

Paradox between Universalism of Human Rights and Relativism of Culture: A Case Study of Honour Killings in India

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Abstract

The rising tide of Honour killings against Hindu women and their justified murder in the name of culture by their parents/relatives, superficially reflects the tension between traditional and modern values in India. At a deeper level, cases of Honour killings represent the ongoing struggle between the universality of human rights and cultural relativism. Against this background, this article critically examines the role of universal human rights in relation to cultural relativism whilst assessing the values that claim to support honour killings in Indian culture. This article will examine the universalism of human rights and their influence on gender-based violence- especially relating to honour killings in North India. In addition, I will argue for an approach (drawing on the seminal work of Donnelly¹ who proposed ‘relative universalism of human rights’) allowing the tension between universality and particularity/relativism can be reconciled.

Keywords: *Honour Killing, Human right, universalism, India, Relativism*

In this paper I discuss the concept of universalism in relation to human rights. Furthermore, I elaborate conceptual elements on the particularistic view of culture. The article further highlights empirical cases of honour killings where the tension between universal human rights and cultural relativism is apparent.

I. BACKGROUND

The establishment of the United Nations and enactment of universal human rights regime in 1945 empowered Individuals to challenge atrocities committed by States and non-State actors. Thus, an Individual is no longer considered solely the prerogative of the State. The United Nations Charter (1945) affirmed universal respect, protection and promotion of human rights and fundamental freedom without any distinctions of race, sex, language or religion (see Article 1(3) and 55). Consequently, the International Covenant on Civil and Political Rights (1966) and

1 Jack Donnelly, “Cultural Relativism and Universal Human Rights” (1984) 6:4 Human Rights Quarterly 400–419.

the International Covenant on Economic, Social and Cultural Rights (1966) support the claim of universality of human rights on the basis of “inherent dignity of the human person”.

The main components of human rights are: all human beings, by virtue of their common humanity, possess dignity; human rights are fundamental, interdependent, and inalienable and cannot be overridden by cultural and religious tradition.² For some human rights are global and have become the aspiration of humankind³, similarly, some also consider human rights a commonly shared bulwark against evil and belief in them has become more widespread.⁴

Conversely, on the other hand, the universality of human rights is contested by cultural relativism; and by those who see human rights as having limited applicability hence resisting the idea and reality of universal human rights.⁵ Jack Donnelly ascribed ‘cultural relativity’ as an undeniable fact.⁶

For the purpose of this paper, the next section will elaborate on the concept of universalism of human rights in relation to cultural relativism.

II. UNIVERSALISM OF HUMAN RIGHTS IN RELATION TO CULTURAL RELATIVISM

Universalism holds the view the concept of underlying human unity, entitles all individuals, regardless of their cultures, holds certain basic rights, known as human rights. Traditionally, universalists have based their support for universal human rights on three major jurisprudential theories: natural law theory, theory of rationalism and the theory of positivism.⁷ Natural law theory asserts that an individual has certain inalienable rights granted to all individuals by God.⁸ Contrastingly, due to the diversity of religion and culture there is no major consensus on the existence of a higher moral order.

Furthermore, rationalism posits a belief in the universal human capacity to reason and think rationally.⁹ Rationalism and natural law theory are at the heart of

2 Elizabeth Zechenter, “In the Name of Culture: Cultural Relativism and the Abuse of the Individual” (1997) 53 *Journal of Anthropological Research* 319-347.

3 Samuel Moyn, “Epilogue in: The Burden of Morality” in *The Last Utopia: Human Rights in History* (Harvard University Press, 2010) 212.

4 Lynn Hunt, “The Soft Power of Humanity Why Human Rights Failed Only to Succeed in Long Run” in *Inventing Human Rights* (New York: W.W. Norton and Company, 2007) 134.

5 Abdullahi Ahmed An-Na’im, “Introduction” in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (University of Pennsylvania Press, 1992) 1.

6 Donnelly, *supra* note 1.

7 Ayodeji Perrin, “Human Rights and Cultural Relativism: The ‘Historical Development’ Argument and Building a Universal Consensus” (2005) *Argument and Building a Universal Consensus*, online: <https://www.academia.edu/2282438/Human_Rights_and_Cultural_Relativism_The_Historical_Development_Argument_and_Building_a_Universal_Consensus>.

