

Women's Rights versus Cultural Rights in Pakistan

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ABSTRACT: Culture has been cited by many governments to justify deprivation of women's rights and the principle of state sovereignty has been used to prevent outside reformers from intervening. Women in provincial Pakistan are notably deprived. Although international law provides for the respect of culture, the adoption of the *principle of cultural change* can be interpreted as an affirmation of the importance of women's rights in any culture. As gender stereotypes are embedded in patriarchal societies, changes can only happen gradually as a result of educating the population about gender equality and reforming local legislation for which non-governmental organisations' work is essential.

KEY WORDS: Women's rights, cultural rights, principle of cultural change, patriarchal societies, CEDAW, UDHR

Introduction

Governments of patriarchal societies explain the deprivation of women's rights as a consequence of respecting their countries' cultural beliefs and reject the interference from other states by claiming that human rights are a matter of state sovereignty. This article argues that women's rights are universal and

prevail over cultural practices that neglect them. The work of non-governmental organisations (NGOs) is essential to educate the population about how women can contribute to the economic, social and political development of the country, as well as to pressure governments for law reforms to reflect gender equality. The case of women's rights in Pakistan is presented as an example of how states and NGOs could act to promote gender equality.

Culture as a justification for the deprivation of women's rights

According to articles 1 and 2 of the Universal Declaration of Human Rights (UDHR) "all humans are born free and equal in dignity and rights" and "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex [...]".¹ Human rights are understood to be universal, indivisible, interdependent, interrelated and of equal importance, and all states are required to protect them, regardless of their political, economic and cultural systems. However, the interpretation and implementation of human rights can differ depending on each state's history, culture and religion.² Time and time again, this last provision has been used by governments to justify the deprivation of women's rights within their territories in the name of *culture* and based on the *principle of non-intervention in domestic affairs*³ they have rejected other states' interference in the matter.

¹ United Nation (1948). *Universal Declaration of Human Rights*. Accessed on 15 July 2013 from <http://www.un.org/rights/50/decla.htm>.

² Mullally, S. (2006). *Gender, Culture and Human Rights: Reclaiming Universalism*. Portland: Hart Publishing; New Zealand Ministry of Foreign Affairs and Trade (2008). *New Zealand Handbook on International Human Rights*. Wellington: Ministry of Foreign Affairs and Trade.

³ The principle of non-intervention in domestic affairs is included in Article 2 (7) of the Charter of the United Nations, retrieved on 15 May 2013 from <http://www.un.org/en/documents/charter/chapter1.shtml>

By bringing local culture and state sovereignty into play, governments put a veil of protection over their decisions and laws. They appeal to a reason that prevents others from acting to avoid being labelled as ‘imperialists’ or ‘neo-colonialists’. Many Muslim countries, for example, make reservations to key articles⁴ of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) stipulating that the state will only comply with the provisions of such articles provided that they do not interfere with local laws.⁵ This line of thought presents women’s rights as contradictory to the respect for culture and tradition.⁶ Nonetheless, one could argue that the cultural rights of women are not considered when they do not have the choice to opt-out of a certain culture or religion and if they did, they would risk being subjected to retaliation from members of their own community. Therefore, the conflict seems to be between women’s rights and the cultural rights of men (or at least, what governments understand to be the culture of the majority of the men in their countries).

In order to determine whether women’s rights or culture prevail, if either does, one needs to determine whether the former are universal or relative.

Partaking in the first option implies a “shift from ‘ethnos’ to ‘demos’”,⁷ limiting

⁴ Such as articles 2, 9, 16 and 23 CEDAW, United Nations, *Convention on the Elimination of All Forms of Discrimination against Women*. Accessed on 15 July 2013 from <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

⁵ Holtmaat, R., & Naber, J. (2011). *Women's Human Rights and Culture. From Deadlock to Dialogue*. Cambridge: Intersentia; Mullally, S. (2006). *Gender, Culture and Human Rights: Reclaiming Universalism*. Portland: Hart Publishing.

