

# **Cultural Oppression Disguised as Religious Obligation: A Fatal Misrepresentation to the Advancement of Muslim Women's Rights in the Context of the So-Called Honor Killings**

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## ABSTRACT

Advocates of women's rights have faced various struggles throughout the decades in the advancement of women's rights and emancipation in Muslim-majority countries. Much of the struggle is caused by the long-held misconception that the principal barrier to the advancement of such rights is due to the religion of Islam or, more accurately, the prevailing interpretations of Islam. In fact, historically, Islam has helped to further women's rights. If that is so, then there must be another reason so as to why Muslim women living in Muslim-majority countries or Muslim communities in the west are often deprived of the same rights that are granted to their western counterparts. The answer lies within the culture itself.

The dangers of misconstruing culture with religion is apparent. For one, mixing up religion with culture does not create an accurate depiction of Islam, which is why Muslim communities in different parts of the world practice "Islam" differently. What often occurs is different communities often mix their culture with religion, resulting in different versions of Islam being practiced from one community to the next with dire consequences for women. Second and more relevant to this discussion, if one were to perceive tension between women's rights and religion, the advancement of women's rights would be much more difficult to achieve. That is because opponents often hide behind arguments that religion takes precedence over all other rights.

Because of the complexities caused by mistaking cultural norms as religion, this Article aims to lay to rest the misconception that women's rights are hindered by religion. By arguing that it is culture and tradition that are the main obstacles to the advancement of women's rights in Muslim communities, this Article hopes to defeat any potential arguments that aim to hinder the advancement of women's rights under the false guise of religion. In doing so, this Article will look at one practice that is erroneously perceived as being governed by Islamic law: honor killings.

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### INTRODUCTION

Advocates of women's rights have faced various struggles throughout the decades in the advancement of women's rights and emancipation in Muslim-majority countries. Much of the struggle is caused by the long-held misconception that the principal barrier to the advancement of such rights is because of the religion of Islam or, more accurately, the prevailing interpretations of Islam. To this day, this common misconception, which exists within and outside the Muslim community, has resulted in western opponents claiming that women are oppressed by the confines of Islam. Muslims who oppose the advancement of women's rights do so on the basis that Islamic law principles should prevail<sup>1</sup> while westerners claim that Islamic law principles exist to the detriment of women's rights. Both views are inherently misleading and miss a crucial point: Islam does not conflict with women's rights. In fact, Islam has historically helped further women's rights. If that is so, then there must be another reason why Muslim women living in Muslim-majority countries or Muslim communities in the west are often deprived of the same rights that are granted to their western counterparts. The answer lies within the culture itself.

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1. Lisa Hajjar, *Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis*, 29 L. & Soc. INQUIRY 1, 16 (2004).

The deprivation of women's rights is due, not to religion, but to societal and cultural norms. It is culture that has shaped itself in a way that deprives women of their rights. Religion advocates for women's rights; culture often does not. The dangers of misconstruing culture with religion is apparent. For one, mixing up religion with culture does not create an accurate depiction of Islam, which is why Muslim communities in different parts of the world practice "Islam" differently. What occurs is different communities often mix their culture with religion, resulting in different versions of Islam being practiced from one community to the next with dire consequences for women. Second, and more relevant to this discussion, if one were to perceive tension between women's rights and religion, the advancement of women's rights would be much more difficult to achieve. That is because opponents often hide behind arguments that religion takes precedence over all other rights. The Cairo Declaration on Human Rights in Islam, for example, guaranteed that Islamic law would prevail over all other rights.<sup>2</sup> It is therefore much more difficult to argue for rights that religion is perceived to limit. On the other hand, if the tensions were correctly identified to occur between women's rights and culture, then women's rights advocates can no longer be silenced by those very claims. Cultures change with the times and, as we have seen in recent times,<sup>3</sup> women living in Muslim-majority countries are no longer silenced by appeals to custom and tradition.

Because of the complexities caused by mistaking cultural norms as religion, this Article aims to lay to rest the misconception that women's rights are hindered by religion. By arguing that culture and tradition are the main obstacles to the advancement of women's rights in Muslim communities, this Article hopes to defeat any potential arguments that aim to hinder the advancement of women's rights under the false guise of religion. While women's rights limited by the false pretenses of religion is ample and include private, public, and political rights, in attempting to explore the interdependence that exists between culture and religion, this Article will look at one practice that is erroneously perceived as being governed by Islamic law: honor killings.

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2. *Id.* at 18.

3. Women in Muslim-majority countries have fought for their rights, leading to much positive change including the right to vote and the right to practice as judges. See Margot Badran, *Islam, Patriarchy, and Feminism in the Middle East*, *TRENDS IN HIST.* 3, 17 (1982). Additionally, women's rights groups in the region are taking a stand against discriminatory citizenship laws and violent practices against women, including honor killings. See, e.g., Women's Refugee Commission & Tilburg University, *Briefing on Qatar, Iraq and Bahrain for the Committee on the Elimination of Discrimination against Women (CEDAW) 57<sup>th</sup> Pre-session Working Group, 29 July–02 August 2013*, at 2; see also, ABOLISH ARTICLE 153, <http://www.ablosih153.org> (last visited Feb. 20, 2020) (an awareness campaign started by women in Kuwait aiming to abolish the sanctioning of honor killings in Kuwait).