8 Zechenter, *supra* note 2.

9 Jack Donnelly, *Universal Human Rights in Theory and Practice* (Cornell University Press, 1989).

human rights principles and take the form of claims that universal human rights are independent of culture, ideology or value systems and challenges the existing norms, practice and institutions as well as subvert oppressive customs.¹⁰ However, cultural relativism questions the soundness of the rationalist approach terming it as a reflection of Western culture, therefore, failing to reflect the diversity of human experience.

Positivists believe the source of human rights does not lie in individual culture but rather in international law such as international treaties and customary international law. However, positivism is unable to justify human rights abuses of indigenous peoples by modern nation-states that were forcefully annexed into modern states.

Alternatively, the capabilities theories seeks commonalities amongst cultures, religions and philosophical traditions, as well as commonalities amongst men and women and use those commonalities to argue that all individuals must have at least some minimum rights necessary for human functioning.¹¹ This theory fails to acknowledge there is considerable variance between cultures and these cannot be easily reconciled by looking for commonalities.

However, Donnelly believes that rights are formulated to protect human dignity. Thus, the easiest way to overcome the presumption of the universality of human rights is to demonstrate either that the anticipated violations are not standard in that society or that they are protected by an alternative mechanism.¹² It is hard to imagine cultural arguments against recognition of the basic personal rights such as right to life, liberty, and security of person; protection against slavery; torture and inhuman treatment; these rights are so clearly connected to basis requirement of human dignity, that any morally defensible society must recognize them.

1. Cultural Relativism/Particularism

Throughout this article, theories of 'relativism and particularism are used interchangeably. Relativism is a specific practice that may be relative to a specific context whereas particularism is the case of values (universal/particular values) that something is in particular to a specific context.

Cultural relativism within the discipline of anthropology is a heuristic tool reflecting the principle that an individual human's beliefs make sense in terms of his own culture. According to Fernando Tesón;

“In the context of the debate about the viability of international human rights, cultural relativism may be defined as the position according to which local cultural traditions (including religious, political, and legal practices) properly determine the existence and scope of civil and political rights enjoyed by individuals in a given society. A central tenet

10 *Ibid.*

11 Martha C Nussbaum, *Creating Capabilities: A Human Development Approach* (Cambridge: MA Harvard University Press, 2011), 44.

12 Donnelly, *supra* note 1.

of relativism is that no transboundary legal or moral standards exist against which human rights practices may be judged acceptable or unacceptable.”¹³

For Gellener, cultural relativism is a theory which asserts that there is no absolute truth, be it ethical, moral, or cultural and that there is no meaningful way to judge different cultures because all judgments are ethnocentric.¹⁴ The cultural relativists, deny the legitimacy of using alien values to judge a culture and reject using ideas taken from Western culture to judge the institutions of non-Western cultures. They also tend to oppose the idea that human rights norms are universal.

There are several variants of cultural relativism, ranging from strong culture relativism (culture is the sole source of the validity of a moral rule), to weak cultural relativism (culture may be an important source of the validity of moral rule, but relativity of human nature, communities and rights serves as check on potential excesses of universalism). Epistemological relativism (or extreme relativism), propagated by Geertz and his followers claim that humans are shaped exclusively by their culture and therefore there exists no unifying cross-cultural human characteristic.¹⁵

Donnelly believes that relativism rests on the notions of moral autonomy and communal self-determination.¹⁶ Respect for moral communities demands internal evaluation. However, Donnelly suggests, relying solely on internal judgement may abrogate one’s moral responsibilities as a member of the cosmopolitan moral community; such membership would seem to demand the application of universal standards in external judgements.¹⁷

2. Underlying tension between universalism and cultural relativism

There seems to exist an inherent tension between universalism and cultural relativism. To human rights relativists the application of universal human rights norms are impossible to defend in a diverse world and are no more than a Western concept with limited applicability.¹⁸ However, some have shown concern that the influence of cultural relativism is slowly undermining the entire system of international human rights treaties.¹⁹ Goodhart argues, “if human rights are not universal then their theoretical justification is undermined.”²⁰

Nevertheless, it has been suggested the conciliatory approach that human rights are universal in a real sense, in terms of worldwide acceptance, and for its effective

13 cited in Perrin, *supra* note 7.

14 cited in Zechenter, *supra* note 2.

