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Law and Culture in Conflict:  
A Legal Study of Dowries and Domestic  
Violence

JURM02 Graduate Thesis

Graduate Thesis, Master of Laws programme  
30 higher education credits

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Semester: HT2013

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# Summary

Violence against women is one of the most serious international human rights breaches in the world. It reaffirms the subordination of women, the patriarchal standard setting and insufficient implementation of human rights. This thesis investigates what domestic violence consists of in India and in Sweden. In India this is focused on dowry violence and in Sweden “ordinary” domestic violence and honour-related violence are prioritized. Thereafter it is examined what States have done legislatively on this field since it is the responsibility of States to perform due diligence and stop violence against women, and there are no legitimate excuses to ignore this obligation. This leads to a discussion of the role of universal human rights and culture. The conclusion is that different forms of domestic violence should not be separated since they share the same root causes; the power structures in society and family, as well as the diminishment of women. That is why a single solution, that is international human rights law, should be a suitable machinery to amend the problem. However, the thesis explores the two different viewpoints in this field expressed by human rights universalists and cultural relativists. This can be summarized as a conflict between those that think that universal human rights exist and those that think that human rights take their stand depending on their cultural environment. It is a question whether international human rights are in conflict with culture or if they have to take customary practises into consideration in order to be effective. The answer might be to balance the two opposing poles and have both the concept of “difference” for cultural variety and a regard for “sameness” to create normative authority. Regardless, the conclusion is that the former attitude to ignore women’s rights, or what violations of them depended on, is a thing of the past. The de-marginalisation of the problem has led to the belief that women’s rights are human rights since the Vienna Declaration and Programme of Action in 1993. Nonetheless, the standard setting is merely ideological if it is not followed by government initiatives, public education and more research on the area. It is important to acknowledge that violence against women does not happen somewhere else, but is a reality in the entire world, which forces women into a certain role and hinders them from realising their basic human rights. This thesis was meant to explain, investigate and analyse this situation.

Keywords: *comparative law, culture, domestic violence, domestic legislation, dowries, honour-violence, international human rights, state responsibility, women’s human rights.*

# Sammanfattning

Våld mot kvinnor är ett av de mest allvarliga brotten mot internationella mänskliga rättigheter i världen. Det bekräftar underordningen av kvinnor, den patriarkatiska normgivningen och den otillräckliga implementationen av mänskliga rättigheter. Det här arbetet utreder vad våld i hemmet består av i Indien och i Sverige. I Indien är detta fokuserat på dowry-våld och i Sverige är "vanligt" våld i hemmet och hedersrelaterat våld prioriterat. Därefter undersöks vad stater har gjort legislativt på detta område då det är staters ansvar att vidta erforderliga åtgärder och stoppa våld mot kvinnor, och det finns inga legitima ursäkter att ignorera denna skyldighet. Detta leder till en diskussion om rollen för universella mänskliga rättigheter och kultur. Slutsatsen är att olika former av våld i hemmet inte ska separeras då de delar samma grunder; maktstrukturer i samhället och familjen, såväl som underordningen av kvinnor. Därav borde en enda lösning, d.v.s. internationella mänskliga rättigheter, vara ett lämpligt system för att förbättra problemet. Arbetet efterforskar emellertid de två olika ståndpunkterna på detta ämnesområde uttryckt av mänskliga rättigheter universalister och kulturella relativister. Detta kan bli sammanfattat som en konflikt mellan de som tror att det existerar universella mänskliga rättigheter och de som tror att mänskliga rättigheter tar sitt uttryck beroende på deras kulturella miljö. Frågan är huruvida internationella mänskliga rättigheter är i konflikt med kultur eller om de måste ta sedvanor i beaktande för att vara effektiva. Svaret kan vara att det måste finnas en balans mellan de två motsatta polerna och ha både konceptet "olikhet" för kulturella varianter och hänsyn till "samma" för att skapa normativ auktoritet. Oavsett detta är slutsatsen att den tidigare attityden att ignorera kvinnors mänskliga rättigheter, eller vad brott mot dem berodde på, är en dåtida förseelse. Avmarginaliseringen av problemet har lett till tron att kvinnors rättigheter är mänskliga rättigheter sedan Wiendeklarationen och handlingsprogrammet från 1993. Oberoende av detta, normgivningen är bara ideologisk om den inte följs av regeringsinitiativ, utbildning av allmänheten och mer forskning på området. Det är viktigt att bekräfta att mäns våld mot kvinnor inte bara händer någon annanstans, utan är en realitet i hela världen, vilket tvingar kvinnor till en särskild roll och förhindrar dem från att åtnjuta sina grundläggande mänskliga rättigheter. Detta arbete är menat att förklara, utreda och analysera denna situation.

Nyckelord: *dowries, hedervåld, komparativ rätt, kvinnors mänskliga rättigheter, internationella mänskliga rättigheter, kultur, nationell lagstiftning, staters ansvar, våld i hemmet.*

# Preface

I would like to thank the Faculty of Law at Lund University and my supervisor Michael Bogdan, for 4.5 years of teaching and inspiration during my education.

Likewise, I have to recognize the support from my family and friends and thank them for always helping and believing in me.

This thesis also acknowledges all the girls and women that experience violence, and other forms of oppression, that make them unable to control their own lives. As long as there are people expressing their views and working for equal human rights – progress will be made.

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Sofie Lindholm  
Lund, January 2014

# Abbreviations

BCE	Before Common Era
Brå	Brottsförebyggande rådet (The Swedish National Council for Crime Prevention)
CEDAW	The Convention on the Elimination of All Forms of Discrimination Against Women
EU	European Union
HD	Högsta Domstolen (Swedish supreme court)
IPC	Indian Penal Code
MDGs	Millennium Development Goals
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner of Human Rights
PROP	Proposition (Swedish government bill)
RH	Rättsfall från Hovrätterna (case from appellate courts)
SFS	Svensk Författningssamling (Swedish codes of statutes)
SOU	Statens Offentliga Utredningar (Swedish government official reports)
SPC	Swedish Penal Code
UDHR	Universal Declaration of Human Rights
UN	United Nations

# 1 Introduction

## 1.1 Background

There is a saying in India that states; “[r]aising a daughter is like watering your neighbours’ garden.”<sup>1</sup> It illustrates the preference for sons over daughters in India, and that the families’ “ownerships” over their daughters are only temporary until they hand it over to their sons-in-laws and their families. This transaction is realized through the use of dowries, a form of gift from the bride’s family to the groom’s before a pending wedding or during a marriage, and this has many complications. First of all, it is difficult to draw a line on the correct definition of the dowry itself. Secondly, it is troublesome to set aside the dowry from the actual ramifications that it can lead to – the most serious and irrevocable being dowry deaths. I chose this topic after spending one year as an exchange student in Japan and discussing topics concerning Asia that I had never heard of before. The problems of dowries made me contemplate the legal status of these and what has been done to prevent them and the domestic violence they represent. The reason for choosing to focus on India is that, as Veena Talwar Oldenburg, author of “Dowry Murder – The Imperial Origins of a Cultural Crime”, suggests, dowry or violence against women is nothing that only exists in India, but the problem has very much relevance there.<sup>2</sup> In order to understand the root problem with domestic violence, a comparison with Sweden is included, to see what different countries have done according to domestic and international obligations, to deal with the global difficulty of domestic violence – no matter their historical background or how it is carried out.

## 1.2 Purpose

This graduate thesis is meant to bring some light to the problem of dowries and domestic violence. The purpose is not to create a sense of “otherness” from the situation in India by saying that it is either better or worse compared to Sweden. Violence against women is widespread across the world and there are many other forms of it. That is why this thesis is also investigating the situation in Sweden. The purpose is to illustrate that even if violence against women can be perceived as different, it shares the same background, and the abolishment of it requires efforts on several levels. Due to the on-going globalization, it is becoming increasingly important to apprehend and react to different notions in the world, and thereby understand domestic problems better, and this graduate thesis is written in

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<sup>1</sup>The Washington Times, “India’s imbalance of sexes”, retrieved from: <http://www.washingtontimes.com/news/2007/feb/26/20070226-124608-6785r/?page=all>, 2013-09-05.

<sup>2</sup> Oldenburg, Veena Talwar, Dowry Murder – The Imperial Origins of a Cultural Crime, 2002, p.3.



that context.

## **1.3 Question Formulation**

Since 1961, the Indian Government has banned the use of dowries, and this illustrates the clash between law and culture. The question is how States' governments use their law-making power and to which extent it is being followed by their citizens and accepted by the international community. What role has the law, principles and institutions in a society where the family is an authority and security enough? The issue is whether law alone can change culture and deeply rooted traditions, specifically in the case of dowries and domestic violence. If it can, how? Would it alter the problem? The question formulation can be summarized under three subheadings:

1. What is violence against women in the private sphere, and is it subject to international human rights law?
2. What should Member States do to combat violence against women according to international human rights law?
3. Can culture and regional differences be used as excuses to ignore obligations according to international human rights law?

## **1.4 Method**

The method used in this thesis is the legal dogmatic method. It contains research and descriptions of legal rules in India as well as case law and other documents, such as treaties and rapports. The legal reasoning is based in literature and articles concerning law and sociology of India. The same method was used concerning Sweden and other international sources. This was considered to be the most appropriate method since States' international and domestic obligations are illustrated very clearly through treaties, government initiatives and legislation. The thesis also includes a comparative method where India and Sweden are paralleled, with the overall aim of comparing them in the light of international human rights. International human rights are used as a standard throughout the entire thesis.

## **1.5 Material**

Since the thesis is focused on international human rights, it was essential to get relevant and up-to-date material from around the world. This was proven easy when it came to international human rights, since there has been abundant research about it, predominately in English. The sources are primarily governmental ones, since it is their actions that are relevant. One other reason for choosing India as a field of interest, other than the one mentioned in the background, is that it would be unproblematic to come across material in English. This is because the Constitution of India, Article 343(3), gives the Parliament permission to use English for official procedures.

The sources consist mainly of international human rights documents, such as resolutions and reports by different United Nations entities. Above this, there are many articles and government publications that bring extra background and explanations to the problem. It was important to find English sources even when it comes to Swedish legislation and material, so that this information could be accessible to international readers. The literature is focused on dowries and law and offers an historical background to the thesis, while the electronic sources are newer and show what is done today to stop violence against women. In the bibliography, these sources are divided into sections with the headings “India”, “Sweden”, “International” and “United Nations” to increase readability and make it easier for the reader to find the right source.

## **1.6 Limitations**

When it comes to limitations, there are obviously a lot of issues that cannot be covered with a topic that extends in both place and time. This made compromises necessary and therefore only the concrete situations in India and Sweden will be discussed. The thesis, except for historical backgrounds to increase understanding about present circumstances, will focus on the time after the creation of the Universal Declaration of Human Rights in 1948, since this is seen as the beginning of international human rights. Due to the time and page constraint, other adjacent topics such as bride price, that is the money given from the groom to the bride’s family in some societies, will have to be disregarded. The same reason applies for other forms of domestic violence, even though some are used as explanatory examples. When it comes to the section about Sweden, it will not deal with the background of law in the same degree as India, but will mostly deal with present legislation and projects concerning domestic violence. This is because it was found necessary to explain more about India, and it is assumed that the typical reader has more general information about the situation in Sweden than India, or has more resources to find such information.

## **1.7 Disposition**

The disposition of this thesis is firstly this current chapter, where the thesis is introduced (chapter 1). In order to illustrate the issues presented above, it was helpful to first explain the background of the legal history in India (chapter 2). Thereafter, the concept of dowries is investigated and why there is a discrepancy between law and this cultural phenomenon and what measures have been done to bring them closer together (chapter 3). To get another perspective, the issue of domestic violence in Sweden is then explored (chapter 4). When these two outlooks have been explained, international law and its different components are examined (chapter 5). This then developed into a legal discussion about the role of law itself, with emphasis on international human rights law, and its place among State’s

citizens in the private sphere, as well as its relationship with culture (chapter 6). This is ultimately discussed in the final chapter, where some conclusions can be drawn about the relationship between law and culture, as well as dowries and domestic violence (chapter 7).

## **1.8 State of Research**

When it comes to dowries and other forms of domestic violence, there has much research conducted about it legally, socially and economically. However, the research does not extend that far back in time, relatively speaking, but is a new topic when it comes to international human rights. Furthermore, the research conducted about it, or the beliefs about it, have been misdirected, and it is not until later years that it has become more prioritized. As the present number of sources reveals, there is a lot of work conducted in understanding, explaining and preventing domestic violence around the world. This paper differs from theirs because it questions the very role of law and culture and states responsibility to interfere in customary practices and domestic affairs according to international law. This is unique when it comes to comparing such different countries like India and Sweden, and this should bring some extra substance to the subject.