## I. THE PRACTICE OF HONOR KILLINGS

Honor killings is the practice of murdering a member of a family—often a daughter, sister, mother, or wife—who is regarded as having brought shame upon the family.<sup>4</sup> Such dishonor may include acts of adultery, pre-marital sexual relations, and any such acts of defiance that are considered to undermine male honor.<sup>5</sup> Men are often hailed as heroes during the initiation of honor-based violent acts and often face no repercussions for their heinous acts.<sup>6</sup>

Honor killings are not unique to the Muslim community and have existed since ancient Rome.<sup>7</sup> The practice is widespread, ranging from the Muslim-majority countries in the Middle East and North Africa region to the migrant communities in the west, including the United States, Germany and the United Kingdom.<sup>8</sup> Their prevalence in Muslim communities is due to the practice that existed among the Arabs during pre-Islamic times, where it was deemed that a woman's virginity belonged to the entire family.<sup>9</sup> Today, this perception still remains among the Arab population. In one famous case in Arizona, a Muslim father honor-killed his twenty-year-old daughter, Noor Almaleki, by intentionally running her over for being "too Americanized."<sup>10</sup> She had previously moved out to live with her boyfriend and her boyfriend's mother, Amal Khalaf, who was also targeted during the hit-and-run and was severely injured in the process.<sup>11</sup> While justice was served in the case of Noor Almaleki,<sup>12</sup> the same cannot be said of honor killings that occur in Muslim-majority countries. There, instead of receiving a thirty-four-year

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4. John A. Cohan, *Honor Killings and the Cultural Defense*, 40 CALIFORNIA W. INT'L L.J. 177, 191 (2010).

5. Radhika Coomaraswamy (Special Rapporteur on Violence Against Women), *Report on Violence Against Women, its Causes and Consequences*, U.N. Doc. E/CN.4/2002/83 (Jan. 31, 2002) [hereinafter *Special Rapporteur Report*].

6. Justin J. Gengler et al., *Who Supports Honor-Based Violence in the Middle East? Findings From a National Survey of Kuwait*, J. INTERPERSONAL VIOLENCE 1, 3–5 (2018).

7. *Preliminary Examination of so-called "Honour Killings" in Canada*, CAN. DEP'T JUST., <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/hk-ch/p3.html> (last updated July 26, 2017) [hereinafter *Canada Report*].

8. Special Rapporteur Report, *supra* note 5, at 11–12; *The Horror of 'Honor Killings', Even in US*, AMNESTY INT'L, <https://www.amnestyusa.org/the-horror-of-honor-killings-even-in-us> (last visited Jan. 6, 2020).

9. Canada Report, *supra* note 7.

10. Paul Rubin, *How a Muslim Woman Was "Honor-Killed" by Her Father Because He Believed She Was Too Americanized*, PHX. NEW TIMES (Apr. 1, 2010), <https://www.phoenixnewtimes.com/news/how-a-muslim-woman-was-honor-killed-by-her-father-because-he-believed-she-was-too-americanized-6445842>; *The Horror of 'Honor Killings'*, *supra* note 8.

11. Rubin, *supra* note 10; CNN Wire Staff, *Iraqi immigrant gets 34 years for killing 'too Westernized' daughter*, CNN (Apr. 16, 2011), <http://edition.cnn.com/2011/CRIME/04/15/arizona.honor.killing/index.html>.

12. Rubin, *supra* note 10.

sentence, Noor's father would have been met with praise for his seemingly heroic actions in restoring honor to his community.<sup>13</sup>

There is nothing Islamic about honor killings. While falsely portrayed as such, honor killings are not sanctioned by Islam.<sup>14</sup> Rather, honor killings are a cultural practice stemming from the need to maintain honor in patriarchal societies and is observed in non-Muslim communities as well.<sup>15</sup> This is alarming, given that international organizations, including the United Nations and the World Health Organization, have recognized honor killings as violations of human rights.<sup>16</sup> While statistics on honor killings are scattered, the United Nations has estimated that about 5,000 women lose their lives due to honor killings each year.<sup>17</sup> Because of the lack of more accurate data due to fears of reporting honor killings and the fact that honor killings are often a private family matter taking place behind closed doors, this number is estimated to be much higher.<sup>18</sup>

Many states in the Middle East either sanction honor-based killings or provide for reduced sentences which, in effect, would amount to a sanctioning of such killings.<sup>19</sup> Kuwait, for example, retains such a provision in Article 153 of its Penal Code, which reads:<sup>20</sup>

Anyone who surprises his wife in a state of adultery, or surprises his daughter or mother or his sister in the presence of a man and kills her immediately or kills him or kills them together is punishable by imprisonment for a period not exceeding three years and a fine of not more than [\$45] or one of these two punishments.