15 Jarvie 1983, Spiro 1984, cited in *Ibid*.

16 Jack Donnelly, “The Relative Universality of Human Rights” (2007) 29:2 Human Rights Quarterly 281-306.

17 Donnelly, *supra* note 1.

18 Pollis and Schwab 1979, cited in Zechenter, *supra* note 2.

19 Sullivan, cited in *Ibid*.

20 Michael Goodhart, “Neither Relative nor Universal: A Response to Donnelly” (2008) 30:1 Human Rights Quarterly 183-193.

implementation at national and local level; there have to be minimum consensus on certain basic human rights norms. Donnelly calls this ‘overlapping consensus universality’.²¹

However, Xiaorong Li is concerned about societies where people are segregated by class, caste system, or cultural taboos ...where most people are on the verge of starvation and where survival is pressing concern, the prospect for effective implementation of human rights may differ.²² However, he neither legitimizes human rights violations under unfavourable conditions nor denies the universal applicability of human rights.

Conversely, Abdullahi An-Na’im questions the legitimacy of universal human rights standards because it does not accommodate cultural pluralism and prevails over the faith of culture communities thus he suggests in order to enhance the promotion of human rights in that society this issue must be addressed.²³ An-Na’im suggests a cross-cultural approach which requires internal cultural discourse and cross-cultural dialogue²⁴:

“It does not assume that sufficient cultural support for the full range of human rights is either already present or completely lacking in any given cultural tradition. Rather, more realistically prevailing interpretations and perceptions of each cultural tradition can be expected to support some human rights while disagreeing with or completely rejecting other existing human rights.”

An-Naim supports a legal system with a pluralistic mode of interpretation that respects the right of the local community to be the living frame of interpretation for its own religion and its normative regime.²⁵ However, he is against the idea of a centralized legal system enforcing rights on different cultures without respecting its plurality. An-naim, does not deny the applicability of existing human rights instruments.

Donnelly believes that human rights can be culturally relative. For instance, human rights are culturally relative to the extent that they are determined by a particular culture.²⁶ On the similar note, Perrine suggests that investigating and advancing cross-cultural perspectives of rights is a more promising route by which human rights can be universalized.²⁷

Contrastingly, being more sceptical about the universality of human rights, Teson suggests human rights violations in one society may be considered lawful in another, thus Western ideas of human rights should not be imposed upon Third World

21 Donnelly, *supra* note 16.

22 Li Xiaorong, “‘Asian Values’ and the Universality of Human Rights” (1996) 16:2 *Philosophy and Public Policy Quarterly* 18-23.

23 An-Na’im, *supra* note 5.

24 *Ibid.*

25 *Ibid.*

26 Donnelly, *supra* note 1.

27 Perrin, *supra* note 7.

societies.²⁸ Many cultural relativists base their criticisms on the historical development of the human rights corpus since World War II. It is the historical development of international human rights law largely within the UN treaty system and other regional bodies that cultural relativists find most problematic.²⁹ Because of this, cultural and historical context, the human rights movement's basic claim to universality is undermined as Makau Mutua claims.³⁰

Whilst Lee views universalism as a vague and abstract idea which is found to be in conflict with the particularism inherent in religion, he believes that religion is a part of human rights theory.³¹ For Douzinas, human rights are a Western-centric abstract idea, which fails to include diverse human identity,³² whereas Yasuaki, views the socio-religious diversity (in the Asian context) as a challenge for universalism.³³ Asian traditions do not focus on excessive legalism and individualism as European or American cultures have a tendency to. Supporting this view, one of the key drafters of UNESCO, Jacques Martin recalled: that so long as people's view in faith or philosophy differs, there are bound to be conflicts regarding interpretation and justification of rights.³⁴

However, Ignatieff believe that, human rights are the only universal moral vernacular that validates the claims of women and children against the oppression they experience in patriarchal and tribal societies; particularly against- arranged marriages [he failed to differentiate between arranged and forced marriages], civic disenfranchisement, genital mutilation and domestic slavery; that are ratified by the weight and authority of their cultures.³⁵ Ignatieff adds "adopting the values of individual agency does not necessarily entail adopting western ways of life". On the other hand, he believes that human rights should not delegitimize traditional culture as a whole.

Nonetheless, the conciliatory approach has been taken by universalists and relativists, whilst dealing with major human rights abuses of global concern. In this context, an intercultural conversation is taking place where believers of different faiths are seemingly agreed on condemning genocide, slavery and racism. They accept some basic rules of argumentation to reveal hidden presuppositions, disclose inconsistencies between ideas, clarify conceptual ambiguity and expose conclusions based on insufficient evidence and oversimplified generalizations. In such a

28 Teson cited in Rebecca Adami, "Reconciling Universality and Particularity through a Cosmopolitan Outlook on Human Rights" (2012) 4:2 CCS Journal 22-37.