⁶ Considering that women’s rights are human rights and that the UDHR establishes freedom of religion (article 18) and affirms that “everyone has the right to participate in the cultural life of the community” (article 27), the former seem to be competing with the latter in the events of violations of women’s rights due to culture. However, some scholars argue that “the dichotomy between the religious and the secular is often exaggerated to suggest an inherent incompatibility of the two.” An-Naim, A. (2004). ‘The Best of Times’ and ‘The Worst of Times’: Human Agency and Human Rights in Islamic Societies. *Muslim World of Human Rights*, 1(1), pp. 11.

⁷ Mullally, S. (2006). *Gender, Culture and Human Rights: Reclaiming Universalism*, pp. 114.

the power of the state, and justifies eventual transgressions to the principle of state sovereignty in order to protect women's rights. Relativity, on the other hand, means understanding the deprivations of women's rights as an inherent characteristic of certain cultures. However, even some of the most ardent defenders of relativity may wonder whether all aspects of a culture are worth keeping when faced with atrocities such as female genital mutilation, honour killings or acid attacks.

Limits to cultural rights and state sovereignty

Although, the United Nations (UN) Charter⁸ and the UDHR⁹ establish rights in relation to religion and CEDAW recognises the right of women to participate in cultural life¹⁰ (as it can help create their identities and empower them), the last instrument establishes a limit to these rights by incorporating the *principle of cultural change*.¹¹ This principle requires all states parties to the Convention to eliminate all practices (including customary ones) that are detrimental to women's rights and perpetuate gender stereotypes and women inferiority, irrespective of whether the perpetrator is the state or a private actor.¹² Though this provision does not confer women's rights nor changes governments' stands *per se*, it legitimises claims for gender equality, implying (to a certain

Portland: Hart Publishing.

⁸ Articles 4, 13, 55 and 76 UN Charter, retrieved on 15 May 2013 from <http://www.un.org/en/documents/charter/chapter1.shtml>

⁹ Articles 2, 16 and 18 UDHR, United Nations (1948), *Universal Declaration of Human Rights*. Accessed on 15 July 2013 from <http://www.un.org/rights/50/decla.htm>.

¹⁰ Article 13(c) CEDAW, United Nations, *Convention on the Elimination of All Forms of Discrimination against Women*. Accessed on 15 July 2013 from <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

¹¹ Article 5 CEDAW, United Nations, *Convention on the Elimination of All Forms of Discrimination against Women*. Accessed on 15 July 2013 from <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

¹² Holtmaat, R., & Naber, J. (2011). *Women's Human Rights and Culture. From Deadlock to Dialogue*. Cambridge: Intersentia.

extent) the recognition of the link between human rights and popular sovereignty over state sovereignty.¹³ Subscribing to Mullally, imposing limits on states' rights is an inevitable consequence of moving towards a cosmopolitan world order in which the universal legitimacy of human rights norms is recognised. Rights are no longer tied to nationality or to ethno-cultural identity.¹⁴

The role of NGOs

As the classification of human rights as universal and the establishment of the principle of cultural change do not imply that they will be respected (or even accepted) locally, the challenge for human rights advocates is to reconcile local cultures and international human rights, to vernacularise the latter¹⁵ To this end, education about gender equality to promote a cultural change and the adaptation of the local legislation to international standards and law are essential. In regards to the first remedy, considering that female inferiority and gender stereotypes are embedded in patriarchal societies and, therefore, perceived as something natural,¹⁶ educational campaigns are necessary in order to raise awareness about the value of women and of their equal status to men. People need to be shown that they have something to gain from the change; women need to see themselves as bearers of rights and it is important that the community recognises them as individuals who cannot only

¹³ Mullally, S. (2006). *Gender, Culture and Human Rights: Reclaiming Universalism*. Portland: Hart Publishing; Ross, S. (2008). *Women's Human Rights. The International and Comparative Law Casebook*. Philadelphia: University of Pennsylvania Press.

¹⁴ Mullally, S. (2006). *Gender, Culture and Human Rights: Reclaiming Universalism*, pp. 114. Portland: Hart Publishing.