# 2 Historical Background and Problem Description

## 2.1 India

### 2.1.1 History and Influences in Law

India is described as the world's largest democracy and is the second most populous<sup>3</sup> with about 1.21 billion people.<sup>4</sup> It is a parliamentary republic and has been sovereign since its independence from the British rule in 1947.<sup>5</sup> According to the Human Development Report 2013, India is ranked 136 out of 187 territories and countries. The Human Development Index looks at education, health and income to determine nations' overall welfare.<sup>6</sup> One part of the measurement is the Gender Inequality Index that investigates gender inequalities in three levels: empowerment, economic ability and reproductive health. India is in this index ranked 132 out of 148 countries. Two factors that determined this number are seeing how the parliamentary seats are divided between the sexes and the adolescent fertility rate, which in India consist of 10.9 per cent of women, respectively 74.7 births per 1000 live births.<sup>7</sup>

The base of the legal system is the Constitution of India that came into force in 1950. The legislative work is the responsibility of the two houses in the Parliament; The Lok Sabha (House of the People) and the Rajya Sabha (Council of States). It is the Supreme Court of India that has the ultimate saying about judicial issues, assisted by high courts and other lower courts.<sup>8</sup> When it comes to the State, India has had a long political tradition of secularism.<sup>9</sup> This was discussed in the case S.R. Bommai vs. Union of India in 1994.<sup>10</sup> There it was stipulated that the Constitution was secular, and religion has no place in the State, and that “[p]olitics and religion cannot be

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<sup>3</sup>BBC Monitoring, India country profile, BBC News, retrieved from: <http://www.bbc.co.uk/news/world-south-asia-12557384>, 2013-09-26.

<sup>4</sup> Census India, 2001, retrieved from: [http://www.censusindia.gov.in/2011-prov-results/data\\_files/india/Final\\_PPT\\_2011\\_chapter3.pdf](http://www.censusindia.gov.in/2011-prov-results/data_files/india/Final_PPT_2011_chapter3.pdf), 2013-09-26.

<sup>5</sup> National Portal of India, India at a glance – profile, retrieved from: <http://india.gov.in/india-glance/profile>, 2013-09-26.

<sup>6</sup> Human Development Indicators, "India", retrieved from: <http://hdrstats.undp.org/en/countries/profiles/IND.html>, 2013-11-05.

<sup>7</sup> Human Development Report 2013, "India", retrieved from: <http://hdrstats.undp.org/images/explanations/IND.pdf>, 2013-11-05.

<sup>8</sup> National Portal of India, India at a glance – profile, retrieved from: <http://india.gov.in/india-glance/profile>, 2013-09-26.

<sup>9</sup> Kulke, Hermann, Rothermund, Dietmar, History of India, 1998, p.334.

<sup>10</sup> S.R. Bommai vs. Union of India on 11 March, 1994, retrieved from: <http://www.indiankanoon.org/doc/596735/>, 2013-09-23.

mixed.”<sup>11</sup> However, freedom of religion is at the same time guaranteed to everyone in India.<sup>12</sup>

The documentation of the Indian legal history started in the Vedic ages and it is believed that a law system existed during the Bronze Age and the Indus Valley civilization. As for religious and philosophical transcripts, they were prominent under the Hindu schools and afterwards by Jains and Buddhists. Different rulers used the secular laws and the courts for ruling their region, and there were different regulations from one region to the other. Secular court systems started getting the shape they have today through the systems of the Mauryas (321-185 BCE) and the Mughals (16<sup>th</sup>-19<sup>th</sup> centuries). It was with the arrival of the British East India Company that the common law system started developing in India. In 1726, King George I gave the company the authority to create Mayor’s Courts in Madras, Bombay and Calcutta, which later multiplied into other cities.<sup>13</sup> One of the figures of the British colonisation in India, and specifically in the legal sphere, was Warren Hastings. He was interested in civil jurisdiction, which turned out to be limited and only reached the cities of Murshidabad, Dacca and Patna. He sought out to redeem this and created eighteen new courts. Above this, he also reformed the civil procedure itself and how to appeal to a higher court. To his help he had Sir Eliah Impey, the presiding judge of the Supreme Court at Calcutta, who drafted entirely new rules for the civil procedure. Some examples of these were the process of notifying the defendant and the proceedings’ records. The British jurisdiction thereby got its influence and control over the Indian judicial system. This reaffirmed the British rule but also improved the state finance since the fees for litigation were relatively high. After Sir Impey, Sir William Jones continued his work by translating and codifying Indian legal cultures. This had some practical ramifications, since British officers, without legal training or knowledge of Hindu law, became magistrates and put in place to judge cases. This required a codified legal body. This was however inconsistent with the Indian legal culture that relied on the cooperation between ancient rules and the present and moving reality. However, Jones was more critiqued for trying to adapt these Indian traditions at all. This conflict between India and Great Britain was even more evident in the criminal jurisdiction and the penal code. In particular, some forms of punishment, such as mutilation, were found in India as opposed to Britain.<sup>14</sup>

At the beginning, the Indian practitioners of law were banned from the courts, but this was changed with the introduction of the Legal Practitioners Act of 1846. The newly formed Law Commission made other important bodies of law. The chairman Thomas Babington Macaulay supervised the

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<sup>11</sup> S.R. Bommai vs. Union of India on 11 March, 1994, Conclusion, paragraph, (10), retrieved from: <http://www.indiankanoon.org/doc/596735/>, 2013-09-23.

<sup>12</sup> Constitution of India, Right to Freedom of Religion, Articles 25-28, retrieved from: <http://lawmin.nic.in/coi/coiason29july08.pdf>, 2013-09-23.

<sup>13</sup> Bar Council of India, ”Brief History of law in India”, retrieved from: <http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/>, 2013-09-20.

<sup>14</sup> Kulke, Hermann, Rothermund, Dietmar, History of India, 1998, pp.227-229.

first Indian Penal Code, and it was brought into force in 1862. The Code of Criminal Procedure and the Evidence Act followed this in 1872. After India gained independence, the work commenced with creating a constitution for the new country. Men like B. R. Ambedkar, Jawaharlal Nehru, and M. K. Gandhi were a part of the process and they tried to turn the former attention on colonialism to social welfare. It was believed that law would help the people who were at the bottom of the social ladder.<sup>15</sup>

## 2.2 History – Why Dowry

### 2.2.1 Class System, Gender Discrimination and Patriarchy

There are many methods that parents can use to give capital to their children. One is through a *dotal*, a dowry giving marriage, which once existed in Europe, Near East, East Asia, South Asia and some parts of the Americas. Even though this form of marriage is now uncommon in the western world, it is still very much a reality in South Asia.<sup>16</sup> The beginning of dowry in India, or *dahej* in Hindi and *daaj* in Punjabi, has many different explanations depending on which perspective that is used. According to British colonialists, it is due to Hinduism and its caste system. Marxists, in comparison, phrase it as a backward economic tradition, and feminist writers think of it as gender discrimination since women get dowries instead of inheritance, as only sons or male relatives inherit property. However, one can say that dowry is a pure women's issue in a society that is patriarchal.<sup>17</sup> Consequently, men in India were and are the primary legal subjects. This has created many disasters when, for whatever reason, marriages were ruined and women found themselves being left without any legal right to the property they lived on. For this reason, the movement for securing women's right to property commenced.<sup>18</sup> As Oldenburg puts it:

“I certainly don't condone dowry demand, this modern, ugly pathology of dowry. But the custom I condone because it was created at a time because that was all women could get. Today, I am a fighter for women's property rights. Because we lost our rights, and now we are fighting for them again.”<sup>19</sup>

The dowry takes place before or during a marriage, but there are also traditions concerning the end of it. In the preamble of the Commission of Sati (Prevention) Act of 1987, *sati*, the act of burning or burying the widow

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<sup>15</sup> Bar Council of India, “Brief History of law in India”, retrieved from: <http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/>, 2013-09-20.

<sup>16</sup> Botticini, Maristella, Siow, Aloysius, “Why Dowries?”, 2003, p.2, retrieved from: SSRN, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=380129](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=380129), 2013-09-17.

<sup>17</sup> Oldenburg, Veena Talwar, Dowry Murder – The Imperial Origins of a Cultural Crime, 2002, pp. 8-9.

<sup>18</sup> Oldenburg, Veena Talwar, Dowry Murder – The Imperial Origins of a Cultural Crime, 2002, p. 15.

<sup>19</sup> The Rediff Interview/Veena Talwar Oldenburg “Don't condemn the institution of dowry”, retrieved from: <http://www.rediff.com/news/2003/apr/05inter.htm>, 2013-09-18.

alive with her deceased husband or other relative is banned.<sup>20</sup> According to the National Crime Records Bureau in India, no reports of *sati* occurred during 2012.<sup>21</sup> The question is why this is a thing of the past when dowries are not.

### 2.2.2 Security and Status

The original purpose of dowry was to ensure that daughters would be provided for economically, even if they would not get any inheritance.<sup>22</sup> Then it is deemed as a crucial asset for a woman and a safety net economically, which can be used in emergencies.<sup>23</sup> In the rural India, where marriages occur between small groups, the belief that you marry of women with *outside* groups is strong. It is therefore crucial to give daughters or sisters as much assistance as possible in order to assure them a good life.<sup>24</sup> Even if there are not any demands for a dowry, it can still be voluntarily given by the bride's family, as a way to show gratitude in her home community and illustrate her status in a new home.<sup>25</sup> At some point, this security and status perception altered into a contractual relationship, where dowry was viewed as a pay-off to accept a bride, that otherwise would not have been "materially productive"<sup>26</sup>. The difficulty with the dowry system is that dowry is a symbol and a transmission of wealth, leaving women objectified, and reinforces the belief that a marriage is all women need for protection. It would require a change of the basic structures and the gender and status customs to deal with these problems.<sup>27</sup>

### 2.2.3 Characteristics of an Indian Marriage

The Indian marriage has some features that should be mentioned in order to understand the concept of dowry. Firstly, the parents of the potential wife and husband arrange the marriage.<sup>28</sup> Secondly, marriage only takes place in endogamous groups. This means that people are only "allowed" to marry

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<sup>20</sup> The Commission of Sati (Prevention) Act, 1987, retrieved from: <http://www.court-marriage.com/commission-of-sati-prevention-act.html>, 2013-09-24.

<sup>21</sup> National Crime Record Bureau India, "Crime against Women", retrieved from: <http://ncrb.gov.in/CD-CII2012/cii-2012/Chapter%205.pdf>, 2013-09-17.

<sup>22</sup> Sandanshiv, D.N., Mathew, Jolly, "Legal Reform in Dowry Laws, 2005, p. 74. In: Basu, Srimati, Dowry & Inheritance.

<sup>23</sup> Oldenburg, Veena Talwar, Dowry Murder – The Imperial Origins of a Cultural Crime, 2002, p. 9.

<sup>24</sup> Marriott, McKim, "Social Structure and Change in a U.P. Village", Economic Weekly, 1952, p. 871, retrieved from: [http://www.epw.in/system/files/pdf/1952\\_4/34/social\\_structure\\_and\\_change\\_in\\_a\\_up\\_village.pdf](http://www.epw.in/system/files/pdf/1952_4/34/social_structure_and_change_in_a_up_village.pdf), 2013-09-17.

<sup>25</sup> Oldenburg, Veena Talwar, Dowry Murder – The Imperial Origins of a Cultural Crime, 2002, p. 9.

<sup>26</sup> Oldenburg, Veena Talwar, Dowry Murder – The Imperial Origins of a Cultural Crime, 2002, p. 37.

<sup>27</sup> Basu, Srimati, Dowry & Inheritance, 2005, pp. xlix-l.

<sup>28</sup> Dasgupta, Indraneel, Mukherjee, Diganta, "'Aranged' Marriage, Dowry and Female Literacy in a Transnational Society", 2003, p. 2, retrieved from: SSRN, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=463580](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=463580), 2013-09-17.

within their own sub-caste. A sub-caste is traditionally stated; people that have a certain employment or follow a specific religion make out one group. If one would marry outside this well-defined sub-caste this person would be subject to severe social repercussions. Thirdly, the marriage is patrilocal, that is the bride leaves her family after the wedding to move in with the groom's family. Lastly, divorce is not an alternative but marriage is seen as final. These features may have altered within the areas of the urban and educated cities, but are still relevant in the rural societies. This can explain the helplessness these women and their families feel when they deal with demands for dowry and why a husband and his relatives would find it necessary to resort to murder, instead of choosing divorce, if not content with a bride.<sup>29</sup>

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<sup>29</sup> Bloch, Francis, Rao, Vijayendra, "Terror as a Bargaining Instrument: A Case Study of Dowry Violence in Rural India", 2000, pp. 4-5, retrieved from: SSRN, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=630719](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=630719), 2013-09-17.