Kuwait's treatment of honor-based killings thereby reduces the crime of murder to a misdemeanor when the crime has been committed on the basis of honor.<sup>21</sup> Legislation providing for honor-based killings are able to pass strict scrutiny due to widespread public support in the region for

13. See Paul Rubin, *Iraq Native Faleh Almaleki Gets 34 Years in Prison for Murdering His Americanized Daughter*, PHX. NEW TIMES (Apr. 21, 2011), <https://www.phoenixnew-times.com/news/iraq-native-faleh-almaleki-gets-34-years-in-prison-for-murdering-his-americanized-daughter-6448238>. (“[M]embers of the local Iraqi community shunned Amal Khalaf in support of the defendant.”) [hereinafter *Rubin II*].

14. See Special Rapporteur Report, *supra* note 5, at 13.

15. See *id.* (discussing honor killings taking place in Brazil, a non-Muslim community).

16. PRISCILLA OFFENHAUER, *WOMEN IN ISLAMIC SOCIETIES: A SELECTED REVIEW OF SOCIAL SCIENTIFIC LITERATURE* 65 (Library of Cong. 2005).

17. Gengler, *supra* note 6, at 4.

18. See *id.*; Susan M. Okin, *Feminism, Women's Human Rights, and Cultural Differences*, 13 *HYPATIA* 32, 36 (1998).

19. See Gengler, *supra* note 6, at 5. Such countries include Lebanon, Jordan, Syria, Oman, Kuwait. *Id.*

20. Kuwait Law No. 16 (1960), Penal Code, art. 153.

21. Musawah and Abolish 153, *Joint Report on Article 16, Muslim Family Law and Muslim Women's Rights in Kuwait*, 68<sup>th</sup> CEDAW Session (Nov. 2017), [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KWT/INT\\_CEDAW\\_NGO\\_KWT\\_29225\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KWT/INT_CEDAW_NGO_KWT_29225_E.pdf).

honor-based violations. The perception is that women, like property, are meant to be possessed.<sup>22</sup>

A 2018 study conducted among 1,050 Kuwaiti citizens revealed considerable public support for honor-based violations.<sup>23</sup> It was concluded that “[h]alf of citizens report agreement that physical violence is justified as punishment for female adultery, whereas a third of both men and women say they would support a law permitting violence against a female adulterer.”<sup>24</sup> In supporting honor-based violations, the strongest justifications included: tribal attachment, religion, and stronger support for political Islam.<sup>25</sup> Yet, the concept of gender-based violence, including honor killings, is inherently un-Islamic.

## II. WOMEN’S RIGHTS AND RELIGION: A FALSE DICHOTOMY

In Islam, women are considered so important that an entire chapter of the Quran is dedicated to them, titled *An-Nisa*, which is the Arabic word for women.<sup>26</sup> The chapter on women is the second longest chapter in the Quran,<sup>27</sup> revealing the significance of women to Islam. In it are verses preaching equality of women to men before God and limiting the practice of polygamy to a maximum of four wives,<sup>28</sup> but it also contains verses *seemingly* permitting the use of violence against both men and women who commit unlawful sexual relations.<sup>29</sup> This has become the foundational basis on which patriarchal societies rely to restrict women’s rights today and sanction the practice of honor killings. However, the verses of the Quran must be read with proper context.<sup>30</sup>

Take, for example, the verse that seemingly permits violence against those who engage in extramarital or premarital sexual relations. While it appears at first glance to be true that violence is authorized in these cases, it is only when unauthorized sexual conduct is proven to exist that violence can ensue. The standard to prove that unlawful sexual conduct has taken place is so stringent that it, in essence, results in violence never being permitted. To prove the existence of unlawful sexual conduct, Islam requires either a

22. When speaking on the perceptions of women in the United States in the past, U.S. Supreme Court Justice Ruth B. Ginsburg discussed how she encountered discriminatory phrases such as the following in past law school textbooks: “land, like woman, was meant to be possessed.” AALS, *AALS Presidential Program – A Conversation With U.S. Supreme Court Justice Ruth Bader Ginsburg*, SOUND CLOUD (Jan. 4, 2020), <https://soundcloud.com/aals-2/aals-presidential-program-a-conversation-with-us-supreme-court-justice-ruth-bader-ginsburg/s-oG5xE>.

23. Gengler, *supra* note 6, at 5.

24. *Id.* at 1–2.

25. *Id.*

26. *Quran* 4.

27. *Id.*

28. *Id.* 4:3.

29. *Id.* 4:15–16.

30. See Carla Power, *What the Koran really says about women*, THE TELEGRAPH (Nov. 6, 2015), <http://s.telegraph.co.uk/graphics/projects/koran-carla-power/index.html>.

confession or the matching testimony of four eyewitnesses, who must have all publicly witnessed the actual act.<sup>31</sup> If eyewitness testimony was obtained in violation of an individual's right to privacy, then the evidence is inadmissible.<sup>32</sup> Consequently, since sexual acts are likely to occur behind closed doors, they are very difficult to convict. In these situations, then, no subsequent acts of violence are permitted. In any event, Islam does not condone vigilante justice, but it is reserved for the State to decide after proper procedures have taken place whether to impose punishment or not.