¹⁵ Merry compares the vernacularisation of human rights with that of national languages in Europe. She affirms that just as Latin was adapted to national and local communities, the human rights language needs to be tailored to local contexts. Merry, S.E. (2006). Transnational Human Rights and Local Activism: Mapping the Middle. *American Anthropology*, 108(1), pp. 38-51.

¹⁶ Holtmaat, R., & Naber, J. (2011). *Women's Human Rights and Culture. From Deadlock to Dialogue*. Cambridge: Intersentia.

perform a reproductive role but can also contribute to the economic, social and political development of the country.

Educational campaigns can be implemented by local NGOs in partnership with international ones. On one hand, the former have a broad understanding of local cultures, beliefs and traditions so can find manners to adapt them to international standards and laws, without corrupting the essence of either of them, the local or the international. They can reach grassroots level,¹⁷ which may be a hard task for international NGOs as conservative communities, especially in rural areas, may see them as representatives of Western imperialism and a threat to the local culture. Finally, the involvement of local NGOs helps dissipate the idea that the changes are *imposed* by *donors* who *know better* than the locals.¹⁸ On the other hand, international NGOs, in comparison with local ones, have more human and financial resources, well-developed networks and the capacity to draw international attention to the country where they work. Together both types of NGOs can mobilise the public and get international support to influence political leaders and the government to adapt local legislation to international laws.¹⁹

Funds could be provided by developed states where the participating international NGOs come from, as they (together with the rest of the members of the UN) are responsible for putting an end to the violations of women's rights for two reasons. Firstly, according to the UN Charter (1945)²⁰,

¹⁷ Idem.

¹⁸ Idem.

¹⁹ Hoadley, S. (2013). International Relations and Human Rights Course Syllabus. University of Auckland.

²⁰ This refers to Art. 56 ad 55(c) of the Charter of the United Nations (1945)²⁰ read in conjunction. Office of the High Commissioner for Human Rights (1999). Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers. Retrieved on 14 March 2013 from <http://www.ohchr.org/Documents/Publications/training9chapter1en.pdf>

Member States have a legal obligation 'to take joint and separate action in co-operation with the Organisation for the achievement of 'universal respect for, and observance of, human rights and fundamental freedoms'.²¹

Secondly, the respect for human rights goes hand-in-hand with international peace and security, encourages the peaceful resolution of conflicts, and favours economic progress as economic freedom usually depends on political freedom.²²

The main obstacle to the proposed remedies (education and adaptation of local legislation to international standards) is constituted by governments who oppose gender equality because they consider that it can interfere with the *national identity* of their countries; especially states that have recently become independent or where great ethnic and/or economic differences are disguised under the idea of a national identity that holds different groups together as a nation and prevents conflicts.²³ Moreover, as the subordination of women involves power of men, the consequences of changing this situation may range from the loss of support from the male electorate, to armed conflicts with religious fundamentalist groups and the generation of more violence against women as a form of retaliation.

A further difficulty can be posed by governments with similar ideologies as they might fear that, if the cultural reform promoting women's rights is successful, the impetus of change will spread to their countries. Consequently, they may provide political and financial support to the fundamentalist groups of the country where the remedies are being implemented to counter pro-women's rights work.

²¹ Idem.

²² Idem; The Economist (1997). A suitable target for foreign policy? Retrieved 10 March 2013 from <http://www.economist.com/node/146874>

²³ Holtmaat, R., & Naber, J. (2011). *Women's Human Rights and Culture. From Deadlock to Dialogue*. Cambridge: Intersentia.

In the events of opposition from governments, conditionality can be used as a manner to pressure them to review their stand and make changes. While conditionality is used to impose the *donors' rules*, in some cases it may be the only manner to compel governments to guarantee women's rights in their countries. A downside of this measure is that if a government does not comply with the requirements, development aid might be cut, punishing the society and not the government itself for the lack of change.²⁴ A last resort to promote women's rights is humanitarian intervention,²⁵ which should only be used in the event of armed conflicts between the government and fundamentalist groups or if either of these actors exert violence over the population. This measure tends to be avoided because it is very costly and requires states to stand in opposition to governments when the latter are the perpetrators, risking to damage their diplomatic (and possibly commercial) relations. Although conditionality and humanitarian intervention may be necessary in certain cases, education still needs to be provided in order to promote a cultural change and ensure that women's rights are respected in the long run.