# 3 Indian Law

## 3.1 Dowry Prohibition Act

### 3.1.1 Background

The original purpose of the Dowry Prohibition Act of 1961 was to ban the giving and taking of dowry. The Government had, before 1961, been trying to improve the situation by introducing property rights for women with the Hindu Succession Act in 1956. Nevertheless, there were still reasons for creating a law that prohibited this social evil.<sup>30</sup> Subsequently, in 1961 the Parliament banned the use of dowry to defend the rights of brides and their families from the distress of the brides' new families. The objections that have been raised against dowry demands and dowry murders have been one of the core issues in the Indian women's movement.<sup>31</sup>

### 3.1.2 Definitions

#### 3.1.2.1 Dowry

In the Dowry Prohibition Act from 1961, in Section 2, dowry is defined as any property or valuable security that has been given or agreed to be given, either by a party of the marriage or parent or other person of either party, to the other party of the marriage - either in a direct or indirect manner.<sup>32</sup> The amended Dowry Prohibition Act bans both the giving and receiving of dowries, while it allows gifts that have been given willingly. The law also excludes customary gifts such as *stridhan*.<sup>33</sup> *Stridhan* is the gift that the bride receives from her family or from the groom at the time of the wedding or after.<sup>34</sup> The difference from a gift, which is allowed, is that a demand for dowry according to the Dowry Prohibition Act is seen as compulsory in contrast to a gift's voluntary nature.<sup>35</sup> Another difference is that *stridhan* is solely meant for the bride, while a dowry is meant for the bride and groom and others.<sup>36</sup>

#### 3.1.2.2 In Connection with the Marriage

In the 1961 Dowry Prohibition Act it was stated that dowry should be made for *consideration* of the marriage in the sense that it is a prerequisite for its

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<sup>30</sup> The Dowry Prohibition Act 1961, (28 of 1961), retrieved from: [http://www.wcdhry.gov.in/women\\_Acts/dowry\\_act.pdf](http://www.wcdhry.gov.in/women_Acts/dowry_act.pdf), 2013-11-07.

<sup>31</sup> Basu, Srimati, *Dowry & Inheritance*, 2005, pp. iii-iv.

<sup>32</sup> The Dowry Prohibition Act, 1961, retrieved from: <http://www.antidowry.org/dp-act-1961/46-the-dowry-prohibition-act-1961.html?start=1>, 2013-09-16.

<sup>33</sup> Basu, Srimati, *Dowry & Inheritance*, 2005, pp. xxi-xxii.

<sup>34</sup> Srinivas, M.N. "Some Reflections on Dowry", 2005, p.7. In: Basu, Srimati, *Dowry & Inheritance*.

<sup>35</sup> Dowry Prohibition Act, 1961, retrieved from: <http://www.antidowry.org/dp-act-1961/46-the-dowry-prohibition-act-1961.html?start=1>, 2013-09-16.

<sup>36</sup> *Hakam Singh And Ors. vs The State Of Punjab And Anr.* on 10 August, 1989, para 12, retrieved from: <http://indiankanoon.org/doc/1377080/>, 2013-10-14.

fulfilment. If the request for dowry had no association with the deliberation for the marriage it was not a dowry according to the Dowry Prohibition Act. This was altered because gifts that were requested after the marriage would then not be included. Therefore it is now stated that the dowry should be in *connection* with the marriage.<sup>37</sup> So even if the demand for property or valuable securities is given after the marriage, it can in some cases still be seen as a dowry.<sup>38</sup>

### **3.1.2.3 Property or Valuable Securities**

The definition of dowry is meant to have a broad interpretation and include all properties or valuable securities. This had the result that in the case *Vemuri Venkateswara Rao v. State of Andhra Pradesh*, the Court decided that 20,000 Rupees and 1 ½ acres of land were seen as dowry, even if it after the wedding was rephrased as a *pasupukumkuma*, which is a form of a deed.<sup>39</sup>

### **3.1.2.4 Given or Agreed to be Given**

The dowry has to be given to the husband or his relatives, or been agreed to be given. The meaning of given or agreed to be given was discussed in *Shankar Prasad Shaw v. State*, where a woman's new family mistreated her after the wedding when she could not meet their requests. This was not seen as a demand for dowry, since neither party to the couple nor their relatives had ever given or agreed to give any dowry. The court came to the conclusion that for it to be another turnout, the actual definition of dowry needed to be altered in Section 2 of the Act, and would then also match the definition and view of people and media on what dowry is.<sup>40</sup>

## **3.1.3 Opinions of the Dowry Prohibition Act**

Gender equity is often realized through laws and by creating a law it shows that it is a social problem that needs to be corrected. However, a cultural phenomenon often finds a way around legal solutions, leaving the law to be merely ideological. It is believed that dowry laws are examples of this.<sup>41</sup> In *Shri Bhagwant Singh v. Commissioner of Police, Delhi*, the Supreme Court stated;

“[t]he greed for dowry, and indeed the dowry system as an institution, calls for the severest condemnation. It is evident that legislative measures such as the Dowry Prohibition Act have not met with the success for which they were designed. Perhaps, legislation in itself cannot succeed in stamping out such an evil, and the solution must ultimately be found in the conscience and will of the

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<sup>37</sup> The Dowry Prohibition Act (28 of 1961), p.3, retrieved from:

[http://www.wcdhry.gov.in/women\\_Acts/dowry\\_act.pdf](http://www.wcdhry.gov.in/women_Acts/dowry_act.pdf), 2013-10-10.

<sup>38</sup> Universal Law Publishing, *The Dowry Act, 1961*, 2011, "Y.K. Bansal v. Anju", p. 4.

<sup>39</sup> *Andhra High Court Vemuri Venkateswara Rao And Anr. vs State Of Andhra Pradesh* on 4 July, 1991, retrieved from: <http://indiankanoon.org/doc/1767687/>, 2013-09-16.

<sup>40</sup> *Calcutta High Court Shankar Prasad Shaw And Ors. vs State And Anr.* on 27 July, 1990, retrieved from: <http://indiankanoon.org/doc/946303/>, 2013-09-16.

<sup>41</sup> Basu, Srimati, *Dowry & Inheritance*, 2005, pp. xxi-xxii.

social community and in its active expression through legal and constitutional methods.”<sup>42</sup>

This led to amendments of the Act in 1984 and 1986, with the purpose of making it more severe.<sup>43</sup> Nonetheless, in 1997 the Supreme Court wrote a Writ Petition criticizing the Act to invoke the Executive branch to implement the provisions in the Act. In the answer from the Union of India and the States, they stated that they had done all legislative work that could be done. That the purpose of the law had not been fully realized is not solely up to the administration. In the words of the first Prime Minister of India, Jawaharlal Nehru:

“[l]egislation cannot by itself normally solve deep-rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential, so that it may give that push and have that educative factor as well as the legal sanctions behind it which help public opinion to be given a certain shape.”<sup>44</sup>

Additionally, misuse of the Act can be a problem and cases under this provision have been under scrutiny. One example is the case *Pradeep Pathak vs The State Of Madhya Pradesh*.<sup>45</sup> The Apex Court there expressed their worry of not finding the facts.

“The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon.”<sup>46</sup>

So, there are people that believe that the purpose of the Act has been corrupted and that women use the Act as a tool for blackmailing men. Another critique of the Act can be read through the advice by the United Nations Women, which states that legislation that bans dowries must protect the rights of complainants and survivors, which include not punishing them for giving dowry.<sup>47</sup> This could be a problem for the Indian Dowry Prohibition Act that punishes both receiver and giver of dowries.<sup>48</sup>

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<sup>42</sup> *Shri Bhagwant Singh v. Commissioner of Police, Delhi* : 1983CriLJ1081, p. 121, retrieved from: <http://indiankanoon.org/doc/1303576/>, 2013-11-05.

<sup>43</sup> International Centre for Criminal Law Reform and Criminal Justice Policy, “Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice”, pp. 42-43, retrieved from: <http://icclr.law.ubc.ca/sites/icclr.law.ubc.ca/files/publications/pdfs/Compendium.pdf>, 2013-10-10. Also: *The Dowry Prohibition Act 1961*, (28 of 1961), retrieved from: [http://www.wcdhry.gov.in/women\\_Acts/dowry\\_act.pdf](http://www.wcdhry.gov.in/women_Acts/dowry_act.pdf), 2013-11-07.

<sup>44</sup> *In Re: Enforcement and Implementation of Dowry Prohibition Act, 1961*, retrieved from: <http://www.legalcrysal.com/judgements/description/654640>, 2013-11-07.

<sup>45</sup> *Pradeep Pathak vs The State Of Madhya Pradesh* on 14 February, 2013, retrieved from: <http://www.indiankanoon.org/doc/86013326/>, 2013-09-18.

<sup>46</sup> *Pradeep Pathak vs The State Of Madhya Pradesh* on 14 February, 2013, para 35, retrieved from: <http://www.indiankanoon.org/doc/86013326/>, 2013-09-18.

<sup>47</sup> UN Women, “Rights of complainant/survivors”, retrieved from: <http://www.endvawnow.org/en/articles/793-rights-of-complainant-survivors.html?next=794>, 2013-09-24.

<sup>48</sup> *The Dowry Prohibition Act, 1961*, retrieved from:

## 3.2 Indian Penal Code

### 3.2.1 Cruelty

Domestic violence in India is believed to be the outcome of men's ownership of women. This ownership extends both over their sexuality, their right to give birth, their right to work and to move and their own independence. This patriarchal superiority is the root of the inequalities between women and men and it can lead to violence-induced control. Violence in the home sphere is generally seen as something private<sup>49</sup> and acts of violence inside the house of one's family – past or present – were formerly not seen as crimes. Indian law saw these acts as private and not subject to state interference and came under the doctrine of space. This doctrine meant that there should be different regulations for private and public situations and that law would not control the former. In 1983 the Indian law received an addition with the introduction of Section 498-A of the Indian Penal Code (IPC) that outlaws physical and psychological cruelty, and violence in the home sphere gained some acknowledgement.<sup>50</sup> Cruelty here has two definitions. Firstly, it is when a husband or a relative of the husband mentally or psychically act in a way that is likely to force the woman to commit suicide or cause other serious injury. Secondly, cruelty is to harass a woman or her relatives into giving them property or valuable security, which means making demands for dowry.<sup>51</sup> Cruelty was discussed in the case *Shamrao vs. State Of Maharashtra*.<sup>52</sup> The Court first looked into Section 498-A, Sub-clause (b) and stated that it is not every form of harassment that can be defined as cruelty. The cruelty must have the goal of forcing the woman or any of her family members into providing a dowry. This combination is crucial for neither harassment, nor demand for property, is cruelty alone. So in order to fulfil the requisites in 498-A it must be harassment with the objective to force the woman to commit suicide or to get unlawful dowries.<sup>53</sup> In this case, it could not be proven that the women that had committed suicide had experienced any cruelty due to unfulfilled demands for dowries by her husband or his relatives. And seeing as her husband had tried to stop the suicide, it could not be perceived that he wanted her to commit suicide. Therefore, no crime could be proven according to 498-A, both sub-clause (a) and (b). The court instead came to

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<http://www.antidowry.org/dp-act-1961/46-the-dowry-prohibition-act-1961.html?start=1>, 2013-09-24.

<sup>49</sup> Poornachandra, Prasanna, "A Domestic Violence Coordinated Project – Going Beyond Victim Support", p. 112, retrieved from:

<http://www.strengthbasedstrategies.com/PAPERS/14%20PoornachandraFormatted.pdf>, 2013-09-23.

<sup>50</sup> Sandanshiv, D.N., Mathew, Jolly, "Legal Reform in Dowry Laws, 2005, pp. 73 – 74. In: Basu, Srimati, *Dowry & Inheritance*.

<sup>51</sup> The Indian Penal Code, 1860, Section 498A, retrieved from:

<http://indiankanoon.org/doc/538436/>, 2013-09-18.

<sup>52</sup> *Shamrao vs. State Of Maharashtra* on 24 March, 2004, retrieved from:

<http://indiankanoon.org/doc/1277041/>, 2013-09-18.