In any event, with nearly insurmountable evidentiary rules to meet,<sup>33</sup> the Quran has ensured the protection of women from violence, which is further proven by the fact that those who are found to have made false accusations in this regard must themselves be beaten for slander and will lose their civil rights including the right to serve as witnesses in the future.<sup>34</sup> Even if the information obtained is accurate, if the requirement that four witnesses come forward is not met, the remaining witnesses will face the same punishment as that of illicit sexual conduct for their slander, all to ensure that no one would come forward unless such acts can be corroborated by three additional witnesses who can testify to the same descriptions.<sup>35</sup>

Ultimately, one can only be convicted if he or she engages in an unlawful sexual act in public, with four eyewitnesses corroborating the act of penetration.<sup>36</sup> As stated by Quraishi, "Quranic principles honor privacy and dignity over the violation of law, except when a violation becomes a matter of public decency."<sup>37</sup> Private matters are, therefore, precluded. Conversely, while the Quran has ensured that the conviction for unlawful sexual conduct is near impossible, it has been used to justify violations against women who do commit unlawful sexual conduct.

Similarly, the Quran has been used to justify the beating of disobedient wives due, again, to a misinterpretation of the infamous verse of the Quran that is falsely held to permit domestic violence, verse 4:34.<sup>38</sup> Verse 4:34, which appears at first glance to sanction domestic violence, has been dubbed the "DNA of patriarchy."<sup>39</sup> This verse has been relied upon by many Muslim-majority States to sanction violence against women. Before 2016, the United Arab Emirates (UAE), for example, permitted domestic violence in Article 53 of its penal code, allowing for the "chastisement by a husband to his wife

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31. Ziba Mir-Hosseini, *Criminalizing Sexuality: Laws as Violence Against Women in Muslim Contexts*, WOMEN ISLAM J. (2018).

32. See Asifa Quraishi, *Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective*, 18 MICH. J. INT'L L. 287, 295 (1997).

33. *Id.* at 294.

34. See *Quran* 24:23; Mir-Hosseini, *supra* note 31; Quraishi, *supra* note 32, at 294.

35. Quraishi, *supra* note 32, at 299.

36. See *id.* at 296.

37. *Id.*

38. See *Quran* 4:34.

39. Power, *supra* note 30.

and chastisement of the parents . . . to the minor children[.]”<sup>40</sup> In 2010, the Federal Supreme Court of the UAE upheld the right of men to chastise their wives and children with violence, so long as it remains within the confines of Islam, meaning that the beating does not result in physical harm.<sup>41</sup> Notwithstanding the fact that Article 53 is a blatant disregard of international conventions that the UAE is Party to, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC),<sup>42</sup> domestic violence is also not authorized in the Quran. In 2016, the UAE amended its penal code such that there is no longer mention of husbands having the ability to beat their wives.<sup>43</sup> Nonetheless, the UAE has yet to enact laws criminalizing domestic violence against women and is therefore still in violation of its international law obligations.<sup>44</sup> Even Saudi Arabia, a Muslim-majority country that practices the strictest form of Islam based solely on the teachings of Islam,<sup>45</sup> has criminalized domestic violence since 2013, a monumental change for the country.<sup>46</sup> Regardless of whether or not the legislation works in practice, it shows a willingness on the part of the government and lends credibility to the argument that no form of domestic violence is authorized by Islam.<sup>47</sup> Jordan’s Court of Cassation, its highest court of law, has likewise banned the practice of honor killings on the basis that it conflicts with Islamic law.<sup>48</sup> Therefore, verse 4:34 cannot be said to support violence against women.

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40. *United Arab Emirates: Events of 2018*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2019/country-chapters/united-arab-emirates> (last visited Feb. 12, 2020); FEDERAL LAW NO.3 / 1987: THE PENAL CODE, art. 53 (United Arab Emirates).

41. *UAE: Spousal Abuse Never a ‘Right’*, HUM. RTS. WATCH (Oct. 19, 2010), <https://www.hrw.org/news/2010/10/19/uae-spousal-abuse-never-right?tr=y&aid=7215566>; Azizah Y. al-Hibri, *An Islamic Perspective on Domestic Violence*, 27 *FORDHAM INT’L L.J.* 195, 204 (2003).

42. *UAE: Spousal Abuse Never a ‘Right’*, *supra* note 41.

43. Hiba Zayadin, *An Emirati Woman’s Ordeal to Seek Protection from Abuse*, HUM. RTS. WATCH (Feb. 14, 2019), <https://www.hrw.org/news/2019/02/14/emirati-womans-ordeal-see-protection-abuse>.