Women's rights in Pakistan

One of the major evidences of the lack of respect for women's rights in Pakistan was demonstrated in 2009, when the national government introduced *Shari'ah law* (Islamic law)²⁶ in Swat Valley in *exchange* for a ceasefire of the Taliban.²⁷ The fact that the government basically traded

²⁴ Kerr, J. (Ed.). (1993). *Ours by Right. Women's Rights as Human Rights*. London: Zed Books Ltd.

²⁵ Hoadley, S. (2013). International Relations and Human Rights Course Syllabus. University of Auckland.

²⁶ According to Shari'ah law, men have complete control over women (including their education, movement, bodies, etc.), who must be punished by beating, stoning, mutilation or execution if they do not comply with (or even question) the law (Pakistani Women's Human Rights Organisation, 2010).

²⁷ Pakistani Women's Human Rights Organisation (2010). Sharia Law. Retrieved on 17 May 2013 from http://www.pakistaniwomen.org/sharia_pwhro.html

women's rights (amongst other aspects that the Shari'ah law comprises) for a promise of ceasefire shows that it does not view women's rights as inherent to women as human beings but as privileges that can be taken away from them.

The main concerns regarding the implementation of this law in terms of women's rights relate to what can be done in Swat Valley to revert this situation and how can the implementation of this fundamental interpretation of Shari'ah law in the rest of Pakistan be prevented. Firstly, considering that violence and bombings still continue in Swat Valley nowadays,²⁸ it is in the hands of the Pakistani Government to intervene politically and militarily to bring peace to the region and, in turn, start negotiations towards changing the legislation. The Pakistani Government would most probably count with the support of the United States, who could provide troops and financial resources, in the fight against the Taliban. Secondly, NGOs could educate the rest of the country's population about women's rights (as explained in the 'The role of NGOs' section of this article) and raise awareness about the consequences of the implementation of Shari'ah law in Swat Valley. These measures could, in turn, promote pro-women's rights feelings amongst the Pakistani society. In addition, the Pakistani Government and NGOs could look at the implementation of Shari'ah law in countries such as Germany²⁹, where it is applied only to the Muslim part of the society and to a degree that does not contravene women's rights.

²⁸ Arab News (2013). Attack fuels Taleban comeback fears in Pakistan's Swat Valley. Retrieved on 17 May 2013 from <http://www.arabnews.com/attack-fuels-taleban-comeback-fears-pakistan-s-swat-valley>; Daily Times (2013). Death Rains on Pakistan. Retrieved on 17 May 2013 from http://www.dailytimes.com.pk/default.asp?page=2013%5C01%5C11%5Cstory_11-1-2013_pg1_1; The Guardian (2012). Malala Yousafzai: Pakistan Taliban causes revulsion by shooting girl who spoke out. Retrieved on 17 May 2013 from <http://www.guardian.co.uk/world/2012/oct/09/taliban-pakistan-shoot-girl-malala-yousafzai>.

²⁹ The Local (2010). Sharia Law Being Used in Germany in Muslims' Domestic Disputes. Retrieved on 17 May 2013 from <http://www.thelocal.de/society/20101009-30383.html#.UZI3L5WTNUQ>

Conclusion

While culture is important for the development of people's identities, it cannot be accepted as a justification for the deprivation of women's rights in Pakistan or any other country. On the contrary, cultures are not static and changes of cultural practices or beliefs that are detrimental to these rights can legitimately be promoted. Although aid conditionality or other interventions are required to push a reform of local legislation and policies, these measures need to be coupled with education of the population by their government about gender equality to stimulate a voluntary cultural change and ensure its success in the long term.