



# Crossroad between Culture and Gender Violence- A Human Rights Perspective

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Abstract

*Although human rights violations affect men as well as women, their impact and character clearly changes according to the sex of the victim. Moreover, most of the violations of the rights of women or the discrimination and abuse which women are subjected to are specifically attributable to their sex. Despite the social awareness the victimization of women, generally speaking, every act of aggression perpetrated against a woman has some characteristic or other that identifies it to be as gender-based violence. Gender-based violence reflects the existing asymmetry in the power relations between men and women and that perpetuates the subordination and devaluation of the female as opposed to the male. This violence exists within the framework of the patriarchy as an array of day-to-day practices which deny women their rights and reproduce the existing imbalance and inequity between the sexes. The difference between this kind of violence and other forms of aggression and coercion lies in the fact that in this case the risk factor or source of vulnerability is the mere fact of being a woman. This research article will aim to explore the possibility of connection between cultures as a tool often misused by the society to perpetrate violence against a particular gender.*

**Key Words: Culture, Gender Violence, Power Relation, Tradition and Human Rights.**

Over the past few decades, Gender-based violence has increasingly come to be recognized as a serious problem at the international level, not only for women but also for the attainment of equality, development and peace (United Nations, 1986). The issue has also become a priority for women's organizations in the region and a subject for Human Rights Activists and in recent years Governments in the region have also begun to devote attention to the issue.

Human Rights violation, gender violence is a relative newcomer, but since the 1990s it has become the centre piece of women's human rights. But, till today establishing women's rights as human rights is still an uphill struggle. Because violence against women refers to bodily injury as is the case with other human rights violations, such as torture, which is a relatively straightforward violation. Like torture, it is about injury, pain, and death. However, in many parts of the world gender based violence appears to be an everyday, normal problem, not a serious violation of human rights. Moreover, because gender violence is deeply embedded in systems of kinship, religion, warfare, and nationalism, its prevention requires major social changes in communities, families, and nations. Powerful local groups often resist these changes.<sup>1</sup>

At this time, it is imperative to analyze the question of human rights and gender-based violence against women from a perspective that offers the possibility of cultural change. To do so, it must be borne in mind that this issue is directly related to the unequal distribution of power in society and that radical changes are therefore needed in this area. The type of social change which demands that women's rights be upheld should cast women with all their different ways of thinking, feeling and acting as leading actors in this process of change.<sup>2</sup>

CEDAW General Recommendation 19 on VAW views gender-based violence as a form of discrimination that constitutes a serious obstacle in the enjoyment of human rights and fundamental freedoms by women, and addresses intersections of gender-based violence with the different substantive areas covered by the articles of CEDAW.<sup>3</sup> It defines gender-based violence as “violence directed against a woman because she is a woman or which affects a woman disproportionately. It includes physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Accordingly, it calls upon State parties to address and report on VAW within the substantive framework of CEDAW.

It has also begun to be recognized that gender-based violence is a violation of the right to identify, since it reinforces and reproduces the subordination of women to men, as well as leading to a distortion of the human being; of the right to affection, since violence is the antithesis of any expression of that sort; of the right to peace and enriching personal relations, since it is a negative form of dispute settlement; of the right to protection, since it creates a situation of defenselessness, not only vis-à-vis the husband and the family but also in terms of the State, which denies protection to women, and society, which denies that the problem exists; of the right to personal development, since its victims suffer a form of psychological paralysis which prevents them from developing their creative potential; of the right to social and political participation, because it inhibits activities outside the household, with the exception of the bare minimum

<sup>1</sup> Sally Engle Merry, *Culture, Power, And The Discourse Of Law*, 37 N. Y. L. Sch. L. Rev. 209 1992

<sup>2</sup> Supra note 2

<sup>3</sup> CEDAW/C/1992/L.1/Add.15.

of activities related to traditional roles such as participating in organizations, groups or meetings; of the right to freedom of expression, and of the right to an optimum state of physical and mental health.<sup>4</sup>

Throughout history, various forms of violence have manifested themselves in society as a consequence of certain sector's or group's domination over others. In this context, gender-based violence is a key social mechanism for perpetuating the subordination of women, since male hegemony power being considered the generic patrimony of men is based on social control over women.<sup>5</sup> Therefore, violations of women's human rights are directly or indirectly related to the gender system and to mainstream cultural values.