44. *Id.*

45. *Saudi Arabia’s Constitution of 1992 with Amendments through 2005*, art. 1, CONSTITUTEPROJECT (2019), [https://www.constituteproject.org/constitution/Saudi\\_Arabia\\_2005.pdf](https://www.constituteproject.org/constitution/Saudi_Arabia_2005.pdf); See Nathan J. Brown, *Why won’t Saudi Arabia write down its laws?*, FOREIGN POL’Y (Jan. 23, 2012), <http://foreignpolicy.com/2012/01/23/why-wont-saudi-arabia-write-down-its-laws>.

46. Tom T. Butler, *The Times: Are They a-Changin’? Saudi Law Finally Addresses Domestic Violence with Its Regulation on Protection from Abuse*, 100 *IOWA L. REV.* 1233, 1234 (2015).

47. *Id.* at 1257.

48. Rothna Begum, *How to End ‘Honor’ Killings in Jordan*, HUM. RTS. WATCH (Apr. 3, 2017), <https://www.hrw.org/news/2017/04/03/how-end-honor-killings-jordan>. There is still much work to be done in Jordan. Even though the Court of Cassation will no longer tolerate the practice of honor killings, Article 340 of the Jordanian Penal Code still authorizes honor killings. For true change to occur, then, reforms to the Penal Code must be adopted. Still, the Jordan decision shows that honor killings do not conform to Islamic law obligations and stand in direct opposition to Islam.

Interestingly, and to lend more credibility to the proposition that verse 4:34 does not sanction violence, in 1947, during British colonization of Nigeria, a British court overturned a decision by a local Shariah court which had sentenced a man who had killed his wife's lover to death.<sup>49</sup> The British court excused the murder on the basis of it being a crime of passion, thereby deciding "that the murderer did not deserve to die."<sup>50</sup> Islamic law, then, appeared to make no justifications for the murderer in the name of honor whereas western law did. Relying on Islamic law principles to justify any sort of honor killing is, therefore, moot.

A proper translation of Verse 4:34, alongside its context, would show that domestic violence is never permitted in Islam. An earlier verse of the same chapter preaches that husbands must live with their wives in peace or separate in kindness.<sup>51</sup> To read 4:34 as permitting domestic violence of women, then, seems contrary.<sup>52</sup> It should also be recounted that the Prophet himself never beat any woman,<sup>53</sup> leading to many Muslim scholars forbidding the practice,<sup>54</sup> so it is difficult to argue that the Quran would sanction the beating of women under any circumstances.

It is noteworthy to point out that the Quran was the first Holy Book to recognize wife beating, at a time when wife beatings were paramount.<sup>55</sup> Gradually, so as to ensure adherence, Islam sought to prohibit wife beatings and other forms of violence against women.<sup>56</sup> The true meaning of Islam, then, forbids violence against women and aims to further the advancement of women's rights. In fact, when Islam was first introduced, it was rejected for being more progressive than the traditions and customs that already existed at the time.

Before the emergence of Islam, the then-existing pre-Islamic society was guided by patriarchal tribal customs.<sup>57</sup> Such custom allowed for, among other women's right violations, wife beatings, due to prevailing perceptions that women were the property of men.<sup>58</sup> Along with Islam came improvements in women's rights, including the restriction on the practice of polygamy,

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49. Lisa Idzikowski, *HONOR KILLINGS: GLOBAL VIEWPOINTS* 71 (Greenhaven 2017).

50. *Id.*

51. *Quran* 4:19.

52. al-Hibri, *supra* note 41, at 220.

53. Sunan Abu Dawood, *Kitab Al-Adab [Book of General Behavior]*, Hadith 4786; Fatima Mernissi, *THE VEIL AND THE MALE ELITE: A FEMINIST INTERPRETATION OF WOMEN'S RIGHTS IN ISLAM* 156 (Mary J. Lakeland trans., Basic Books 1991).

54. JONATHAN A.C. BROWN, *MISQUOTING MUHAMMAD: THE CHALLENGE AND CHOICES OF INTERPRETING THE PROPHET'S LEGACY (ISLAM IN THE TWENTY-FIRST CENTURY)* 275–76 (Oneworld Publications 2014).

55. Murad H. Elsaidi, *Human Rights and Islamic Law: A Legal Analysis Challenging the Husband's Authority to Punish "Rebellious" Wives*, 7 *MUSLIM WORLD J. HUM. RTS.* 1, 14, 18 (2011); Khaleel Mohammed, *Sex, Sexuality, and the Family*, *THE BLACKWELL COMPANION TO THE QUR'AN* 302 (Andrew Rippin ed., Blackwell Publishing 2006).