29 Perrin, *supra* note 7.

30 Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights" (2001) 42 Harvard Journal of International Law 201-245.

31 Man Yee Karen Lee, "Religion, human rights and the role of culture" (2010) The International Journal of Human Rights, online: <<https://www.tandfonline.com/doi/abs/10.1080/13642981003665906>>.

32 Onuma Yasuaki, "In Quest of Intercivilizational Human Rights: 'Universal' vs. 'Relative' Human Rights Viewed from an Asian Perspective" (2000) 1:1 Asia Pacific Journal on Human Rights & the Law 53-88.

33 *Ibid.*

34 cited in Lee, *supra* note 31.

35 Michael Ignatieff, *Human Rights as Politics and Idolatry* (New Jersey: Princeton university press, 2001).

conversation people may revise or reinterpret their old beliefs based on public reasoning; the plausibility of such a conversation suggests a way of establishing universal validity.³⁶

Lee suggests a cultural dialogue between religious fundamentalists and liberals³⁷ whereas, Yasuaki to tackle the problem of cultural diversity, proposes an inter-civilization standard of human rights and strongly supports the reconceptualization of human rights.³⁸ Boaventura Santos stresses that human rights cannot be universal unless the discourse of human rights accommodates the voices of the South. As well the language and struggle of grassroots social struggles;³⁹ citing the inability of conventional human rights thinking to address the challenging questions raised by contemporary issues. Santosh, believes the western conception of human rights grants rights only to those from whom it can demand duties; further, he suggests finding other languages of dignity originating from cultures of South.

Boaventura Santosh (2002) stresses human rights are not universal in their application (there are three different sets of human rights regional systems such as the Inter-American, European and African); and rests on a western-centric idea of 'human dignity' and 'liberalism' which differs from other conceptions of human dignity thus, the metaphysical and moral foundation of human rights is not without flaws. For instance, the Hindu and Islamic ideals of 'human dignity' are different from Western ones.

On a similar note, Donnelly asserts human rights could not be universal, the sense in which they are (and are not) relative and argues for the "relative universality" of internationally recognized human rights.⁴⁰ He propagates 'weak cultural relativism' which recognizes a comprehensive set of prime facie universal human rights and allows only relatively rare and strictly limited local variations and exceptions; he is against the idea of radical universalism.⁴¹

Some refer to human rights as forms of moral imperialism which exclude and include humanity on the basis of coloniality of power⁴² thus human rights remain the site of contentious discourse and the question of their universality controversial. However, Waltz affirms, socioeconomic rights, freedom of religion, gender equality, right to self-determination and the universal application of the UDHR all owe their existence within the human rights corpus to non-Western States.⁴³ In fact, the expansion of the very concept of human rights owes a great deal to the non-Western world.

36 Xiaorong, *supra* note 22.

37 Lee, *supra* note 31.

38 Yasuaki, *supra* note 32.

39 Boaventura de Sousa Santos, *If God Were a Human Rights Activist* (Stanford University Press, 2009).

40 Donnelly, *supra* note 16.

41 Donnelly, *supra* note 1.

42 Coloniality refers to the logic, culture, and structure of the modern world-system as propagated by Anibal Quijano

43 Susan Eileen Waltz, "Universal Human Rights: The Contribution of Muslim States" (2004) 26:4 *Human Rights Quarterly* 799-844.

The universalism of human rights is limited since it excludes Southern narratives, struggles and cultures. The successful international, national and local implementation of human rights cannot be achieved without a degree of reconciliation between universalism and cultural relativism.

The following section will build on the previous section's discussion in a more concrete manner by highlighting the cultural/values justification for honour killings in India.