The term culture is one that is widely used and misused in everyday life. It is often used with reference to the arts e.g. music, dance, painting, sculpture and theatre. However this is only one aspect of the meaning of culture. Culture is actually a very broad term used to refer to virtually all the things we do and the ways in which we do them. Culture in the broadest sense, celebrates a people's ability to create knowledge, lifestyles, meanings, symbols, images and material objects, out of their multiple and diverse experiences. In seeing culture as many-layered therefore, there is also need to recognize that within cultures there is diversity in the ways in which people understand and experience culture and cultural change. In other words people, often unconsciously, collude in and consent to their own subordination or the subordination of others. But the dominant group often exercises its power over other through violence or the fear of violence that compels the weaker group to or agrees to certain behaviours and practices. In de-legitimizing violence against women therefore, a major shift in the hegemonic gender ideologies and understandings of legitimate gendered power relations was and continues to be necessary. Even if state adheres to society might not give its consent, for while and in some cases actively resisted.<sup>6</sup>

Moreover, culture is seen integral to systems of power. Cultural forms construct hegemonic understandings as well as the counter hegemonies that challenges the unequal power relation in society.<sup>7</sup> Activists have argued that since the maintenance of relations of power depends on retaining particular cultural meanings, moments of resistance include redefinitions of cultural meanings, as well as more direct forms of resistance such as noncooperation, sabotage, foot-dragging, petty thievery, and refusal to conform to gender or class expectations, particularly by the women class.<sup>8</sup>

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<sup>4</sup> Supra note 2

<sup>5</sup> Amorós, 1990

<sup>6</sup> Pilcher, Jane and Whelahan, Imelda, 2005, *Fifty key concepts in gender studies*, Sage publications : New Delhi.

<sup>7</sup> Comaroff & Comaroff, John Comaroff & Jean Comaroff, *Ethnography And The Historical Imagination* (1992) [

<sup>8</sup> James C. Scoat, *Domination And The Arts Of Resistance: Hidden Transcripts* (1990); Lila Abu-Lughod, The Romance of Resistance: Tracing Transformations of Power Through Bedouin Women, 17 *Am. Ethnologist* 41 (1990); Patricia Ewick & Susan Silbey, Conformity, Contestation and Resistance: An Account of Legal Consciousness, 26 *NEW ENG. L. REV.* 731 (1992); Sally E. Merry, Resistance and the Cultural Power of Law, 29 *Law & Society Review.* 11 (1995); Austin Sarat, "... The Law is All Over": Power, Resistance and the Legal Consciousness of the Welfare Poor, 2 *YALE J.L. & HUMAN.* 343 (1990).

In South Asia, the institution of law is generally viewed with deep suspicion and often hatred because it is seen as the central instrument employed by colonizing powers to replace indigenous cultural, religious, and social traditions with the mechanisms of the modern Western nation state.<sup>9</sup>

Culture is often seen to be "the semantic space, the field of signs and practices, in which human beings construct and represent themselves and others, and hence their societies and histories. It is not merely an abstract order of signs, or relations among signs. Nor is it just the sum of habitual practices."<sup>10</sup> Culture is never a closed, entirely coherent system but contains within it polyvalent, contestable messages, images, and actions.

