. On this analysis, even if Mrs Khawar's harm had no causal relationship with her membership of a particular social group, this would not end the state of Pakistan's responsibility to her. For Kirby J, 'persecution = serious harm + the failure of state protection'.[59] The concept is a complex of two separate constructs. Where the reason for the failure of state protection is the fact that Mrs Khawar is a '*woman in conflict with her husband*',[60] this would also satisfy the criteria. Mrs Khawar's harm is not privatised and beyond the reach of the law.

Kirby J is thus able to escape from the gendered presumptions inherent in the reasoning of Gleeson CJ and the dissenting judgment of Callinan J. The possibility that the violence suffered by Mrs Khawar is personally motivated remains, but it is a fact to be decided in all the circumstances of the case, including the social and cultural context within which it occurs. Kirby J does not shy away from an actual engagement with the lived reality of Mrs Khawar

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54 *MIMCA v Khawar*, per Kirby J para 115.

55 *MIMCA v Khawar*, per Kirby J para 102.

56 *MIMCA v Khawar*, per Kirby J para 108.

57 *MIMCA v Khawar*, per Kirby J para 110.

58 *MIMCA v Khawar*, per Kirby J para 120.

59 *MIMCA v Khawar*, per Kirby J para 118.

60 *MIMCA v Khawar*, per Kirby J para 120.

and her daughters. He is able to 'shift consciousness'[61] from engagement with the particular experience of the victims to the requirements of judicial reasoning, without recourse to objectification. He remains focused on the attainment of justice, and is able to see, to become *conscious of*, the error of law of the Tribunal. It is only by such direct engagement that he is able to avoid any presumption that the violence is private, placing Mrs Khawar and other female victims beyond the reach of Australian municipal law or of international law.

Adoption of this reasoning in a future judgment would found justice for future female asylum seekers fleeing male violence on a more secure platform. Kirby J reveals the potential of the law to create a new hermeneutic, albeit within the current paradigm, through a creative jurisprudence. How the law is used *does* matter.[62] Legal narratives have the potential to change the normative universe, to expose hitherto hidden harms and injustices. This can enable the attainment of a concrete vision of justice which is not a limited by a partial view of society based upon masculine norms and understandings.[63] It could have a truly transformative role in ending the oppression of women like Mrs Khawar, and create a future free of oppression for her daughters and herself.

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Legislation

Migration Act 1958 (Cth)

Refugee Convention

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61 Matsuda (1996), p 8.

62 Responding to MacKinnon's question cited earlier.

63 See Graycar (1996).