III. HONOR KILLINGS IN INDIA

1. What is Honour Killing?

For the purposes of this article, I will define honour killings as murders that occur when a person (or persons) transgresses the norms imposed by her/his community in the name of preserving honour which is culturally prescribed. These norms may relate to sexual autonomy, marriage, religious conscience, caste or property, all of which construct honour. Honour killings typically involve the murder of a young woman (and men) who have "violated" the notions of family "honour" and "purity." Such "transgressions" may involve anything from eloping with a lover who is not accepted by the family or for rejecting an arranged marriage to simply wearing revealing clothing in public.⁴⁴ The family gain and lose honour through money, power and the perceived improper behaviour of women; the emphasis on family honour is central to the Indian social framework as the family constitutes a potent force in the social structure.⁴⁵

The victims of most honour killings in India are women, they are perceived as the repositories of family honour; and the threat to this honour lies in the women's body and conduct due to her reproductive capacity; the entire clan and community co-share of this honour as blood ties of the family extend to them.⁴⁶ By choosing her own husband in defiance of her family's wishes, a young woman in India is seen as polluting not just herself but also her domestic group.⁴⁷

a. Cultural understanding of Honour Killing

In classical Latin, the word "honour" or honours, is associated with the idea of respect, prestige, esteem and connected with the existence of public dignities and offices.⁴⁸ Seen from this perspective honour has gender-neutral meaning and not compatible

44 Palash Gosh, "Caste-Council 'Explains' Honor Killings, While India Still Reels from Gang-Rape Tragedy", (16 January 2013), online: *International Business Times* <<https://www.ibtimes.com/caste-council-explains-honor-killings-while-india-still-reels-gang-rape-tragedy-1019686>>.

45 Jyothi Vishwanath & Srinivas C Palakonda, "Patriarchal Ideology of Honour and Honour Crimes in India" (2011) 6:1 *International Journal of Criminal Justice Sciences* 386-395.

46 Chowdhary 2007, cited in *Ibid*.

47 Mehta, cited in Gosh, *supra* note 44.

48 Recep Doğan, "Different Cultural Understandings of Honor That Inspire Killing: An Inquiry Into the Defendant's Perspective" (2014) 18 *Homicide Studies* 363.

with violence or killing. The concept of honour that inspires violence has a collective aspect, shaped and constructed by a gender-specific formula. In this gender specific conceptualization, men's honour and collective honour of the group is dependent on the proper behaviour of their female relatives and controlling female sexuality which if violated can ultimately led to an honour killing. In implicit terms this refers to the hegemonic power relations between men and women where men control women through violence; disallowing her human agency to make her own choices.

b. Cases of Honour Killings in India

Honour killings are rampant in India.⁴⁹ Men and women have been victims of honour killings. Cases of honour killings have been reported amongst Hindu, Muslim and Christian communities cutting across the hierarchy of lower and higher classes. In 2017, six men were sentenced due to killing a lower caste women who sought to marry a man from a higher Caste.⁵⁰ In September 2017, A 13-year-old girl became India's youngest ever "honour killing" victims after her father killed her when he saw her talking to a boy.⁵¹ In October 2012, a young woman in Haryana (the Northern Indian State), was murdered by her own family after marrying a man they disapproved of and who belonged to another caste.⁵² Haryana is one of the most notorious States for honour killings despite being economically progressive.⁵³

In the State of West Bengal, a man decapitated his sister and even brought her head (and the knife he used in the killing) to the local police station to surrender. Mehtab Alam, a 29-year-old, murdered his sister, Nilofar Bibi, 22, after finding out she was living with a former boyfriend. He beheaded her on a public street, stating "she had sinned and had to be punished."⁵⁴

The exact number of honour killings is difficult to compute as such killings are frequently disguised as "accidents" or even "suicides," rendering it impossible to accurately gauge the number of incidents. In India, such murders typically occur in the Northern regions of the country. However, 80 percent of honour killings in the State of Haryana occur due to women marrying without their family's consent.⁵⁵ In 2000, the United Nations (UN) estimated the number of honour killings at around

49 Kavita Krishnan, "Honour' crimes in India: An assault on women's autonomy", (14 March 2018), online: *Aljazeera* <<https://www.aljazeera.com/indepth/opinion/honour-killings-india-assault-women-autonomy-180314090856246.html>>.

50 Six men have been sentenced to death in India for the "honour" killing of a Dalit man who had married a woman from a higher caste.

51 Hatty Collier, "13-year-old girl 'beaten to death and set on fire in honour killing'", (19 September 2017), online: *Evening Standard* <<https://www.standard.co.uk/news/world/girl-13-becomes-one-of-indias-youngest-honour-killing-victims-after-being-beaten-to-death-and-set-on-a3638771.html>>.

52 Gosh, *supra* note 44.

53 Manvir Saini, "Haryana see third honour killing in two days girls murdered and cremated in Bahadurgarh", *The Times of India* (22 February 2018), online: <<https://timesofindia.indiatimes.com/city/chandigarh/haryana-sees-third-honour-killing-in-two-days-girl-murdered-and-cremated-in-bahadurgarh/articleshow/63032875.cms>>>.