The relevance of human rights for the campaign against violence against women, on pretext of culture, has taken on new importance as human rights have become the major global approach to social justice. The way culture is conceptualized determines how social change is imagined. If culture is fixed and unchanging, it is simply a barrier that needs to be removed through education. If culture is a set of practices and meanings shaped by institutional contexts, it is both malleable and embedded in structures of power. These different perspectives on culture affect policies concerning women.<sup>11</sup>

However, the idea that everyday violence against women is a human rights violation has not been easy to establish, nor has it moved readily from transnational to local settings. There are fissures between the global settings where human rights ideas are codified into documents and the local communities where the subjects of these rights live and work. Human rights ideas, embedded in cultural assumptions about the nature of the person, the community, and the state, do not translate simply from one setting to another. If human rights ideas are to have an impact, they need to become part of the consciousness of ordinary people around the world. Considerable research on law and everyday social life shows that law's power to shape society depends not on punishment alone but on becoming embedded in everyday social practices, shaping the rules people carry in their heads.<sup>12</sup>

It has been contended that the global/local divide is often conceptualized as the opposition between rights and culture, or even civilization and culture. Those who resist human rights often claim to be defending culture.<sup>13</sup>

<sup>9</sup> Rebecca J. Cook, *Women's International Human Rights Law: The Way Forward*, 15 *Hum. Rts. Q.* 230 1993

<sup>10</sup> J. Comaroff and J.L. Comaroff, 1992, *Ethnography and the Historical Imagination*, Boulder, Westview.

<sup>11</sup> Sally Engle Merry, *Human Rights And Transnational Culture: Regulating Gender Violence Through Global Law*, 44 *Osgoode Hall L.J.* 53 2006

<sup>12</sup> See e.g. Austin Sarat & Thomas Kearns, eds., *Law and Everyday Life* (Ann Arbor: University of Michigan Press, 1993); Patricia Ewick & Susan Silbey, *The Common Place of Law* (Chicago: University of Chicago Press, 1998); and Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* (Chicago: University of Chicago Press, 1990).

<sup>13</sup> See especially Richard A. Wilson, "Introduction: Human Rights, Culture and Context" in Richard A. Wilson, ed., *Human Rights, Culture and Context. Anthropological Perspectives* (London: Pluto Press, 1996) 1; Jane K. Cowan, Marie-Benedict Dembour & Richard Wilson, eds., *Culture and Rights* (Cambridge: Cambridge University Press, 2001) at 6-7; and Abdullahi

Cultural excuses are used worldwide to tolerate or justify discrimination and violence against women. Indeed, most societies, even “Western” states, are built on patriarchal foundations, giving men the dominant and active role. Yet, some societies have customs and religious practices that make them more patriarchal than others. Traditional cultures, those that have been less integrated into globalization, tend to have more deeply entrenched social norms of what is to be expected of women in the society and in the household. In these societies where gender inequality takes broader and deeper-rooted expressions, females are left with little capacity to participate in decision-making and thus are more prone to be victims of gender-based violence.<sup>14</sup>

Culture, as the customs and social institutions built throughout history in a social group, defines a woman’s role at three levels. First, within the family; patriarchal societies have traditionally attributed to females a bigger burden of household chores and as caretakers, whilst men have historically been engaged in remunerated activities. Yet, women do often carry a double burden, along with their household unpaid responsibilities they hold paid full-time jobs. These social roles have shaped and limited both men’s and women’s “natural” tasks and have confined women to economic dependency on men and put them in a disadvantaged decision-making position within the family. Second, in society, women have been deprived from public positions, and, due to their roles at home, from public spaces. The functions that women are given in society can make them more or less able to influence others at the community and national level. This in turn affects women’s ability to reshape their social role and determines their bargaining power. Although history has shown that women in high political positions do not always translate into gender sensitive policy-making, denying them the possibility to participate at all levels of politics only reinforces the muting of their voices. It also legitimates gender inequality and perpetuates the patriarchal attitudinal factors that subject women to their arbitrary deprivation of fundamental rights. Finally, culture also determines the ability for women to have roles other than those related to the family thus allowing them independence. This is of particular importance given that traditional societies put community or family at the heart of their functioning and depend on the decision-making of the collective.<sup>15</sup>

Yet, the cultural resistance to women’s human rights assumes a view of culture as homogeneous, consensual, and relatively static. However, many of the practices of gender violence are contested both within local communities and through influences from other societies. Those who defend culture against rights construct an unrealistic image of culture in an effort to avoid the rights critiques leveled by insiders as well as outsiders to a social group. The human rights project against violence against women is seeking

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An- Na'im & Jeffrey Hammond, "Cultural Transformation and Human Rights in African Societies" in Abdullahi An-Na'im, ed., *Cultural Transformation and Human Rights in Africa* (London: Zed Books, 2002) 13 at 13-14.