<sup>53</sup> *Shamrao vs. State Of Maharashtra* on 24 March, 2004, Judgement, section 8, retrieved from: <http://indiankanoon.org/doc/1277041/>, 2013-09-18.

the conclusion that the suicide was willingly done and the husband was also cleared from the offence in Section 306 of the IPC, which is abetment of suicide.<sup>54</sup>

### **3.2.2 Dowry Death**

The phrasing "dowry murder" was first introduced 1977-1978 when deaths of women started being questioned and crimes previously categorised by the police as accidents or suicides were rephrased as murders or assisted suicides that were provoked by mental and physical torment by husbands and in-laws. This led to the criminal regulation, initiated by the Parliament, Section 304-B that prohibits and penalizes culprits of dowry deaths.<sup>55</sup> Section 304-B in the IPC defines dowry death and says that when a woman dies of burns or bodily injuries that happen within seven years of her marriage and it has been proved that she, before her death, was mistreated by her husband or his relatives for, or in relation with, demands for dowry, then it is that husband or his relatives that are held responsible for the woman's death. If the components of this paragraph are fulfilled, there lies a presumption that the accused is guilty according to Section 113-B of the Evidence Act.<sup>56</sup> A peculiarity about the crime dowry death is that suicide is also a part of the definition. This was also stated in the case Public Prosecutor, Andhra Pradesh High Court vs. T. Punnaiah, where a woman died due to hanging that was unclear if it was suicide or not. Regardless, the woman died under unnatural circumstances, within seven years, and the other conditions in the paragraph were fulfilled. Therefore, the death fell under Section 304-B in the IPC – but it did not fulfil the conditions for murder under Section 302, IPC.<sup>57</sup>

#### **3.2.2.1 Victim and Nature of Dowry Death**

The Law Commission of India published in 1983 "The 91<sup>st</sup> Report On Dowry Deaths and Law Reform: Amending the Hindu Marriage Act, 1955, the Indian Penal Code, 1860, and the Indian Evidence Act, 1872", where they made a statement regarding the victim and the nature of dowry death. The "ideal victim" of a dowry death is in every case a woman, most commonly in her twenties and recently married. She is reliant on her husband and his family and if not a mother, probably pregnant. She is in this marriage miserable due to the constant demands for dowry. The death most often occurs through burning in a fire, in the home domain, but also poisoning and injuries have occurred. No matter the nature of the act, the husband and his relatives will report it as an accident or suicide, and only

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<sup>54</sup> Shamrao vs. State Of Maharashtra on 24 March, 2004, Judgement, section 15-16, retrived from: <http://indiankanoon.org/doc/1277041/>, 2013-09-18.

<sup>55</sup> Sandanshiv, D.N., Mathew, Jolly, "Legal Reform in Dowry Laws, 2005, pp. 74-75. In: Basu, Srimati, Dowry & Inheritance.

<sup>56</sup> Sandanshiv, D.N., Mathew, Jolly, "Legal Reform in Dowry Laws, 2005, pp. 75-76. In: Basu, Srimati, Dowry & Inheritance.

<sup>57</sup> Andhra High Court Public Prosecutor, High Court Of ... vs Tota Basava Punnaiah And Ors. on 19 June, 1989, retrieved from: <http://www.indiankanoon.org/doc/853868/>, 2013-09-19.

the bride's family may raise suspicion. To name it murder is not the first alternative, and the law enforcement are unwilling to do so, unless they have evidence – which is often lacking in these kind of situations.<sup>58</sup>

### 3.2.3 Difference Cruelty and Dowry Death

There is a difference between Section 498-A and 304-B, and the Supreme Court discussed that difference in the case *Shanti vs. State of Haryana*. The appellants in the case meant that since the High Court acquitted the appellants under Section 498-A it meant that cruelty had not been proven, and therefore it could not be a dowry death according to 304-B. The Supreme Court answered this by stating that Section 498-A and 304-B are not “mutually exclusive”<sup>59</sup>, and cannot be since they concern different offences. It is true that cruelty is a part of both offences, but cruelty is the actual crime in Section 498-A, and it is dowry death that is punishable in Section 304-B. Another dissimilarity is the time constraint of seven years in 304-B, that does not exist in 498-A.<sup>60</sup>

## 3.3 The Protection of Women from Domestic Violence Act

Even though the above laws ban dowries and dowry deaths, dowry laws require community collaboration, legal education and furthermore development of implementation institutions. It is suggested that the only way of combating violence against women is to empower women and at the same time simplify the process of reporting the offences. This is to be achieved by Dowry Prohibition Officers that would, together with women's organisations and family courts, enforce and develop the dowry laws. Only then would gender justice be achieved.<sup>61</sup> This is regulated in the Dowry Prohibition Act<sup>62</sup> and reaffirmed in the Protection of Women from Domestic Violence Act, from 2005.<sup>63</sup> The latter is a civil law, and no arrests can be made with reference to the Act. Instead, the repercussions consist of injunctions and different forms of compensation if someone is the victim of domestic violence. Under Section 3, part b, dowry demand is an example of domestic violence.<sup>64</sup> Concerning the Act itself, there has been some

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<sup>58</sup> Dowry Deaths & Law Reform (91st Report)- Law Commission of India, 1983, retrieved from: <http://www.scribd.com/doc/69400209/Dowry-Deaths-Law-Reform-91st-Report-Law-Commission-of-India>, 2013-09-17.

<sup>59</sup> Supreme Court of India, *Smt. Shanti And Anr vs State Of Haryana* on 13 November, 1990, retrieved from: <http://indiankanoon.org/doc/1036680/>, headnote, 2013-09-19.

<sup>60</sup> Supreme Court of India, *Smt. Shanti And Anr vs State Of Haryana* on 13 November, 1990, retrieved from: <http://indiankanoon.org/doc/1036680/>, 2013-09-19.

<sup>61</sup> Sandanshiv, D.N., Mathew, Jolly, "Legal Reform in Dowry Laws, 2005, pp. 87-88. In: Basu, Srimati, *Dowry & Inheritance*.

<sup>62</sup> Dowry Prohibition Act, section 8B, retrieved from: <http://www.antidowry.org/dp-act-1961/46-the-dowry-prohibition-act-1961.html?start=1>, 2013-09-25.

<sup>63</sup> Declaration on the Elimination of Violence against Women , chapter III, retrieved from: <http://wcd.nic.in/wdvact.pdf>, 2013-09-27.

<sup>64</sup> The Protection of Women from Domestic Violence Act, retrieved from: <http://wcd.nic.in/wdvact.pdf>, 2013-09-27.

complaint regarding the constitutionality of said Act. In a case in the Supreme Court, some argued that the Act went against Article 14 and Article 21 of the Constitution of India, where fundamental rights are enforced such as equality and right to life and liberty. The Act would violate this since it only allows women to report offences of domestic violence and not men. However, the Court said that putting women in a certain category is not in violation of Article 14 or Article 21 of the Constitution. Article 15, which deal with discrimination against gender, of the Constitution even allows the State to make regulations solely for women and children.<sup>65</sup> The Act is necessary because it does not work with the previous Dowry Prohibition Act and Criminal Act alone.<sup>66</sup>

## 3.4 Reaction and Preventive Measures

### 3.4.1 Background

The work for making India more equal and violence-free has long been a struggle for both the government and different women movements. The government has tried to support these movements, and there are legal reforms for many women issues that were raised by them during the 1980's; for example, on dowry death, *sati* and sexual harassment. The government and non-governmental organisations have also resorted to non-legal solutions such as providing shelter homes and counselling.<sup>67</sup>

### 3.4.2 Dowry Boycott

There have been suggestions made by women movements in the 1980's, for example by Manushi – a journal and forum for women's rights - that a dowry boycott is the only solution to the problem. "Dahej mat do, dahej mat lo" ("Do not give dowry, do not take dowry")<sup>68</sup>. These women believed that it is not merely dowry deaths that need to cease, but also the tradition of dowry.<sup>69</sup> This is because dowries are more common than dowry deaths, and when dowries become extinct, so will the ramifications.<sup>70</sup> However, these same voices have in retrospect been raised with another viewpoint. Now,

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<sup>65</sup> Dennision Paulraj vs The Union Of India, Rep. By on 3 April, 2009, retrieved from: <http://www.indiankanoon.org/doc/1078246/>, 2013-09-27.

<sup>66</sup> Uma, Saumyauma, "Addressing Domestic Violence Through the Law: A Guide to - The Protection of Women from Domestic Violence Act, 2005", retrieved from: <http://works.bepress.com/cgi/viewcontent.cgi?article=1021&context=saumyauma>, 2013-09-23.

<sup>67</sup> Poornachandra, Prasanna, "A Domestic Violence Coordinated Project – Going Beyond Victim Support", p. 113, retrieved from: <http://www.strengthbasedstrategies.com/PAPERS/14%20PoornachandraFormatted.pdf>, 2013-09-23.

<sup>68</sup> Sandanshiv, Kishwar, Madhu, "Beginning with Our Own Lives: A Call for Dowry Boycott", 2005, p. 265. In Basu, Srimati, Dowry & Inheritance.

<sup>69</sup> Sandanshiv, Kishwar, Madhu, "Beginning with Our Own Lives: A Call for Dowry Boycott", 2005, pp. 265-266. In Basu, Srimati, Dowry & Inheritance.

<sup>70</sup> Sandanshiv, Kishwar, Madhu, "Beginning with Our Own Lives: A Call for Dowry Boycott", 2005, pp. 267. In: Basu, Srimati, Dowry & Inheritance.

they looked at the actual background and reason for giving and accepting dowries. They reached the conclusion that women take part of the dowry custom because there is no other alternative. In reality, dowry is nothing more than a mere transfer of wealth, and that is not in itself neither bad nor good. To make contributions at weddings is nothing unusual, and it was not long since it was a tradition in Europe as well. The difference is that it leaves women in India without control, and that can promote ill treatment. The problem is set in the power relations in the family, and it will not disappear until they change, and before this change, one cannot require women and/or families to give up their chance to transfer wealth.<sup>71</sup> The problem cannot be labelled as a problem of wealth, but rather who has the control over it.<sup>72</sup> Hence, it is wrong to assume that dowries are the outcome of a materialistic society.<sup>73</sup> Furthermore, dowry demands get noticed because everyone condemns them, and families know that the police will take it more seriously than a case of battering. This has the result that the underlying structures that cause the dowry custom – inheritance, property rights – get ignored. This is in spite of the fact that dowry demands are seldom the only source of harassment.<sup>74</sup>

### **3.4.3 Community Influence**

Correcting this problem may require laws as well as social reforms and community influence. One example of community work in India is the Anna Nagar All Women Police Stations. It is an opportunity for victims to get information at the police station by a coordinator about different possibilities for getting Non-Governmental Organisation (NGO) support, and there are also three crisis counsellors who can assist and a 24-hour open line to call. The Police can require one of the NGO representatives to visit the homes of victims and make different follow-up procedures.<sup>75</sup> Another view on community work is illustrated in a study that was conducted in West Bengal in India, between 1996 and 1999. The purpose of the study was to investigate women's rights and how they have been dealt with by the Left Front government since 1977, how the government's policies have been carried out and furthermore the legal issues that have risen.<sup>76</sup> One thing that was revealed with the study was that a majority of the disputes were not solved in court but rather in the community. The lawyers who were

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<sup>71</sup> Kishwar, Madhu, "Rethinking Dowry Boycott", 2005, pp. 269-270. In: Basu, Srimati, Dowry & Inheritance.

<sup>72</sup> Kishwar, Madhu, "Rethinking Dowry Boycott", 2005, p. 275. In: Basu, Srimati, Dowry & Inheritance.

<sup>73</sup> Kishwar, Madhu, "Rethinking Dowry Boycott", 2005, p. 271. In: Basu, Srimati, Dowry & Inheritance-

<sup>74</sup> Kishwar, Madhu, "Rethinking Dowry Boycott", 2005, pp. 273-274. In: Basu, Srimati, Dowry & Inheritance.

<sup>75</sup> Coordinated Community Response, <http://www.endvawnow.org/en/articles/798-coordinated-community-response.html?next=799> and Poornachandra, Prasanna, "A Domestic Violence Coordinated Project - Going Beyond Victim Support", 2006, p. 115, <http://www.strengthbasedstrategies.com/PAPERS/14%20PoornachandraFormatted.pdf>, both retrieved: 2013-09-30.