54 Gosh, *supra* note 44.

55 *Ibid.*

5,000 worldwide.⁵⁶ In India, in 2012, there were 900 reported honour killings in Haryana, Punjab and Uttar Pradesh, with an additional 100-300 honour killings taking place in the rest of the country.⁵⁷

Honour killings in India are often led by a village Panchayat (a caste-based village Council in North India). The village Panchayat, though not directly involved in the killings, are often guilty of providing sanctity to such crimes. Currently, honour killings in India are perpetrated most notably by the Khap Panchayats, (the caste based village Councils) in States like Haryana, Uttar Pradesh, Punjab, parts of Bihar, Rajasthan and Tamil Nadu.

Despite their legal and official status, village Panchayats in some parts of the country are heavily dominated and coerced by informal social systems like the khap Panchayats.⁵⁸ Khap Panchayats are said to adjudicate on matters relating to social transgressions, marriage, property rights, inheritance and caste issues. The development of these parallel non-State systems of adjudication have, especially after Indian Independence, resulted in constructions of gender and sexuality, tradition and honour.⁵⁹ In many incidents of honour killings, the local Panchayat is believed to have sanctioned or even explicitly ordered killings.

The Times of India⁶⁰ reported a Panchayat declared before the court that the main culprits [behind] honour killing are not the representatives of Khaps but the relatives of couples when they cannot resist the social pressure of the locality. Such 'love marriages' being socially, customarily and traditionally prohibited relationships against the age-old custom and tradition of marriages, their relatives and friends cannot withstand the hostile taunts of their companions and public at large; this aspect forces them to commit such heinous crime of killing the couple on the pleas of saving the honour of their families in the eyes of the villagers.

c. Domestic and International Legal Safeguard

In India, the right to marry is a component of "right to life" as enshrined by Article 21 of the Constitution of India.⁶¹ It is not simply the "right to marry", but it is the right to marry out of choice. In *Lata Singh vs State of Uttar Pradesh* (2006, SC 2522), the

56 Phyllis Chesler & Nathan Bloom, "Hindu vs. Muslim Honor Killings" (2012) 19:3 Middle East Quarterly 43.

57 *Ibid.*

58 Kavita Kachhwaha, "Khap Adjudication in India: Honouring the Culture with Crimes" (2011) 6 International Journal of Criminal Justice Science, online: </paper/Khap-Adjudication-in-India%3A-Honouring-the-Culture-Kachhwaha/64f37b6abba3dddb27e82428f5826a7a75818fc1>.

59 Vishwanath & Palakonda, cited in Sneha Annavarapu, "Human Rights, Honour Killings and the Indian Law" (2015) 48:50 Economic and Political Weekly 7-8.

60 Dhananjay Mahapatra, "Cabinet sends bill on khaps to GoM", (9 July 2010), online: *Times of India* <<https://timesofindia.indiatimes.com/india/Cabinet-sends-bill-on-khaps-to-GoM/articleshow/6144531.cms>>.

61 Ananta Krishnan & Gopal Krishnan, "Right to Marry Person of One's Choice Is Integral: Supreme Court", (10 April 2018), online: *Times of India* <<https://indianexpress.com/article/india/right-to-marry-supreme-court-hadiya-case-5131055>>.

Supreme Court observed that “once a person becomes a major he or she can marry whosoever he/she likes”. Ironically, in contemporary India, honour crimes remain undefined allowing culprits to escape justice.⁶²

In relation to free will and choice, the Universal Declaration of Human Rights (hereafter UDHR), in its preamble asserts the dignity and worth of the human person and equal rights of women and men while affirming the freedom from fear and want.⁶³ Article 3 states everyone has the right to life, liberty and security while Article 5 prohibits torture and inhumane treatment. Article 8 guarantees effective remedial procedure in the national justice system for the violation of human rights. Article 12 prohibits arbitrary interference with privacy, family, home or correspondence including an attack on honour and reputation. The act of honour killing violates all the aforementioned rights. The UDHR also espouses the right to protection of the law against such attacks by Article 30.⁶⁴ It is abundantly apparent the human right to life is violated by honour killings.