<sup>14</sup>Anamaria Vargas, *Challenging 'Cultural' Excuses for Gender-Based Violence in India*, Culture and Human Rights series (Pt II), January 13, 2012 at <http://www.gendercrossborders.com/2012/01/13/challenging-cultural-excuses-for-gender-based-violence-in-india/> (last accessed on 30<sup>th</sup> March, 2014)

<sup>15</sup> ibid

to change ideas of what forms of violence are legitimate. Many religious and political leaders resist making this change, invoking the need to protect culture. Since defenses of culture become the basis for defending male control over women, feminist activists often lose patience with cultural defenses despite their commitment to cultural diversity.<sup>16</sup>

This demonstrates how traditional practices can be in conflict with the respect of women's fundamental rights. Patriarchal societies grant men greater bargaining power, especially when women are not economically empowered. Therefore, if communities advocate for practices that deny women's individual rights and that females lack the capacity to stand for them, gender-based violent practices undoubtedly occur.

, but also fosters more effective international cooperation for women's human rights.<sup>17</sup>

Yet over the last decade, the concept of culture on which many of these insights depend has come under siege. The nature of culture has been radically altered. This change demands an equivalent rethinking of the relationship between law and cultural phenomena.

Challenges to understanding law through this concept of culture came through the study of disputing processes, which provided a more agentic, dynamic understanding of the relationship between culture and law but did not necessarily challenge the notion of culture as integrated and bounded.<sup>18</sup>

For example, now a days the debate has shifted towards culture vis-à-vis women's human rights. Although 'rights' and 'culture' have emerged as key-words of the late twentieth century, their relationship to each other, both historically and in the present, has been conceived in quite variable ways. Not surprisingly, perhaps, the initial formulation of the link between women's rights and culture was one of opposition: rights versus culture. Recognizing rights was seen to entail a denial, rejection or overriding of culture; conversely, recognizing culture was seen to prohibit, at least potentially and in women cases, the pursuit of universal individual rights. However, in spite of this the tensions between the dictates of universalism and those of respect for cultural difference, and thus between 'rights' and 'culture', are in important ways real and persistent. They cannot be made to vanish through an analytical sleight of hand which appeals to the eradication of local forms of difference through global processes and to the increasing hybrid of identities and cultures, because these phenomena occur at an uneven pace.<sup>19</sup>

Abdullahi An-Na'im, a Sudanese Scholar-in-Residence at the Ford Foundation's Cairo office, underscored the importance of cultural legitimacy of international human rights in relation to women's human rights.

<sup>16</sup> Sally Engle Merry, *Gender Violence: A Cultural Perspective*, 2009, Malden, MA: Wiley-Blackwell

<sup>17</sup> Sally Engle Merry, *Law, Culture, and Cultural Appropriation*, 10 Yale J.L. & Human, 575, 1998

<sup>18</sup> The Disputive Process (Laura Nader & Harry F. Todd eds., 1978).

<sup>19</sup> Jane K. Cowan, Marie-Benedicte Dembour and Richard A. Wilson, *Culture and Rights Anthropological Perspectives*, Cambridge University Press, 2001.