<sup>76</sup> Gupta, Jayoti, "Women, Land and Law: Dispute Resolutions at the Village Level", 2005, p. 194. In: Basu, Srimati, Dowry & Inheritance.



asked said that, even though decisions based on community participation might be quick, it is not always the best alternative for the women involved. The increase of the out-of-court settlements might be the product of the social duty people feel in the communities. This has the result that the line between the private and public, that is otherwise clear through law, becomes blurred.<sup>77</sup>

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<sup>77</sup> Gupta, Jayoti, "Women, Land and Law: Dispute Resolutions at the Village Level", 2005, pp. 201-202. In: Basu, Srimati, Dowry & Inheritance.

# 4 Swedish Law

## 4.1 Background

Sweden is a parliamentary democracy<sup>78</sup> with a population of 9.6 million people.<sup>79</sup> According to the Human Development Report 2013, Sweden is ranked number 7 out of 187 territories and countries. When it comes to the Gender Inequality Index, Sweden is ranked number 2 out of 148 countries. The parliamentary seats are occupied by women at 44.7 per cent and the adolescent fertility rate is 6.5 births per 1000 live births.<sup>80</sup> This means that Sweden is considered very gender equal, which is illustrated in the different Government initiatives to keep it so.<sup>81</sup> In a speech for the UN General Assembly in September 2013, Prime Minister Fredrik Reinfeldt expressed that the lack of gender equality is the “most important human rights failure of all.”<sup>82</sup>

The Government machinery contains three steps: the national, the regional and the local step. Furthermore, there is the European step that originates from Sweden’s membership in the European Union (EU). It is the Riksdag (Swedish parliament) at the national level that has the authority to legislate. It is the Government that makes proposals for laws to the Riksdag and also has the obligation to implement the Riksdag’s decisions. The regional and local levels consist of county councils and municipal councils, respectively, that deal with political tasks and municipal issues. When it comes to the EU, Sweden is subject to its *acquis communautaire* and makes jointly decisions on how new common rules should be.<sup>83</sup>

An important historic legislation when it comes to domestic violence in Sweden is when husbands lost their statutory right to flog their wives in the 1864 version of the Swedish Penal Code (SPC). However, prohibition against rape within the marriage was not introduced until the SPC was amended in 1965 and thereby replaced the 1864 version.<sup>84</sup> With this,

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<sup>78</sup> Government Offices of Sweden, “Sweden’s democratic System”, retrieved from: <http://www.government.se/sb/d/2853>, 2013-11-01.

<sup>79</sup> Statistics of Sweden, Population statistics, retrieved from: [http://www.scb.se/Pages/Product\\_\\_\\_25799.aspx](http://www.scb.se/Pages/Product___25799.aspx), 2013-11-01.

<sup>80</sup> Human Development Report 2013, “Sweden”, retrieved from: <http://hdrstats.undp.org/images/explanations/SWE.pdf>, 2013-11-05.

<sup>81</sup> For example: Prop. 2005/06:155, “Makt att forma samhället och sitt eget liv - nya mål i jämställdhetspolitiken”, retrieved from: [http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/Makt-att-forma-samhallet-och-s\\_GT03155/?html=true](http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/Makt-att-forma-samhallet-och-s_GT03155/?html=true), 2013-11-05.

<sup>82</sup> Fredrik Reinfeldts tal i FN:s generalförsamling 2013, “Det talade ordet gäller.”, retrieved from: <http://www.regeringen.se/sb/d/17000/a/224786>, 2013-11-13.

<sup>83</sup> Government Offices of Sweden, “The Swedish model of government administration - three levels”, retrieved from: <http://www.government.se/sb/d/2858>, 2013-11-01.

<sup>84</sup> The Swedish Association of Women’s Shelters and Young Women’s Empowerment Centres, “Historiska årtal”, retrieved from: <http://www.kvinnojouren.se/fakta/feminism-och-jamstalldhet/historiska-artal>, 2013-11-01.

violence against women was more acknowledged. At the same time, to think of this violence as belonging only to the private sphere ignores the violence's structural features. This influenced the decision of formerly excluding it from national and international settings. Nonetheless, this is still a problem, and as Amnesty International's global campaign "Stop violence against women" mentions in their report; "Men's violence against women in intimate relationships - An account of the situation in Sweden", in 2004, violence does not only happen somewhere else, or within certain groups, but is a human rights issue even in Sweden. The authorities, the legislative and the political bodies all have a responsibility to prevent violence and punish perpetrators of it, as well as protect women that have experienced it.<sup>85</sup> In a follow-up report by Amnesty International, in 2004-2005, they examined the municipalities' work to prevent men's violence against women. The topics concerned the municipalities' efforts to raise knowledge about men's violence against women, as well as how women's shelters, action plans, and so on, worked. The answers were summarized in a report named, "Not a priority issue – A review of the work of Swedish municipalities to combat violence against women".<sup>86</sup> Amnesty International found that it differed from municipality to municipality. Some worked against men's violence against women, while in some it was not prioritized. The latter municipalities did not ensure any protection in traumas but let non-profit women's shelters take the responsibility. Amnesty International therefore concluded in their report that the Swedish government must examine what should be requested by the municipalities to guarantee a more effective process – a responsibly that was stated already in the Protection of Women's Integrity Bill in 1998.<sup>87</sup>

## 4.2 Legislation

### 4.2.1 Murder

In the Swedish Penal Code (1962:700), SPC: On Crimes against Life and Health, Chapter 3, Section 1, the crime murder is stated. It declares that anyone who takes the life of another person shall be sentenced to murder. The penal latitude is since 2009 at fixed term, minimum 10 years and maximum 18 years or lifetime. Since this amendment in 2009, the Supreme Court has tried the matter of sentencing for murder in the case HD B 5613-12.<sup>88</sup> The case is an example of violence against women and it took its base in Chapter 29, Section 1, SPC, and discussed the degree of culpability when

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<sup>85</sup> Amnesty International, "Men's Violence against Women in Intimate Relationships - An account of the situation in Sweden", 2004, p. 5, retrieved from: [http://www2.amnesty.se/svaw.nsf/mvaw/\\$File/mvaw.pdf](http://www2.amnesty.se/svaw.nsf/mvaw/$File/mvaw.pdf), 2013-10-29.

<sup>86</sup> Amnesty International, "Not a priority issue" – A review of the work of Swedish municipalities to combat violence against women", 2005, p. 3, retrieved from: [http://www2.amnesty.se/svaw.nsf/mvaw/\\$File/Not\\_a\\_priority\\_issue.pdf](http://www2.amnesty.se/svaw.nsf/mvaw/$File/Not_a_priority_issue.pdf), 2013-11-06.

<sup>87</sup> Amnesty International, "Not a priority issue" – A review of the work of Swedish municipalities to combat violence against women", 2005, p. 28, retrieved from: [http://www2.amnesty.se/svaw.nsf/mvaw/\\$File/Not\\_a\\_priority\\_issue.pdf](http://www2.amnesty.se/svaw.nsf/mvaw/$File/Not_a_priority_issue.pdf), 2013-11-06.

<sup>88</sup> Brottsbalk (1962:700), 3 kap. 1 §, law comment, retrieved from: Karnov, 2013-11-01.

a man killed his former common-law wife in the presence of her children. Here, their relationship became relevant, and it was a question if the man deserved a harsher punishment than 14 years. The Court discussed that the crime was planned and directed towards a family member, that he took advantage of her vulnerable situation, that the woman herself was afraid of the man in spite of a restraining order and, finally, that it took place in front of her children. That he still committed the crime was viewed as very ruthless.<sup>89</sup>

### 4.2.2 Assault

The Crime Assault is in the SPC, Chapter 3, Section 5-6. Section 5 is assault, while Section 6 describes gross assault. The latter is relevant if the act was especially grave and put the victim in mortal danger, or inflicted the victim with serious injuries.<sup>90</sup> Whether or not it should be considered as a gross assault depends on many factors, for example if the injuries caused any permanent damages such as loss of sight.<sup>91</sup> All cases of assault are, since 1982, under public prosecution. This means that it is not up to the plaintiff to report the crime, but anyone can do it, and a report can thereafter not be withdrawn.<sup>92</sup> Previously, cases of assault that were conducted in the private sphere were under the concept of denunciation, that is, the victim had to decide if the culprit should be subject to prosecution or not. This new change did not apply to gross assault, which even before 1982 was under public prosecution.<sup>93</sup> The most common form of assault against women is done by a culprit whom they are familiar with, or closely related to.<sup>94</sup>

### 4.2.3 Restraining Orders

The Restraining Orders Act (1988:688) came into force in 1988.<sup>95</sup> Its purpose was to provide a better protection for women and avert threats and violence from men that they were, or had been, in an intimate relationship

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<sup>89</sup> HD B 5613/12, 2013-05-28, para 34, retrieved from:

<http://www.hogstodomstolen.se/Domstolar/hogstodomstolen/Avgoranden/2013/2013-05-28%20B%205613-12%20Dom.pdf>, 2013-11-01.

<sup>90</sup> Brottsbalk 1962:700, retrieved from: [http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Brottsbalk-1962700\\_sfs-1962-700/#K3](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Brottsbalk-1962700_sfs-1962-700/#K3), 2013-10-28.

<sup>91</sup> Nilsson, Göran, Brottsbalk (1962:700) 3 kap. 6 §, comment, retrieved from: Karnov, 2013-11-01.

<sup>92</sup> Brå, Brottsutvecklingen i Sverige fram till år 2007, Kapitel: Misshandel mot kvinnor”, p. 114,

<http://www.bra.se/download/18.1ff479c3135e8540b2980008075/1334745575754/5+Misshandel+mot+kvinnor.pdf>, retrieved: 2013-10-28.

<sup>93</sup> Amnesty International, ”Men’s Violence against Women in Relationships - An account of the situation in Sweden”, 2004”, p. 18,

[http://www2.amnesty.se/svaw.nsf/mvaw/\\$File/mvaw.pdf](http://www2.amnesty.se/svaw.nsf/mvaw/$File/mvaw.pdf), retrieved: 2013-10-29.

<sup>94</sup> NTU 2012, ”Om utsatthet, trygghet och förtroende”, 2013, p. 34, retrieved from:

[http://www.bra.se/download/18.22a7170813a0d141d21800050381/1367324684272/2013\\_01\\_NTU\\_2012\\_web.pdf](http://www.bra.se/download/18.22a7170813a0d141d21800050381/1367324684272/2013_01_NTU_2012_web.pdf), 2013-11-01.

<sup>95</sup> Lag (1988:688) om kontaktförbud, retrieved from:

<http://www.notisum.se/rnp/sls/lag/19880688.HTM>, 2013-10-28.

with. According to the Government Bill in 1987, restraining orders should be issued when there exists a risk that someone will commit a crime, persecute or in any other way seriously harass another person. The restraining order then makes it illegal to initiate contact or see that woman. If the man in question violates the restraining order, he will face either a fine or imprisonment for one year maximum, unless it is a minor offence – in which case he will be relieved of any sanctions.<sup>96</sup>

In a report by The Swedish National Council for Crime Prevention in 2007, they described their findings after being ordered by the Government to evaluate the Restraining Orders Act.<sup>97</sup> In most cases, applications for restraining orders are done in combination with reporting a crime to the police. If the public prosecutor believes that there is a risk that the suspected person will stalk, harass or commit any other crime against the reporter, then a restraining order may be issued. One indicator that this will be issued is whether the person has previously committed any crime according to Chapter three of the Swedish penal code, that is, against the life, health, liberty or peace of mind of the other person. Therefore, the aspect that leads to a granted application is primarily if a committed crime can be proven. In two thirds of cases, in 2003, applications were granted if a crime could be proven, while only one third of application were granted in cases with lacking evidence of committed crimes.<sup>98</sup> The survey indicated that the applicants hope that a restraining order would help their current situation, which puts pressure on the legal system to grant restraining orders to the right applicants, as well as offer follow-up procedures to ensure that the restraining orders are followed. The National Council's survey demonstrated that the public prosecution service does commendable work with developing their specialization and training, but should make sure that the process of decision-making is even more constant and open than today. According to earlier surveys, it is important that procedures are improved to ensure more organized risk calculations.<sup>99</sup>

In a Government Bill from 2012, they suggest that there should be increased opportunities to prevent violence in intimate relationships. Therefore, an amendment of the law on restraining orders is advised to remove the requisite that it should be an “obvious” (“påtaglig”) risk for crime, in order

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<sup>96</sup> Prop. 1987/88:137 om besöksförbud, retrieved from:

[http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/prop-198788137-om-besoksforb\\_GB03137/?html=true](http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/prop-198788137-om-besoksforb_GB03137/?html=true), 2013-10-28.