56. See Elsaidi, *supra* note 55, at 18.

57. See Badran, *supra* note 3, at 14.

58. See Elsaidi, *supra* note 55, at 14.

a practice erroneously considered to be exclusively Islamic.<sup>59</sup> Whereas, previously, tradition dictated that men could marry an unlimited number of wives, Islam limited that number to four, much to the protection of women.<sup>60</sup> Similarly, Islam was regarded as progressive when it allowed women to participate in the selection of community leaders.<sup>61</sup> Additionally, the veiling of a woman's face was a practice that existed prior to the introduction of Islam and, contrary to public thought, is not an Islamic obligation.<sup>62</sup> Women's rights seemed to be advanced in the era of Islam, then. After the death of the Prophet Muhammad, however, conflict developed between Islam and women's rights, as patriarchal interests, again, resurfaced.<sup>63</sup>

Islamists, strict adherents of Islam who support restrictions on women's rights, rely on misinterpretations of the Quran to arrive at the conclusion that women's rights must be limited in the furtherance of Islam.<sup>64</sup> For these strict adherents, granting women's rights leads to what are perceived as negative impacts, including an increase in the marriage age and a decrease in fertility, changes in mentality leading to a creation of new identities seemingly not approved by religion, and a proliferation of female independence, which, in patriarchal societies, is undesirable.<sup>65</sup> Thus, to preserve the religion, Islamists advocate that it is necessary to allow religion to continue to influence private family matters, leading to the sanctioning of heinous practices being committed against women, such as honor killings.<sup>66</sup> In fact, neither the Quran nor other Islamic sources, including the Hadiths, the practice of the Prophet, mention the practice.<sup>67</sup> Even if one were to accept the supposition that wife beatings are sanctioned by Islam, physical injury must never result from the beating.<sup>68</sup> As such, honor killings would never be permitted under any interpretation of the Quran. Yet, this does not stop some Muslims from referring to honor killings as their God-given right.<sup>69</sup>

Unapologetically barbaric, honor killings are not prescribed by Islam. The practice stands in conflict with Islamic law principles, and Muslim feminists have argued that the advancement of women's rights will come about "only with the achievement of a true Muslim society."<sup>70</sup> Danger results when this tension is falsely perceived as resulting from religion and not from culture, as society turns a blind eye to the real culprit.

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59. Dr. Fatemah Albader, *Breaking the Perceptions of Islamic Monolithism*, 26 U. MIAMI INT'L & COMP. L. REV. 337, 342 (2019); Badran, *supra* note 3, at 14–15.

60. Badran, *supra* note 3, at 14.

61. *Id.*

62. *Id.*

63. *Id.*

64. See Feryal M. Cherif, *Culture, Rights, and Norms: Women's Rights Reform in Muslim Countries*, 72 J. POL. 1144, 1145 (2010).

65. *Id.* at 1148.

66. *Id.* at 1145.

67. Canada Report, *supra* note 7.

68. al-Hibri, *supra* note 41, at 222.

69. Canada Report, *supra* note 7.

70. Badran, *supra* note 3, at 19.

### III. WOMEN'S RIGHTS AND CULTURE: THE TRUE DICHOTOMY

Islam is not practiced in isolation. Rather, it is influenced by political, economic, social, and cultural factors.<sup>71</sup> While Islam is inherently flexible due to the diversity that exists among competing interpretations of Islam,<sup>72</sup> no interpretation of Islam could reasonably conclude that there is true tension between Islam and women's rights. That is because Islam, as a proponent for some of the earliest protections toward a group of people so highly regarded by Islam, has long-embraced women's rights. No matter how one interprets the Quran, the right to interpretation being inherent in the religion of Islam,<sup>73</sup> it all leads to the same conclusion: women must be respected and granted the highest standard of due care.

Almost all Islamic societies are dual systems, comprised of both (1) a civil code and (2) a personal status or family law that is primarily built upon Islamic law.<sup>74</sup> Thus, it becomes ever more impossible to separate religion from culture. Still, some restraints brought about in the name of religion are inherently cultural. Restricting women's right to vote is cultural, not Islamic. The veiling of women is cultural, not Islamic. The practice of polygamy is, for the most part, cultural. Culture is so deeply intertwined with religion that scholars often cannot study religion without studying culture as well.<sup>75</sup> Take, for example, the stringent requirements of proving illicit sexual relations. Most Muslim communities have limited the ability to testify to male witnesses, but not female witnesses.<sup>76</sup> The Quran, however, speaks only of eyewitnesses, thereby allowing both males and females to testify. Yet, it is due to culture that the requirement that only males be allowed to testify, because culturally, Muslim women are viewed as inferior to men.<sup>77</sup> To support their patriarchal agendas, leaders of Muslim societies often turn to Islam as the justification to prohibit females from testifying, yet the prohibition is not grounded upon religion but on culture.

This overlap between culture and religion often leads to different versions of the same religion being practiced in different parts of the world.<sup>78</sup> Religion is no longer monolithic and depends on many factors, including customary influences.<sup>79</sup> That is why, for example, some Muslim-majority states permit polygamy while others prohibit it, all based on differing interpretations of Islam being intertwined with culture as well.<sup>80</sup> As others have put it,

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71. Albader, *supra* note 59, at 367; *see also*, Fait A. Muedini, *Teaching "Islam and Human Rights" in the Classroom*, 45 POL. SCI. POL. 101, 105 (2012).

72. *See* Albader, *supra* note 59, at 367.