He explained that if cultural legitimacy is not taken seriously, "it is sometimes raised with the intention of undermining international human rights law, or of justifying its violation." It is not enough, he said, to rely on international law obligations to bring national laws. An-Na'im suggested that one must go beyond this formalistic understanding of international legal obligations in order to seek a deeper consensus and sustainable commitment to women's international human rights. He argued that unless international human rights have sufficient legitimacy within particular cultures and traditions, their implementation will be thwarted, particularly at the domestic level, but also at the regional and international levels. Without such legitimacy, neither the law nor other agents of social change will be capable of improving the status of women.<sup>20</sup>

Many of these countries [with reservations] hold a belief in the patriarchal structure of a family which places a father, husband, or son in a favourable position. In some countries where fundamentalist or other extremist views or economic hardships have encouraged a return to old values and traditions, women's place in the family has deteriorated sharply. In others, where it has been recognized that a modern society depends for its economic advance and for the general good of the community on involving all adults equally, regardless of gender, these taboos and reactionary or extremist ideas have progressively been discouraged.<sup>21</sup>

While there is no doubt that cultural demands for women's subordination have been made in the name of nationalism or religious fundamentalism, the source of oppression for women largely in the domain of beliefs and values. Thus, it reinforces the idea that it is culture that is subordinating women and modernity that frees them. That modernity is also a cultural system seems lost in this formulation. Culture is relegated to the domain of the past, to religious extremism, and to irrational "taboos." Its opposite is modernity and the norms of human rights<sup>22</sup>.

Women are frequently the subject of traditions, often linked to national, cultural or ethnic practices, which violate human rights and freedoms. For example, Reports of the Special Rapporteur on violence against women have repeatedly addressed harmful traditional practices such as female genital mutilation; honour killings; spousal abuse; dowry-related violence; and customary laws that deny women's equality. A resolution on Discrimination against Women by the Human Rights Council recognized that "*laws, policies, customs and traditions that restrict women's equal access to participate fully in development processes and public and political life are discriminatory.*"<sup>23</sup>

<sup>20</sup> Abdullahi An-Na'im, *Islam, Islamic Law and the Dilemma of Cultural Legitimacy for Universal Human Rights*, in Asian Perspectives on Human Rights 31 (Claude E. Welch and Virginia Leary eds. 1990).

<sup>21</sup> General Recommendation 21 of Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Commentary on Reservations, point 421

<sup>22</sup> Sally Engle Merry, *Human Rights Law and the Demonization of Culture (And Anthropology Along the Way)*, 26 Polar 55 2003

<sup>23</sup> A/HRC/12/L.3/Rev.1)

Cultural rights are an integral part of human rights, which are universal, indivisible, interrelated and interdependent. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.<sup>24</sup>

“Harmful practices” against women, in name of culture, reflect existing discrimination against women within society. They are interconnected with each other, as well as with other forms of violence and discrimination against women.<sup>25</sup>

The concept of “dignity”, particularly after a reference to “traditional values”, in name of culture, can be misused to justify human rights violations, through concepts such as the “dignity of women”. Such problematic uses suggest a particular “dignified” role for individuals within society based on the extent to which they play a traditional role. Dignity is in fact inherent to the human person and thus, it is important that the Advisory Committee’s report focus on the language from the preamble of the UDHR that affirms “the inherent dignity and worth of the human person”.<sup>26</sup>

According to the United Nations High Commissioner for Human Rights Human Rights Council, tradition is a complex notion. No society, regardless of its geographic location or level of economic development, can be said to be represented by a single and comprehensive set of shared values covering all social matters. Traditions and values change over time, and are viewed and interpreted differently by various actors in society. While there were traditions in line with human rights, others were in conflict with them. The aim of the workshop was to focus on the traditional values underpinning human rights. Doing so meant rejecting those who would seek to juxtapose traditional values against human rights with a view to erode the universal authority and appeal of human rights. While the Vienna Declaration recognized that the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it reaffirmed that is the duty of all States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. The High Commissioner concluded that understanding the common normative underpinnings of both sides of that equation was important for more effective human rights promotion, and, ultimately, more humane societies.<sup>27</sup>

Culture matters because cultural traditions and beliefs were often more strongly rooted than laws: therefore, to get to the roots of human rights issues, there was a need to engage at a cultural level. For

<sup>24</sup> Resolution 10/23, *Independent expert in the field of cultural rights*, The Human Rights Council, 2010

<sup>25</sup> The Handbook for legislation on violence against women is available online at: <http://www.un.org/womenwatch/daw/vaw/v-handbook.htm>.