India’s neighbour Pakistan has passed a law to counter the cases of honour killings. This law is legally advanced and progressive which “guarantees mandatory prison sentences of 25 years and strips families of the right to legally pardon the perpetrators of so-called “honour killings”, a practice that has allowed thousands of murderers to walk free.”⁶⁵ There is dire need of similar law in India; it may work as a preventive as well as have punitive effects.

In the next section, I will examine the role of traditional values and justification for killing people for the sake of so-called values and honour? In addition, I shall highlight the inherent conflict between universalism and particularism.

VI. THE CONFLICT BETWEEN UNIVERSALISM AND PARTICULARISM

The very notion that universal human rights are applicable to all human beings irrespective of any other consideration is important here. While the idea of “marriage” is a universal one, the terms and conditions of its execution and substance are culturally specific. A liberal view of marriage would be considered a matter of individual choice and freedom, whereas some communities consider it to be tied to ideas of lineage, honour and religion.⁶⁶

The “aspirational” idea behind the documentation of universal human rights is put under severe duress owing to the recurrent and recalcitrant presence of honour killings. In such cases, the idea of “individualism” and choice” is challenged by the

62 Kachhwaha, *supra* note 58.

63 United Nations, *United Declaration of Human Rights* (1948).

64 Adami, *supra* note 28.

65 Jon Boone, “Pakistan makes ‘honour killings’ punishable by mandatory prison time”, *The Guardian* (6 October 2016), online: <<https://www.theguardian.com/world/2016/oct/06/pakistan-honor-killing-law-prison-sentence>>.

66 Annavarapu, *supra* note 59.

prevalence of informal social systems which rely on ideas of “culture” – however contentious that term may be. The very fact that honour crimes stand at the confluence of “competing spheres of legal subjection simultaneously – customary laws, family law, criminal law and international law – makes it a severely challenging case to study.⁶⁷

Honour killings reflect the conflict between traditional vs. modern and universal vs. particular values, and a reaction against the construction of a modern notion of justice and law in which attempts to inscribe tradition with clear boundaries that can be attributed to the authenticity of an Indian culture.

Honour killings often occur when certain individuals have flouted the society’s normative stance regarding matrimony. In India, marriages occur for a variety of reasons ranging from basic notions of “carrying forward the bloodline” to pecuniary motives such as property acquisition to the more contemporary notions of love and the exercise of choice. In rural India, the notion of “proper” marriages are intertwined with adhering to certain norms of society which, if, disregarded cause disrepute to the family and kin of the “accused”.

One of the most prominent reasons to execute an honour killing is when persons do not adhere to the traditional norms of society and marry out of choice vis à-vis out of consent by the elders in the village. This is said to bring “dishonour” upon the family of the person engaging in such activity. Punishments can be fines (nominal or substantial), ritual expiation, public humiliation (ranging from blackening of face to dipping victim’s nose in human urine), forcing her/him to host a feast for the village, beatings, banishment from the village and murder.⁶⁸

The friction between universalism and cultural relativism manifests itself clearly in the case of honour killings and crimes as perpetuated by Khap Panchayats. It is not just the act of the murder of “erring” individuals, but it is the process behind the construction of honour, where the concept of honour is placed in a woman's body, and it is being forcefully protected by social custodians (in this case the village Council) by killing/restricting those who breached the boundary of honour. In addition, the concept of purity is deeply entwined with the women’s body; thus marrying into a similar blood line (same lineage) or out of caste/lower caste can be seen as a digression of purity. Thus, breaching purity norms attracts violence towards women. In this context, the liberal notion of “individual agency” is in direct contrast with the notion of collective social agency and stringent norms. In traditional rural Indian society community trumps individual rights particularly those of women.

Arguing that human rights are indeed natural rights and inherent by being a human being, Donnelly points to the universality of certain basic human rights as being both positive and normative issues.⁶⁹ In addition, Elizabeth Zechenter⁷⁰ whilst

67 Pratiksha Baxi, Shirin M Rai & Shaheen Sardar Ali, “Legacies of Common Law: ‘Crimes of Honour’ in India and Pakistan” (2006) 27:7 Third World Quarterly 1239–1253.