<sup>97</sup> Brå report No 2007:2, “Restraining orders in Sweden: An evaluation of the law, the new regulations, their implementations and effects”, p. 5, retrieved from:

<http://kunskapsbanken.nck.uu.se/nckkb/nck/publik/fil/visa/31/brå%20rapport%202007%202%20english%20summary%20restraining%20orders%20in%20sweden.pdf>, 2013-10-28.

<sup>98</sup> Brå report No 2007:2, “Restraining orders in Sweden: An evaluation of the law, the new regulations, their implementations and effects”, pp. 8-9, retrieved from:

<http://kunskapsbanken.nck.uu.se/nckkb/nck/publik/fil/visa/31/brå%20rapport%202007%202%20english%20summary%20restraining%20orders%20in%20sweden.pdf>, 2013-10-28.

<sup>99</sup> Brå report No 2007:2, “Restraining orders in Sweden: An evaluation of the law, the new regulations, their implementations and effects”, pp. 15-16, retrieved from:

<http://kunskapsbanken.nck.uu.se/nckkb/nck/publik/fil/visa/31/brå%20rapport%202007%202%20english%20summary%20restraining%20orders%20in%20sweden.pdf>, 2013-10-28.

for a restraining order to be issued on a joint domicile. Instead, it should be enough that the risk is concrete and clear. If the law is to be amended, it will be in force in January 2014.<sup>100</sup>

#### 4.2.4 Female Genital Mutilation

In 1982, the Law Against Female Genital Mutilation (1982:316) came into force in Sweden with the purpose to abolish it.<sup>101</sup> As of 1999, it is no longer required to enforce the principle of double culpability. This means that even if the act has been done in a country other than Sweden, regardless if the act is legal there, it can still be brought to a Swedish court. The judgement on whether a case should lead to prosecution in Sweden is done in connection with the hearing on permission to prosecute (Chapter 2, Section 5, SPC).<sup>102</sup> The motivation to remove the requirement of double culpability is found in the Government Bill that preceded the law. They stated there that the purpose of the law and this new amendment was to protect girls and young women from female genital mutilation. The extended jurisdiction then fulfils that purpose by prohibiting it even if it takes place in another country. However, they must have some connection with Sweden before the crime is commenced, for example when parents take their child from Sweden overseas to have the operation in a country where it is legal, but it does not apply when asylum-seeking parents bring their child to Sweden for the first time.<sup>103</sup>

With the Government Bill 1997/98:55, the law changed, and the punishments got stricter due to the procedure's serious nature. Therefore, the degree of culpability is equal to more grave assault crimes.<sup>104</sup> In the case RH 2007:7, a discussion of penalty value was discussed when it came to female genital mutilation. In the case, the victim had on numerous occasions stated that she did not want to remain in Somalia but be reunited with her mother in Sweden. She made two attempts to escape, where only the second was successful. After the first failed attempt, she was subject to genital mutilation and the act was considered both as a punishment and to illustrate that she would act according to her father's wishes and adjust to soon being married. Aggravating circumstances were both the motive to the genital mutilation, the victim's vulnerable position and that the crime was designed

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<sup>100</sup> Prop. 2012/13:186 om ökade möjligheter att förebygga våld i nära relationer, retrieved from: [http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/kade-mojligheter-att-forebygg\\_H003186/?text=true](http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/kade-mojligheter-att-forebygg_H003186/?text=true), 2013-10-28.

<sup>101</sup> Lag (1982:316) med förbud mot könsstympning av kvinnor, retrieved from: [http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-1982316-med-forbud-mot-\\_sfs-1982-316/](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-1982316-med-forbud-mot-_sfs-1982-316/), 2013-10-28.

<sup>102</sup> Nilsson, Göran, Lag (1982:316) med förbud mot könsstympning av kvinnor, 3 §, comment, retrieved from: Karnov, 2013-10-28.

<sup>103</sup> Prop. 1998/99:70 Könsstympning - borttagande av kravet på dubbel straffbarhet, p. 11, retrieved from: <http://www.regeringen.se/content/1/c6/02/14/88/a9e0af75.pdf>, 2013-10-28.

<sup>104</sup> Prop. 1997/98:55 Kvinnofrid, retrieved at: <http://www.regeringen.se/content/1/c4/22/66/5406e038.pdf>, 2013-10-28, see also Prop. 2009/10:147 om skärpta straff för allvarliga våldsbrott m.m., retrieved at: <http://www.regeringen.se/sb/d/12165/a/141659>, 2013-10-28.

to abuse the safety and trust of a child in her relationship to a family relative (Chapter 29, Section 2, part 3 and 8, SPC). This led to a two years prison sentence.<sup>105</sup>

#### **4.2.5 Violation of Integrity and Gross Violation of a Woman's Integrity**

“Captured Queen: Men’s Violence against Women in ”Equal Sweden” A prevalence study”– a survey conducted by the Swedish Crime Victim Compensation and Support Authority and Uppsala University was the first greater national survey in Sweden with the goal to study the magnitude of men’s violence against women. The lack of research on this subject displayed that this was treated as a marginal problem. It was also believed that the efforts from society had been over-focused on viewing the perpetrator as a deviant man, and that violence only existed in socially burdened places.<sup>106</sup> The survey explained the development of violence against women and the work effort made by the Government and different agencies.

One of the defining moments was the creation of the Commission on Violence Against Women, which showed a change of thinking when it came to violence against women and introduced new projects - many of which were political initiatives, but some were legislative. It was in 1993 that the former Minister for Health and Social Affairs and Deputy Prime Minister Bengt Westerberg appointed the formation of the Commission on Violence Against Women, and Britta Bjelle became head of the Commission. She was awarded the task to, with a female point of view, review questions of violence against women and suggest appropriate measures to prevent such violence. This meant that the feminist studies, politics and law were put into the same arena working to stop violence against women – which is shown in the legislation in the area.<sup>107</sup> In 1994, the Commission left an interim report; “Ett centrum för kvinnor som våldtagits och misshandlats” (SOU 1994:56). This led to the Government’s decision to give three million Swedish kronor to a National Centre for Battered and Raped Women at Uppsala Hospital for the financial year 1994/1995. In 1995, the Commission on Violence Against Women gave its final report (SOU 1995:60).<sup>108</sup> With this, the Commission made a range of radical suggestions on changes in legislation with connection to violence against women. Some of these were added to the

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<sup>105</sup>RH 2007:7, retrieved from:

<http://www.notisum.se/Pub/Doc.aspx?url=/rnp/domar/rh/RH007007.htm>, 2013-10-28.

<sup>106</sup>Heimer, Gun, Kalliokoski, Anne-Marie Westerstrand, Jenny, Lundgren, Eva, Captured Queen: Men’s Violence against Women in ”Equal Sweden” A prevalence study, p. 11, retrieved from: <http://www.brottsoffermyndigheten.se/Filer/Böcker/Slagen%20dam.pdf>, 2013-10-30.

<sup>107</sup>Heimer, Gun, Kalliokoski, Anne-Marie Westerstrand, Jenny, Lundgren, Eva, Captured Queen: Men’s Violence against Women in ”Equal Sweden” A prevalence study, p. 12, retrieved from: <http://www.brottsoffermyndigheten.se/Filer/Böcker/Slagen%20dam.pdf>, 2013-10-30.

<sup>108</sup>”Kvinnofrid”, retrieved at:

<http://www.regeringen.se/content/1/c6/02/51/22/1c1f1520.pdf>, 2013-10-25.

Protection of Women's Integrity Bill, 1997/98:55. One of the suggestions was a new offence concerning violence against women – which was somewhat amended and entered the SPC in Chapter 4, Section 4a, with the labelling “Violation of Integrity and Gross Violation of a Woman's Integrity”. The process of normalisation and the significance of the repeated violations for the victim were the foundation for this new offence. The purpose was to increase the penalty value for those relatively mild but repeated acts of violations. The offence, therefore, takes into consideration the process of normalisation that women resort to during the time of violence, and even though these are not grave acts, they impact women very negatively.<sup>109</sup> In the Government Bill, they discuss that continuous crimes fulfil its function when single acts does not reach the requisites for the crime penalty – and that the crime's repeated acts instead makes it culpable.<sup>110</sup> The Government Bill also contained ideas regarding expanding the rape crime and a more rigorous Equality Act.<sup>111</sup>

#### 4.2.6 Honour-related Violence

The definition of honour is disputed, but one definition is:

“[h]onour is defined in terms of women's assigned sexual and familial roles as dictated by traditional family ideology. Thus adultery, premarital relationships (which may or may not include sexual relations), rape and falling in love with an “inappropriate” person may constitute violations of family honour.”<sup>112</sup>

If one would see honour-related violence as way of controlling a woman's sexuality, then this is something that exists in many countries – including Sweden. The State and the Church have historically used honour and shame as a control mechanism – which have diminished the role of private reestablishment of honour. Nonetheless, private actions such as suicide due to illegitimate children or economic difficulties have been labelled as affiliated with honour and shame.<sup>113</sup> Honour-related violence is often linked with general violence against women. The similarity is the male control over women that restricts their freedom both in the public and private sphere. The difference is that men's violence against women in close

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<sup>109</sup> Heimer, Gun, Kalliokoski, Anne-Marie Westerstrand, Jenny, Lundgren, Eva, Captured Queen: Men's Violence against Women in "Equal Sweden" A prevalence study, p. 13, retrieved from: <http://www.brottsoffermyndigheten.se/Filer/Böcker/Slagen%20dam.pdf>, 2013-10-30.

<sup>110</sup> Prop.1997/98:55, p. 76, retrieved at: <http://www.regeringen.se/content/1/c4/22/66/5406e038.pdf>, 2013-10-25.

<sup>111</sup> "Kvinnofrid", retrieved at: <http://www.regeringen.se/content/1/c6/02/51/22/1c1f1520.pdf>, 2013-10-25.

<sup>112</sup> UN Economic and Social Council, "Violence against women in the family", E/CN.4/1999/68, p. 7, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/113/54/PDF/G9911354.pdf?OpenElement>, 2013-11-20.

<sup>113</sup> National Centre for Knowledge on Men's Violence Against Women, "Begyppet heder", retrieved from: [http://www.nck.uu.se/Kunskapscentrum/Kunskapsbanken/amnen/Hedersrelaterat\\_vald\\_och\\_fortryck/Begyppet+heder/](http://www.nck.uu.se/Kunskapscentrum/Kunskapsbanken/amnen/Hedersrelaterat_vald_och_fortryck/Begyppet+heder/), 2013-10-28.



relations is done individually and is condemned collectively, while honour-related violence is performed collectively and is somewhat accepted in certain limited communities.<sup>114</sup>

In a report by the UN Secretary-General in 2002, Sweden's efforts to prevent honour-related violence is described. The National Council for the Protection of Women against Violence, created in 2000, has conducted six seminars up to that point on the topic, including one that specifically dealt with honour-violence, named "Violence against women with immigrant backgrounds: culture, religion, patriarchy". When it comes to the interaction between social services, the police and the prosecution, it has been agreed that girls or women that have been forced to marry abroad or in any other way is in a defenceless situation, have the right to protection by Swedish authorities. This has led to a better ground for dealing with honour-crimes. The National Board of Health, with the assistance of fourteen authorities, has in this theme opened a web portal with information about violence against women. The Government has also initiated many projects focused on creating equality between the genders, especially ones that are aimed on girls and women with immigrant backgrounds.<sup>115</sup> Furthermore, as a part of integration policies for these women, guidelines have been created to deal with the protection of women. This also included giving staff education about the concept of honour,<sup>116</sup> and it extends to giving adequate shelter housing to women in distress and providing a emergency telephone in about twenty languages.<sup>117</sup>

In 2003, Sweden was the host of an international meeting of experts on honour-crimes.<sup>118</sup> The former Minister for Democracy and Integration Issues, Mona Sahlin, stated in the introduction for the meeting that Sweden had done some advancement in this field. However, when it comes to violence in the name of honour, it is required to seek an answer internationally. The United Nations (UN) has to continue to be a part of the

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<sup>114</sup> National Centre for Knowledge on Men's Violence Against Women, "Hedersrelaterat våld och förtryck", retrieved from: [http://www.nck.uu.se/Kunskapscentrum/Kunskapsbanken/amnen/Hedersrelaterat\\_vald\\_och\\_fortryck/Hedersrelaterat\\_vald\\_och\\_fortryck\\_\\_Kunskapsbankens\\_amnesguide\\_/](http://www.nck.uu.se/Kunskapscentrum/Kunskapsbanken/amnen/Hedersrelaterat_vald_och_fortryck/Hedersrelaterat_vald_och_fortryck__Kunskapsbankens_amnesguide_/), 2013-10-28.