<sup>26</sup> UN Human Rights Council, Study of the Human Rights Council Advisory Committee on promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind, 6 December 2012, A/HRC/22/71, available at: <http://www.refworld.org/docid/51136ee92.html> [accessed 12 March 2014]

<sup>27</sup> *Workshop on traditional values of humankind*, Report of the United Nations High Commissioner for Human Rights Human Rights Council, Sixteenth session, 13 December 2010

instance, discrimination and violence against women and harmful practices such as female genital mutilation and child marriage were illegal in many countries, and yet they persisted because they were deeply rooted within the culture. Violations of human rights happened in families and communities while systems of justice were often at the national level, far away from the violations. It was the mechanisms of the local value system that recognized or ignored such violations. To be effective in eradicating such practices, there was a need to engage at a deeper level to promote human rights in the context of individuals, families and communities at the local level. This required listening and promoting dialogue within communities.<sup>28</sup>

“Tradition” is frequently invoked to justify maintaining the status quo of men over women in society, ignoring the fact that cultures and social norms have always evolved and will continue to change with time; by contrast, a human rights-based approach often requires changes to the status quo in order to ensure compliance with international standards. Simply because a practice or belief has existed over a period of time or is practiced by a majority does not provide it with worth or validity. The obligation must always be to promote and protect human rights, which may require that traditional values and practices evolve in order to meet international standards.<sup>29</sup>

Many practices that fall under “tradition” are of long-standing origin, but others that claim to be “traditional” are in fact relatively recent. Tradition itself changes over time and all cultures contain diverse and contradictory traditions. Most importantly, many “traditional values” may be inconsistent with international human rights, and “traditional values” are frequently invoked to justify human rights violations. In previous decades and centuries, mixed-race marriages, desegregation, women having the right to work, to vote, to hold public office, or to own property would have been thought by many to be inconsistent with “traditional values”.<sup>30</sup>

In 2002, the Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, produced a report on cultural practices in the family that are violent to women. She described these practices as “an important issue that would define the international human rights debate over the next decade”.<sup>31</sup> The report argues that these cultural practices harmful to women’s human rights to bodily integrity and expression have avoided national and international scrutiny “because they are seen as cultural practices that deserve tolerance and respect.” “*Cultural relativism*,” she asserts, “*is often used as an excuse to permit inhumane and discriminatory practices against women in the community despite clear provisions in many human rights instruments, including the Convention on the Elimination of all Forms of Discrimination against Women.*”

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<sup>28</sup> ibid

<sup>29</sup> *Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind*, Human Rights Council, Advisory Committee, Seventh session, 8 to 12 August 2011

<sup>30</sup> ibid

<sup>31</sup> (HR/CN/02/32: 10 April 2002, UN Press Release).

Women may subject to traditional practices across their life cycle, including female infanticide, child marriage, dowry-related violence, female genital mutilation, so-called “honour” crimes. The ways in which culture shapes violence against women are as varied as culture itself.<sup>32</sup>

Culture, gender based violence and women’s human right can be best understood through the example of Honour Crimes. In patriarchal and patrilineal societies maintaining the honour of the family is a woman’s responsibility. In these societies, the concept of women as commodities and not as human beings endowed with dignity and rights equal to those of men is deeply embedded. Women are seen as the property of men and they have to be obedient and passive, not assertive and active”.<sup>33</sup>

UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences addresses the topic of gender-related killings of women whether they occur in the family or the community or are perpetrated or condoned by the State. Globally, the prevalence of different manifestations of such killings is increasing, and a lack of accountability for such crimes is the norm. Terms such as femicide, feminicide, honour killings and crimes of passion, among others, have been used to define such killings.<sup>34</sup>