68 Bhupendra Yadav, “Khap Panchayats: Stealing Freedom?” (2009) 44 Economic and Political Weekly 16–19.

69 Donnelly, *supra* note 1.

70 Zechenter, *supra* note 2.

analysing “cultural relativism” (1997) also supports Donnelly’s claim that relativism and cultural particularism can be abused by States to engage in unethical practices against people. In the case of honour killings by Khap Panchayats, one can see that if adherence to a particular cultural practice is imposed in the name of “tradition”, the attack is not just on the individuals but on the institution of individual choice based on a conscious agency protected by the tenets of a Rule of Law which is assumed to be based on universal notions of justice and fairness.⁷¹

However, if we take the standpoint of relativism, it becomes contingent on the cultural ethos and values of that particular community. Whereby a violation of human rights is understood as something not dependent on an external source or not being a privilege – an argument that Donnelly has made whilst trying to justify the origin of contemporary human rights as being an exclusively Western construct.⁷²

There is a need for universal human right to guarantee culturally relative fundamental rights as enshrined in the constitution of each State (in form of Right to Life, Gender Equality). Therefore, the argument of cultural relativism in the context of honour killings would be deemed invalid by the universal human right to have one’s constitutional rights protected.

Culture cannot be excused for violating human rights. It is from such "cultural" defences that the South-East Asian theory of human rights has arisen whereby the culture of human rights succumbs to the demands of a so-called traditional culture. If the 'cultural' defence is totally accepted as in the case of Khap Panchayats, the human rights enterprise would die. Culture and the culture of human rights have to be reconciled.⁷³

V. CONCLUSION

Unless the international community utilises the crutch of a universal human right (which is not mired in controversies surrounding its content), the seriousness of honour killings will be undermined making it harder to prevent future incidents. It becomes hard to justify the universality of a right that is particular in terms of substance. If human right are specific to how they define “free choice”, the relativists can raise questions pertaining to the origin of this idea of free choice since the substance of the right is articulated and that substance is cultural. As Baxi correctly observed that the notion of the Rule of Law in relation to the complexities inherent in a postcolonial terrain such as India where the tension between the forces of “tradition” and “modernity” are evident in the informal systems such as Khap Panchayats, and where the State itself is constitutive of the dominant social relations and therefore limited in its capacity to mediate social conflict.⁷⁴

71 Annavarapu, *supra* note 59.

72 Donnelly, *supra* note 1.

73 Rajeev Dhavan, “What honour? It’s cruel murder”, (5 April 2010), online: *India Today* <<https://www.indiatoday.in/india/story/what-honour-its-cruel-murder-70972-2010-04-05>>.

74 Baxi, Rai & Ali, *supra* note 67.

If the 'culture' defence, is to kill those who do not succumb to the cultural norms cannot be accepted in this context then human rights shall prevail. Shall we give priority to the idea of community self-determination (by permitting the enforcement of customary practices) or permit the enforcement of universal human rights against traditional society? In this context, certain cultural practices cannot justify even fundamental deviations from universal rights standards. Donnelly rightly, stressed, "if cultural relativism is to function as guarantee of local-self-determination, rather than a cloak for despotism, we must insist on a strong, authentic cultural basis, as well as the presence of alternative mechanisms guaranteeing basic human dignity, before we justify cultural derogations from "universal" human rights."⁷⁵

Nevertheless, Donnelly, like An- Na'im and others, recognize that human rights must not only be universalized in the sense of being accepted by all members of the global community, but they must also be universalized based on advancing cross-cultural perspectives on rights; from all members of the global community.⁷⁶

To a certain extent, I agree with the statement of Department of Justice, Canada, who stated;

"While honour as a cultural justification for killing is in keeping with the mindset of certain groups, this motive cannot be attributed to entire populations...the existence of cultural norms and practices does not reduce individual responsibility except in those rare occasions where there is significant individual psychopathology".

Some experts believe the cases of honour killings are not as frequent as in Pakistan and Afghanistan, but their occurrence in northern India is undeniable.⁷⁷ However, in the Indian context, there is a need for stringent laws to prevent and punish perpetrators of honour killings, - without change in social attitude towards women the law will fail to be effective. In Pakistan there were at least 280 cases of honour crimes noted by the Human Rights Commission between October 2016 to June 2018 despite the passing of the law against honour killings. Cases of honour killings also depict a rural-urban divide. Women have more freedom in urban spaces compare to rural areas in India. People living in rural areas are more conservative and traditional. It also shows culture of urban India (where women experience more freedom) and how it conflicts with the old, traditional values of rural India where falling in love is taboo. Some religious conservative elements in Indian society blame 'decadent western culture' is responsible for eroding traditional Indian values (where women have inferior positions in comparison to men) - yet honour killings seem an overly aggressive and barbaric response to this cultural conflict.

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