<sup>115</sup> Report of the Secretary-General, "Working towards the elimination of crimes against women committed in the name of honour", A/57/169, para 11, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/467/90/PDF/N0246790.pdf?OpenElement>, retrieved: 2013-10-25.

<sup>116</sup> Report of the Secretary-General, "Violence against women", A/59/281, para 40, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/465/59/PDF/N0446559.pdf?OpenElement>, 2013-10-29.

<sup>117</sup> Report of the Secretary-General, "Violence against women", A/59/281, para 43, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/465/59/PDF/N0446559.pdf?OpenElement>, 2013-10-29.

<sup>118</sup> Report of the Secretary-General, "Violence against women", A/59/281, para 44, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/465/59/PDF/N0446559.pdf?OpenElement>, 2013-10-29.

prevention of honour-related violence, according to Sahlin.<sup>119</sup> At the meeting, there was also an address by the UN Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. She began with stating that it is due to the patriarchal way relations between genders are manifested that leads to the diminishment of women – something that is maintained by threats or use of violence. At the foundation of this lies the demand for control over women’s sexuality and their reproduction abilities – which is illustrated in today’s forced marriages.<sup>120</sup> The patriarchal control is also shown in the actions of the community groups, which are culturally accepted, such as female genital mutilation, dowry deaths and honour-related violence. Honour has many meanings in various parts of the world, but one can say that when a single person fails to assimilate into the group it leads to shame for the entire group, which is something that needs to be restored. This makes it a complex crime since it is deeply connected with the rules and beliefs for the whole group. That is why some strategies, for example the empowerment of women, can instead lead to an amplified violence against women. Ertürk meant that a strategy must therefore reach the state, the group and also the woman herself.<sup>121</sup> A positive note is that honour-related violence is nowadays labelled as a violation of human rights, and therefore forces States to respect their obligations according to international law. This includes looking over their national laws to ensure that the penal codes are up to date. Furthermore, States must realise that honour-related violence – once a regional issue - has now become internationalized and takes place in immigrant groups in receiving States. Even though human rights are universal, one cannot see crimes in the name of honour separated from violence against women. Ertürk defined two risks if this is done; firstly, that it would put the focus on immigrant groups leading to anti-immigrant movements, and secondly, that it will make other kinds of violence against women seem normal and thereby get ignored.<sup>122</sup> Nevertheless, even though international law regulations regarding violence against women exist, a challenge is to certify that these are complied with. This can be difficult, seeing as human rights of women lack universality today. In spite of international arrangements, there lacks institutions and political initiative of States in many parts of the world to ensure women’s human rights. A woman’s sexuality is not her private domain, and this is true even in States where the patriarchal system has been questioned but where violence and discrimination still happen, as in many western countries. This should be monitored in the light of the growing

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<sup>119</sup> Expert meeting on violence in the name of honour, p. 9, retrieved from: [http://www.ebiblioteka.lt/resursai/Uzsienio%20leidiniai/Countries/Sweden/Integration/2003/mi2003\\_01.pdf](http://www.ebiblioteka.lt/resursai/Uzsienio%20leidiniai/Countries/Sweden/Integration/2003/mi2003_01.pdf), 2013-10-29.

<sup>120</sup> Expert meeting on violence in the name of honour, p. 10, retrieved from: [http://www.ebiblioteka.lt/resursai/Uzsienio%20leidiniai/Countries/Sweden/Integration/2003/mi2003\\_01.pdf](http://www.ebiblioteka.lt/resursai/Uzsienio%20leidiniai/Countries/Sweden/Integration/2003/mi2003_01.pdf), 2013-10-29.

<sup>121</sup> Expert meeting on violence in the name of honour, p. 11, retrieved from: [http://www.ebiblioteka.lt/resursai/Uzsienio%20leidiniai/Countries/Sweden/Integration/2003/mi2003\\_01.pdf](http://www.ebiblioteka.lt/resursai/Uzsienio%20leidiniai/Countries/Sweden/Integration/2003/mi2003_01.pdf), 2013-10-29.

<sup>122</sup> Expert meeting on violence in the name of honour, pp. 17-18, retrieved from: [http://www.ebiblioteka.lt/resursai/Uzsienio%20leidiniai/Countries/Sweden/Integration/2003/mi2003\\_01.pdf](http://www.ebiblioteka.lt/resursai/Uzsienio%20leidiniai/Countries/Sweden/Integration/2003/mi2003_01.pdf), 2013-10-29.

politicization of culture, which is a threat to national and international governance as well as women's human rights. The UN Special Rapporteur thereafter states that in order to stop violence against women, interventions on State, group and on a woman level must be possible and have policies that include empowerment of women, culture and human rights. When it comes to the communities, it is essential to understand different cultures and find the good features within them. This also means understanding what kind of strain immigrant groups face in society, which might force them to rely mainly on their own group. One example is that women are often reliant on their families for economic assistance, and this makes them especially dependent on them. Finally, Ertürk mentions the need for a conversation to address the issue of patriarchal power and possible alternative options.<sup>123</sup>

#### **4.2.7 Discrimination**

The Discrimination Act came into force in 2008 and thereby annulled former laws on the area.<sup>124</sup> The purpose of the Act is described in the Government Bill as to combat discrimination and promote equal rights and opportunities. This should be guaranteed to everyone regardless of gender, gender identity, ethnicity, religion, functional disability, sexual orientation or age.<sup>125</sup> Discrimination is also banned through the Swedish Constitution and the Instrument of Government, which states that everyone is equal to the law and should not be mistreated.<sup>126</sup>

### **4.3 European Obligations**

The European Convention on Human Rights became a part of Swedish legislation with the Lag (1994:1219) om den europeiska konventionen angående skydd för de mänskliga rättigheterna och de grundläggande friheterna. The Law reaffirms everything in the Convention. In Article 1, the High Contracting Parties have the obligation to ensure everyone within their jurisdiction the rights described in Section I of the Convention. This includes, among others, the right to life in Article 2 and prohibition of

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<sup>123</sup> Expert meeting on violence in the name of honour, pp. 18-19, retrieved from: [http://www.ebiblioteka.lt/resursai/Uzsienio%20leidiniai/Countries/Sweden/Integration/2003/mi2003\\_01.pdf](http://www.ebiblioteka.lt/resursai/Uzsienio%20leidiniai/Countries/Sweden/Integration/2003/mi2003_01.pdf), 2013-10-29.

<sup>124</sup> Discrimination Act, SFS (2008:567) retrieved from: [http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Diskrimineringslag-2008567\\_sfs-2008-567/](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Diskrimineringslag-2008567_sfs-2008-567/), 2013-10-29

<sup>125</sup> Government Bill 2007/08:95, "Ett starkare skydd mot diskriminering", retrieved from: <http://www.regeringen.se/content/1/c6/10/06/34/47ceceac.pdf>, 2013-11-07.

<sup>126</sup> The Instrument of Government, Chapter 1 §§ 2, 9, Chapter 2, §§ 15, 16, 22 (7), Chapter 11 § 9, retrieved from: <http://www.riksdagen.se/en/How-the-Riksdag-works/Democracy/The-Constitution/The-Instrument-of-Government/>, 2013-11-07.

discrimination in Article 14.<sup>127</sup> It is furthermore not allowed to make any regulations that contradict the Convention.<sup>128</sup>

According to Article 8 of the Lisbon Treaty, the EU should work towards combating all forms of inequalities between men and women. However, the EU does not legislate about social issues, so there is no legal ground for criminalizing domestic violence. Therefore, it is up to the Member States to form such documents. Nonetheless, the EU has brought up the question in different instruments and policies and acknowledges that it is a matter of human rights.<sup>129</sup> One example is the Council of Europe's Convention on preventing and combating violence against women and domestic violence, i.e. the Istanbul Convention.<sup>130</sup>

## **4.4 Report of the UN Special Rapporteur on Violence Against Women, its Causes and Consequences – Mission to Sweden**

In 2007 the UN Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, handed in a report regarding the state of domestic violence in Sweden. First of all, Ertürk recognized the peculiarity that Sweden with its development in gender equality still reported a high number of cases of violence against women, based on, for example, the Amnesty International report “Men’s Violence against Women in Intimate Relationships: An Account of the Situation in Sweden”, in 2004.<sup>131</sup>

With that said, she reported her findings and especially the concept of culture in domestic violence. She proclaimed that people that have experienced discrimination based on religion or ethnic reasons can feel a sense of exclusion from the Swedish society. This can lead them to step away from the traditional Swedish values, even if these are international human rights standards, like the case of gender equality. Particularly boys and young men see it as their task to make sure that women are behaving and do not interact with native Swedish culture. Another situation where

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<sup>127</sup> The European Convention on Human Rights, retrieved from: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf), 2013-10-28.

<sup>128</sup> The Instrument of Government, Chapter 2 § 23, retrieved from: <http://www.riksdagen.se/en/How-the-Riksdag-works/Democracy/The-Constitution/The-Instrument-of-Government/>, 2013-11-07.

<sup>129</sup> National Centre for Knowledge on Men's Violence Against Women, “EU:s arbete mot våld”, retrieved from: [http://www.nck.uu.se/Kunskapscentrum/Kunskapsbanken/amnen/Mans\\_vald\\_mot\\_kvinnor/EU/](http://www.nck.uu.se/Kunskapscentrum/Kunskapsbanken/amnen/Mans_vald_mot_kvinnor/EU/), 2013-10-31.

<sup>130</sup> Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), retrieved from: [http://www.coe.int/t/dghl/standardsetting/convention-violence/about\\_en.asp](http://www.coe.int/t/dghl/standardsetting/convention-violence/about_en.asp), 2013-11-13.

<sup>131</sup> Report of the Special Rapporteur on violence against women, its causes and consequences – Mission to Sweden, 2007, para 1, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/53/PDF/G0710653.pdf?OpenElement>, 2013-10-30.

problems may arise is that men who immigrate may undergo some loss of status, while women may gain some. This increases the men's need for control over women.<sup>132</sup> When it comes to domestic violence in Sweden, there is an assumption that the standard Swedish man is not abusive. The usual culprit is instead viewed as an exception that is without work or education and suffers from alcoholism. Above this, they would have a criminal record and a non-western origin.<sup>133</sup> Even though these men are generally represented as perpetrators of domestic violence, they are not dominating the population. In reality, standard Swedish men commit the majority of intimate-partner violence.<sup>134</sup> In spite of the effort to introduce more women into the public life, domestic violence still exists in Sweden. To understand why, one would have to examine the nature of the crime. Intimate-partner violence is not the result of spontaneous anger, but rather a combination of physical, emotional and isolative abuse. When performed long enough, the victim's self-confidence is weakened and replaced by the culprit's male dominance. When it has gotten this far, both the victim's and the culprit's understanding of what is normal have altered, and the victim believes that the violence is the logical outcome of her own personal errors. This makes it difficult for her to leave the relationship, and the difficulty is increased by the disgrace of admitting to being a victim of domestic violence in a seemingly gender-equal country like Sweden.<sup>135</sup>

One aspect that is being discussed is whether culture can increase the domestic violence for women with a foreign origin. One example is the phenomena of honour-related violence.<sup>136</sup> This issue has divided the feminists in Sweden in two groups; one that thinks that honour-related violence should be grouped with all other forms of violence against women, and one that thinks that the gender requirements that immigrant women face are much more severe than native Swedish women's – and therefore it is not possible with a general description for this kind of violence.<sup>137</sup> A difference from "ordinary" domestic violence is that honour-related violence does not have a sole perpetrator, to avoid getting caught, but includes many family members that act in the name of their society's customs. This makes it

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<sup>132</sup> Report of the Special Rapporteur on violence against women, its causes and consequences – Mission to Sweden, 2007, para 18, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/53/PDF/G0710653.pdf?OpenElement>, 2013-10-30.

<sup>133</sup> Report of the Special Rapporteur on violence against women, its causes and consequences – Mission to Sweden, 2007, para 22, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/53/PDF/G0710653.pdf?OpenElement>, 2013-10-30.

<sup>134</sup> Report of the Special Rapporteur on violence against women, its causes and consequences – Mission to Sweden, 2007, para 23, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/53/PDF/G0710653.pdf?OpenElement>, 2013-10-30.

<sup>135</sup> Report of the Special Rapporteur on violence against women, its causes and consequences – Mission to Sweden, 2007, para 25, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/53/PDF/G0710653.pdf?OpenElement>, 2013-10-30.

<sup>136</sup> Report of the Special Rapporteur on violence against women, its causes and consequences – Mission to Sweden, 2007, para 34, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/53/PDF/G0710653.pdf?OpenElement>, 2013-10-30.