73. *See id.*

74. Offenbauer, *supra* note 16, at 2, 33.

75. Jaco Beyers, *Religion and culture: Revisiting a close relative*, 73 HTS THEOLOGIESE STUD./THEOLOGICAL STUD., July 28, 2017, at 1, 4.

76. Quraishi, *supra* note 32, at 309.

77. *Id.*

78. Beyers, *supra* note 75.

79. Albader, *supra* note 59, at 338.

80. *Id.*

“[s]trong Islamic culture worsens women’s rights.”<sup>81</sup> Thus, it is due to cultural differences, not religion, that some practices are frowned upon in some parts of the world and not others, especially in the context of human rights.

There is a clear and perceived tension between culture and human rights, which often results in harmful practices being committed against Muslim women. Such practices include honor killings and female genital mutilation (FGM), and are often practiced in the name of culture.<sup>82</sup> The importance of eliminating these harmful practices has been stressed by the Vienna Programme of Action, a result of the 1993 World Conference on Human Rights.<sup>83</sup> The Programme calls for the eradication of “any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.”<sup>84</sup>

Similarly, various international law instruments protect against cultural claims to committing violence against women, including the CEDAW, which many Muslim-majority States are Parties.<sup>85</sup> Article 5 of CEDAW obliges States Parties to take all appropriate measures to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and custom and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes . . . .”<sup>86</sup> All Muslim-majority countries that are Party to the CEDAW have either accepted Article 5 without reservation or withdrawn reservations in regard to Article 5, except for Niger.<sup>87</sup> Niger has expressed reservations “with regard to the modification of social and cultural patterns of conduct of men and women.”<sup>88</sup> Nonetheless, its reservation of Article 5 has been rejected by many States Parties, including Denmark, Finland, Norway, Sweden, France, and the Netherlands, as being incompatible with the object and purpose of CEDAW.<sup>89</sup> Article 28(2) of CEDAW prevents reservations that will defeat the object and purpose of the Convention.<sup>90</sup> As such, Niger is not entitled to make reservations to Article 5, which would undermine the basis of the Convention. Here, the tension between culture and human rights should be apparent, as

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81. Neilan S. Chaturvedi & Orlando Montoya, *Democracy, Oil, or Religion? Expanding Women's Rights in the Muslim World*, 6 POL. & RELIG. 596, 600 (2013).

82. U.N. Hum. Rts. High Comm’r, *Women's Rights are Human Rights*, 27, U.N. Doc. HR/PUB/14/2 (2014).

83. *Id.* at 4.

84. World Conference on Human Rights, *Vienna Declaration and Programme of Action*, U.N. Doc. A/CONF.157/23 (June 25, 1993).

85. G.A. Res. 34/180, CEDAW, art. 5., (Dec. 18, 1979). *See also* G.A. Res. 48/104, Declaration on Elimination of Violence against Women (Dec. 20, 1993) (stating that “States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.”). *See Offenhauer, supra* note 16, at 8.

86. G.A. Res. 34/180, CEDAW, art. 5, (Dec. 18, 1979).

87. G.A. Res. 34/180, CEDAW, Decl. & Res., (Dec. 18, 1979).

88. *Id.*

89. *Id.*

90. G.A. Res. 34/180, CEDAW, art. 28(2), (Dec. 18, 1979).

expressed by Niger in its reservation, where Article 5 is considered by Niger to be “contrary to existing customs and practices . . . [and] can be modified only with the passage of time and the evolution of society and cannot, therefore, be abolished by an act of authority.”<sup>91</sup> Such an appeal to culture to inhibit women’s rights is no longer acceptable.

In 2001, Former Special Rapporteur on violence against women, Radhika Coomaraswamy, correctly identified, *inter alia*, honor killings and FGM as practices that, because they are viewed as inherently cultural, are often perceived as deserving of tolerance.<sup>92</sup> However, such practices, which are akin to torture and cause serious pain and suffering, cannot be tolerated in any way and are a blatant violation of both treaty and customary law obligations.<sup>93</sup> Even when committed by private individuals, these violations can nonetheless be attributed to the State in cases where the State has failed “to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”<sup>94</sup>

#### IV. HONOR KILLINGS: A RELIGIOUS OR CULTURAL PRACTICE? AND WHAT CAN BE DONE TO COUNTER SUCH PRACTICES?

Many cultural practices that are practiced in the name of Islam are inherently un-Islamic, honor killings included.<sup>95</sup> This misidentification becomes apparent when considering the fact that these practices are not practiced exclusively among Muslim populations but are practiced universally.<sup>96</sup> Islam does not promote the subjugation of women, and nowhere in the Quran does it sanction any violence against women.<sup>97</sup> It is culture that has favored inherently patriarchal violent practices, not Islam in itself. The influence of culture explains why practices such as honor killings have flourished. Unbeknownst to westerners and radical Muslims, Islam does not condone honor killings or any violence against women. This change was brought about due to the revival and influx of culture, taking place soon after the death of the Prophet Muhammad and has lasted well into the current century.