Rather than a new form of violence, gender-related killings are the extreme manifestation of existing forms of violence against women. Such killings are not isolated incidents that arise suddenly and unexpectedly, but are rather the ultimate act of violence which is experienced in a continuum of violence. Women subjected to continuous violence and living under conditions of gender-based discrimination are always in fear of execution.<sup>35</sup>

This results in the inability of women to live, and is always at the receiving end, of the crime committed by the community, when she exercise her right to choice marriage.<sup>36</sup> Rather than serving isolated or individual purposes, such violence against women follows institutional logic that is to delineate and sustain hierarchical social relations of race, gender, sexuality and class and, thereby, to perpetuate the inequality of women communities.<sup>37</sup>

<sup>32</sup> See United Nations (2006), Ending Violence against Women: from words to action, Study of the Secretary-General (A/61/122/Add.1 and Corr.1), pp. 45-47.

<sup>33</sup> *Special Rapporteur on Violence against Women on “honour” crimes*, 2002, E/CN.4/2002/83

<sup>34</sup> UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, 23 May 2012, A/HRC/20/16, available at: <http://www.refworld.org/docid/5008088f2.html> [accessed 31 March 2014]

<sup>35</sup> Nadera Shalhoub-Kevorkian, *Reexamining Femicide: Breaking the Silence and Crossing Scientific Borders* Signs, The University of Chicago Press, Vol. 28, No. 2 (2002) at 581.

<sup>36</sup> *ibid*

<sup>37</sup> Darren Lenard Hutchinson, *Ignoring the Sexualization of Race Heteronormativity*, Critical Race and Anti-Racist Politics, 47 Buffalo Law Review (1999) at 20.

Crimes in the name of honour are rooted in cultural traditions, not religious beliefs.<sup>38</sup> It appears that the promise of maintaining one's honour is one of the main reasons women remain in abusive homes and thus suffer continuing abuse. Indeed, the whole concept of honour acts as a "constraining factor in preventing them from leaving."<sup>39</sup> This concept is two-fold: women are afraid of bringing shame on their families and destroying their family honour,<sup>40</sup> but they equally fear the resulting "social ostracism and harassment."<sup>41</sup> This is because of the perception that honour perpetuates in both the family home and also within the wider community. As a woman's identity is integrally linked to culture and community, women are exceptionally wary of the arrogant gaze of critical outsiders.<sup>42</sup> Therefore, although the woman may escape abuse within the home, once she leaves, she will be subject to a different form of abuse from her community. Furthermore, male abusers use the concept of honour to justify their violence, while honour simply serves to trap women, "by its confining nature, preventing many from leaving abusive situations and sentencing them to pariah status if they do."<sup>43</sup> As such, the concept of honour acts as an excuse or justification for men, while it serves to confine women to strict behavioural codes.

Certain cultural norms and beliefs are the causal factors of harmful practices resulting in violence against women, such as crimes committed in the name of honour.<sup>44</sup> Honour killings have been characterized as being among the most severe manifestations of harmful practices.<sup>45</sup>

Violence at home against girls and women happens mainly at the hands of their husbands, fathers, brothers, sons, and male extended family members. The men sometimes act on the orders of tribal elders who decide on punishments for women deemed to have infringed traditional codes of honour. A woman is tied to her family's honour, which facilitates violence against her, because to forgive an 'errant' woman would jeopardise the ability of her male relatives to hold their heads up in society.<sup>46</sup>

Women are seen to embody the honour of the men to whom they "belong".<sup>47</sup> Honour crimes are also linked to other forms of family violence, and are usually committed by male family members as a means of controlling women's sexual choices and limiting their freedom of movement. Punishment usually has a collective dimension, with the family as a whole believing it to be injured by a woman's actual or

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<sup>38</sup> United Nations General Assembly (2012), Report on the Special Rapporteur on Violence Against Women, its Causes and Consequences [A/HRC/20/16].

<sup>39</sup> *ibid*

<sup>40</sup> Hannana Siddiqui, 'There is no 'Honour' in Domestic Violence, Only Shame! Women's Struggles Against 'Honour' Crimes in the UK' in Welchman and Hossain, 'Honour', 263.