Governments in Muslim-majority States often provide for lesser sentences if not impunity for honor killings due to perceptions that honor killings are a way to restore honor in the family. To further exacerbate the problem, when victims do file a report for honor-based violence not resulting in death, or for attempted or threatened honor killings, they are often accused and

91. G.A. Res., *supra* note 87.

92. Special Rapporteur Report, *supra* note 5, at 3.

93. See G.A. Res. 39/46, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (June 26, 1987). Also, torture is a *Jus Cogens* crime and therefore binds all States. Special Rapporteur Report, *supra* note 5, at 8.

94. Elimination of Discrimination Against Women Comm. Rec. No. 19, Violence Against Women, U.N. Doc. GEC/3731/E (1992).

95. See Offenauer, *supra* note 16, at 2.

96. See Part I, on the practice of honor killings. See also, Offenauer, *supra* note 16, at 5.

97. Power, *supra* note 30.

taken to jail.<sup>98</sup> Sometimes, women turn themselves in to the authorities to ensure that their lives are protected, at least in prison.<sup>99</sup> Should their families bail them out, a more dreadful fate awaits.<sup>100</sup> Victim-blaming must therefore come to an end, and Muslim-majority States should establish better protection for women from egregious practices like honor killings.

These practices, when not prohibited, will remain due to the inflation of family relations where the State itself does not intervene.<sup>101</sup> Families are equipped to take matters into their own hands, knowing full well that they are backed by society. As such, to ensure Muslim-majority States are in compliance with international law obligations, and to ensure that the practice of honor killings is at least reduced and at best eradicated, States must pass legislation providing for criminal prosecution of the practice of honor killings, with stricter punishment, akin to cold-blooded murder. As such, legislation allowing for impunity or reduced sentences for honor killings must be abolished.

Nonetheless, since honor-based violence occurs in both Muslim States and Muslim communities in the west, efforts should be aimed at countering arguments that honor-based violence is sanctioned by Islam. By launching educational efforts to correct the stereotype and to educate Muslim populations that honor killings are not an Islamic practice, but exist despite Islam, will prove useful. By establishing a firm interpretation that Islam does not tolerate what is practically murder, the cultural roots that tie society to the practice may slowly dissipate. Such educational efforts must integrate women's rights into culture and must be headed by local leaders within the community to ensure that these efforts are not viewed as cultural imperialism.

Finally, by consistently raising alert to the fact that governments allowing for reduced sentences or impunity for honor-based violence are in violation of international law obligations, including the CEDAW, and by shedding light on the practice that has remained for so long, imposing pressure could play a positive role in ensuring compliance in the future through more adequate national legislation.

## CONCLUSION

Religion does not exist in isolation. Rather, religion coexists alongside culture. It is due to this mixup with culture that some harmful traditional practices occur in some parts of the world and not others. Nonetheless, by proving that these practices are inherently cultural and not religious, it becomes much easier, but not-at-all easy, to defeat these traditional practices than if the practice stemmed from religion alone. Otherwise, if obstacles to the grant of women's rights are viewed as "divinely inspired," then there is

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98. Rana Husseini, *Honor Killings*, PBS, <https://www.pbs.org/speaktruthtopower/rana.html> (last visited Jan. 7, 2020).

99. *See id.*

100. *Id.*

101. Hajjar, *supra* note 1, at 33.

the risk that they become “not only sacred but impervious to change.”<sup>102</sup> Still, there is a long way to go before such traditional practices are eliminated. On a more positive note, culture is not a fixed variable but has the tendency to change over time, and advocates of human rights, including women’s rights, are no longer silenced by appeals to custom.<sup>103</sup>

Simply put, “[w]omen’s rights are human rights, and there is no room for culture in that discussion.”<sup>104</sup> As the Former Special Rapporteur noted, violent practices exist in all cultures.<sup>105</sup> Nonetheless, the international community should scrutinize these practices as being violent and unlawful, thereby depriving women of rights they are entitled to under various domestic and international law instruments, such as rights laid out in CEDAW.<sup>106</sup> As stressed by the Vienna Programme of Action, the CEDAW, and the international community at large, culture is no longer acceptable as an excuse for violations of women’s rights, that have now become human rights.<sup>107</sup> Accordingly, States can no longer resort to custom or tradition to avoid complying with their obligations owed to women.<sup>108</sup> In the past, appeals to culture remained unchallenged and unquestioned. This no longer stands true today, and, by integrating women’s rights into culture, Muslim-majority communities can ensure that all forms of gender discrimination will be eliminated, starting with the most harmful practices.

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102. Cherif, *supra* note 64.

103. Beyers, *supra* note 75, at 6.

104. Margot Wallström, *Culture is not an excuse for oppressing women*, *Economist* (June 25, 2018), <https://www.economist.com/open-future/2018/06/25/culture-is-not-an-excuse-for-oppressing-women>.

105. Special Rapporteur Report, *supra* note 5, at 3.

106. See G.A. Res. 34/180, CEDAW (Dec. 18, 1979). See also G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966).

107. See Okin, *supra* note 18, at 46.

108. See Special Rapporteur Report, *supra* note 5, at 3.