<sup>41</sup> *Ibid*

<sup>42</sup> *ibid*

<sup>43</sup> Werner Menski, 'Book Reviews: *Honour Crimes, Paradigms, and Violence Against Women*' (2006) 20 *Journal of Immigration, Asylum and Nationality Law*, 144

<sup>44</sup> *ibid*

<sup>45</sup> *ibid*

<sup>46</sup> Lynn Welchman & Sara Hossain, '*Crimes of Honour: Value and Meaning*', Zed Book, 2005

<sup>47</sup> Study on traditional practices affecting the health of women and children, final report by the Special Rapporteur of the Sub-Commission, Ms. Halima Embarek Warzaz, July 1991, (E/CN.4/Sub.2/1991/6).

perceived behaviour, and is often public in character. The visibility of the issue and the punishment also serves a social objective, namely, influencing the conduct of other women.<sup>48</sup>

Violence against women is one of the most serious human rights issues. Although important achievements have been made in different areas, deep-rooted cultural and social issues still exist against realization of and their freedom in many parts of country. Violence against women is one of the serious violations. Such practices are further entrenched by the Government's inability to fully protect the rights of women and girls, highlighting the need to expedite implementation of the Law on Elimination of Violence against Women which criminalizes many harmful traditional practices. The role of religious leaders, community elders and traditional dispute resolution mechanisms in both perpetuating and eliminating harmful practices is also highlighted.<sup>49</sup>

Impunity for the killings of women has become a global concern. As noted by the Secretary General that impunity for violence against women compounds the effects of such violence as a mechanism of control. When the State fails to hold the perpetrators accountable, impunity not only intensifies the subordination and powerlessness of the targets of violence, but also sends a message to society that male violence against women is both acceptable and inevitable. As a result, patterns of violent behaviour are normalized.<sup>50</sup>

The major international documents concerning violence against women are less negotiating. They condemn using cultural justifications for harming women. Any belief, practice or policy that results in harm cannot be seen as violating the cultural right of any community/society. Thus, even if there are women within a community/society who accept cultural practices that result in the violation of fundamental human rights, women should speak out against this since even society need to adhere to certain standards. This is especially necessary when persons who are being violated may not necessarily have the power to object.<sup>51</sup>

States though must protect an individual's exercise and enjoyment of human rights, investigates alleged violations, punish proven violators, and provide effective remedies, including the compensation of victims.<sup>52</sup> Nonetheless, states are seldom held responsible for ignoring their international obligations to

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<sup>48</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum, 15 years of the United Nations Special Rapporteur on violence against women, its causes and consequences (1994-2009) – A critical review, A/HRC/11/6/Add.5 (2009).

<sup>49</sup> UN Assistance Mission, Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women, 9 December 2010, available at: <http://www.refworld.org/docid/4d00c4e82.html> [accessed 31 March 2014]

<sup>50</sup> See, United Nations, In-depth study on all forms of violence against women: Report of Secretary General A/61/122/Add.1 (2006) at 76.

<sup>51</sup> In a posting on the electronic list serve "End violence" managed by UNIFEM, Beng Hui, the Information and Communications Officer for International Women's Rights Action Watch- Asia/Pacific (IRWAW-AP), writes from Kuala Lumpur in response to the question: What about situations where some women in a society consider a practice to be legitimate and others consider it violence?

<sup>52</sup> Theodor Meron, *The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination*, 79 Am. J. INT'L L. 283 (1985)

respect women's human rights.<sup>53</sup> When a form of women's subordination recognized as a violation of human rights is reliably documented within a state, the question of legal responsibility arises. However, this issue when seen from cultural lens present a very different picture. There are instances where state has a legal mechanism to protect individual's rights but what appears to an outsider as oppression may be found tolerable or even advantageous to the women involved in a community. Converse to this notion is also true.



<sup>53</sup> Rebecca J. Cook, *International Human Rights Law Concerning Women: Case Notes and Comments*, 23 Vand. J. Transnatl L. 779 (1990).