<sup>137</sup> Report of the Special Rapporteur on violence against women, its causes and consequences – Mission to Sweden, 2007, para 35, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/53/PDF/G0710653.pdf?OpenElement>, 2013-10-30.

troublesome to protect the victim from potential culprits, and basically requires that the victim end all connections with her family.<sup>138</sup> Another way that honour-related violence can show itself is, according to some Swedish researchers, through female genital mutilation. This is based on the fact that honour-related violence is meant to protect women's honour, but in reality restricts her sexuality, like female genital mutilation. Girls who are immigrants or refugees from countries with a high record of this tradition are in danger, according to the Government's Action Plan on Female Genital Mutilation. There are, however, no exact figures showing how many cases of female genital mutilations have a connection to Sweden.<sup>139</sup>

The UN Special Rapporteur thereafter discussed in the report States' obligations to perform due diligence. This due diligence extends to prevention of violence against women, prosecution and punishment of culprits and victim support. Even though many efforts have been made when it comes to making the public sphere gender equal and providing prosecution of perpetrators and protection of victims, measures regarding prevention of violence against women are still lacking. If the latter is not fulfilled, then it is difficult to achieve total gender equality.<sup>140</sup>

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<sup>138</sup> Report of the Special Rapporteur on violence against women, its causes and consequences – Mission to Sweden, 2007, para 36, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/53/PDF/G0710653.pdf?OpenElement>, 2013-10-30.

<sup>139</sup> Report of the Special Rapporteur on violence against women, its causes and consequences – Mission to Sweden, 2007, para 38, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/53/PDF/G0710653.pdf?OpenElement>, 2013-10-30.

<sup>140</sup> Report of the Special Rapporteur on violence against women, its causes and consequences – Mission to Sweden, 2007, para 46, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/53/PDF/G0710653.pdf?OpenElement>, 2013-10-30.

# 5 International Human Rights Law

## 5.1 Definition of International Human Rights Law

Human rights can be a social, political and legal concept, but it is only the definition of the latter that is questioned in a modern society. An exploration of the legal nature of international human rights will not only touch the legality of human rights but also its relationship with affiliated legal areas such as how it influences domestic law as an international obligation under treaty law or as a constitutional provision.<sup>141</sup> This leads to the question of whether universality of international human rights is possible when cultures and economic possibilities alter in the world. These questions concerning the definition of international human rights stem from the lack of definition of the connection between international law and its human rights branch. One can say that it is through international law that human rights have had most impact, since it has globalized constitutional values and developed international law into a more humane shape.<sup>142</sup>

Even though people have analysed human rights for a long time, it still remains uncertain what it consists of and what its usage is. Some see it as a way to control political power, and some see it as a framework for viewing events in the world like domestic violence or traditional practices. Natural law supporters would see human rights as something humans inherit from a divine source, which can avoid the reality of the world, while a positivist approach might ignore justice since the realisation of one human right can demand the breach of another. Furthermore, the positivist approach requires that human rights change in line with society, and this can make human rights vague.<sup>143</sup> Both natural law advocates and positivists do, however, resent the liberal and the neutral and scientific view on human rights. This is where the feminist school of thinking agrees with the lack of neutrality - more specifically, gender neutrality. They believe that human rights are focused on the male norm since they are focused on States, and States are foremost ruled by male entities, which in turn are supported by international principles. The feminist school also criticizes human rights for not protecting women, since they both support freedom of religion, which in many ways is used to control women, and by naming the family as the foremost unit in society – even though the protection of the family empowers the structures there that lead to domestic violence.<sup>144</sup>

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<sup>141</sup> Addo, Michael K., *The legal nature of international human rights*, 2010, pp.19-20.

<sup>142</sup> Addo, Michael K., *The legal nature of international human rights*, 2010, p. 21.

<sup>143</sup> Addo, Michael K., *The legal nature of international human rights*, 2010, pp. 23-24.

<sup>144</sup> Addo, Michael K., *The legal nature of international human rights*, 2010, pp. 25-26.

## 5.2 Obligations in International Human Rights Law

### 5.2.1 State and Non-State Actors

It is only States that have any direct legal obligations in international human rights law.<sup>145</sup> Actions made by any other non-state actors cannot become a breach of international human rights law. There have been many definitions of what constitute a non-state actor, but one says that it is all individuals, groups and organisations that act inside or outside a territory, which literally means everyone else than States – a negative definition which puts the State in focus.<sup>146</sup> The State is responsible for actions by state officials, which include the legislature, judiciary, executive branches, and the police. The responsibility of these state officials is still intact even when they act outside of their apparent authority, if they act in an official manner. If not, the actions done by non-state actors cannot be traced to the State, unless in four situations which have been summarized by the International Law Commission.<sup>147</sup> The first is mentioned in the Draft articles on Responsibility of States for Internationally Wrongful Acts, in Article 5, and states that if a non-state actor exercises governmental authority, it can still be an act of the State under international law. In Article 11, it furthermore declares that the State can acknowledge an action as their own and would then be an act of the State under international law. The same goes when, if not acknowledged, the non-state actors have instructions or are controlled by the State. Lastly, responsibility for the State can also arise if it has not conducted proper due diligence in order to stop the acts by the non-state actors.<sup>148</sup> In a resolution made by the UN General Assembly, they proclaim the importance of dealing with wrongful actions by States.<sup>149</sup>

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<sup>145</sup> McCorquodale, Robert, "Non-state actors and international human rights law", p. 100. In: Joseph, Sara, McBeth, Adam, Research Handbook on International Human Rights Law, 2010, chapter 4.

<sup>146</sup> McCorquodale, Robert, "Non-state actors and international human rights law", pp. 97-98. In: Joseph, Sara, McBeth, Adam, Research Handbook on International Human Rights Law, 2010, chapter 4.

<sup>147</sup> McCorquodale, Robert, "Non-state actors and international human rights law", pp. 101-102. In: Joseph, Sara, McBeth, Adam, Research Handbook on International Human Rights Law, 2010, chapter 4.

<sup>148</sup> McCorquodale, Robert, "Non-state actors and international human rights law", p. 3. In: Joseph, Sara, McBeth, Adam, Research Handbook on International Human Rights Law, 2010, chapter 4. Also: Draft Articles on Responsibility of States for Internationally Wrongful Acts, Articles, 5, 11, retrieved from:

<http://www.refworld.org/docid/3ddb8f804.html>, 2013-10-14.

<sup>149</sup> Resolution 56/83, Responsibility of States for internationally wrongful acts, retrieved from: <http://www.undemocracy.com/A-RES-56-83.pdf>, 2013-10-14, see also: Report of the International Law Commission on the work of its fifty-third session, A/56/589, retrieved from: <http://www.un.org/documents/ga/docs/56/a56589.pdf>, 2013-10-14.



## 5.2.2 Government Inaction

Previously, domestic violence against women was not seen as a violation of human rights, as they were not performed by the State. It was seen as something private, but this started to alter with the UN Decade for Women from 1975 to 1985. This made people aware of the problem.<sup>150</sup> In a report by the UN Special Rapporteur in 1995, Radhika Coomaraswamy, government inaction against violence against women is discussed. An example of customary action that can cause violence against women is dowry death, and this goes against women's rights. The fact that States remain inactive against these practises, the Special Rapporteur means, is one reason for its realisation. Even though States are creating new laws that promote technology and economy, they are less inclined, or the process is slow, to do the same for the development of women's rights.<sup>151</sup> These traditions must be challenged; otherwise, they would go against international human rights law.<sup>152</sup> If the governments in States do not challenge them, the significance of these crimes goes unrecognized. In some governments, there even exists a tolerance of culprits of violence against women, at least when it is in the private sphere. Even if laws have been created, there can be a lack of implantation and prosecution of the perpetrators. According to rules made by the international community, the State has a positive obligation to act against violence against women when it comes to prevention, investigation and punishment.<sup>153</sup> The development of women's rights has received little acknowledgment in the work of improving international law, but this attitude has begun to alter in recent years with the development of international human rights law. The decrease of violence against women is seen as a part in the overall goal of improving women's human rights.<sup>154</sup>

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<sup>150</sup> Stark, Barbara, *International Family Law: An Introduction*, 2007, p. 234.

<sup>151</sup> "Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45", E/CN.4/1995/42, para 67, retrieved from:

<http://daccess-dds>

[ny.un.org/doc/UNDOC/GEN/G94/148/72/PDF/G9414872.pdf?OpenElement](http://ny.un.org/doc/UNDOC/GEN/G94/148/72/PDF/G9414872.pdf?OpenElement), 2013-10-14.

<sup>152</sup> "Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45", E/CN.4/1995/42, para 68, retrieved from:

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[ny.un.org/doc/UNDOC/GEN/G94/148/72/PDF/G9414872.pdf?OpenElement](http://ny.un.org/doc/UNDOC/GEN/G94/148/72/PDF/G9414872.pdf?OpenElement), 2013-10-14.

<sup>153</sup> "Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45", E/CN.4/1995/42, para 72, retrieved from:

<http://daccess-dds>

[ny.un.org/doc/UNDOC/GEN/G94/148/72/PDF/G9414872.pdf?OpenElement](http://ny.un.org/doc/UNDOC/GEN/G94/148/72/PDF/G9414872.pdf?OpenElement), 2013-10-14.

<sup>154</sup> "Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45", E/CN.4/1995/42, para 79, retrieved from:

<http://daccess-dds>

[ny.un.org/doc/UNDOC/GEN/G94/148/72/PDF/G9414872.pdf?OpenElement](http://ny.un.org/doc/UNDOC/GEN/G94/148/72/PDF/G9414872.pdf?OpenElement), 2013-10-14.

## 5.3 Sources of International Human Rights Law

### 5.3.1 International Bill of Rights

With the end of World War II in 1945, the United Nations was created with a basis in the UN Charter. With this document, the work for making human rights an international matter was a fact. The UN states its purpose in Article 1(3) as promoting human rights, and it delegated the Member States in Article 55 and Article 56 to do the same.<sup>155</sup> The Universal Declaration of Human Rights (UDHR) was thereafter adopted in 1948 and is perceived as the foundation of international human rights law. It signifies that all human beings are born free and share the same rights. The commitment in the UDHR, made by the signing parties, has since 1948 transformed into other legal documents such as treaties, domestic laws and general principles. Two examples of these are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which both entered into force in 1976. The purpose of the latter two is to further work on the rights described in the UDHR and also bind the ratifying partners.<sup>156</sup> These three documents are called the “International Bill of Rights”<sup>157</sup>. The ratification of these documents means that States can no longer say that the protection of human rights is a private domestic problem with a reference to state sovereignty, even if the enforcement machinery against States that violate human rights is not as strong as the standard setting.<sup>158</sup>

When the UN Charter was adopted, and later on the UDHR, it was merely thirty UN Members out of the original fifty-one that could provide women with equal voting rights to men or permit women to hold public office. This prompted the women’s movements at that time to work for equality when it came to their legal status and, thereby, have the same rights as men.<sup>159</sup> This meant that they focused on “sameness”, in comparison with “difference”. The UN documents from this time focused on the principles of equality and non-discrimination and assumed that men and women share the same experiences of life. Critics have stated that women’s rights were not included, as humans are differentiated from birth. When a system does not acknowledge that difference, it means that women are not protected the same rights as men. The subordinate power role of women made it the

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<sup>155</sup> Charter of the United Nations, I UNTS XVI, 1945, retrieved from: <http://www.un.org/en/documents/charter/>, 2013-10-30.

<sup>156</sup> The Universal Declaration of Human Rights, 1948, [http://www.un.org/en/documents/udhr/hr\\_law.shtml](http://www.un.org/en/documents/udhr/hr_law.shtml), retrieved: 2013-09-25.

<sup>157</sup> Joseph, Sara, Adam, Research Handbook on International Human Rights Law, 2010, chapter 1, “The United Nations and human rights”, p.3.

<sup>158</sup> Joseph, Sara, McBeth, Adam, Research Handbook on International Human Rights Law, 2010, chapter 1, “The United Nations and human rights”, pp. 1-2.

<sup>159</sup> Division for the Advancement of Women, “The Four Global Women’s Conference 1975-1995: Historical Perspective”, retrieved at: <http://www.un.org/womenwatch/daw/followup/session/presskit/hist.htm>, 2013-10-17.

men's experience that decided what international human rights should consist of.<sup>160</sup> This was meant to be redeemed with the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, but was not properly done until the adoption of the Vienna Declaration and Programme of Action in 1993. Only then did women's rights become part of the human rights mechanism.<sup>161</sup>

### **5.3.2 Convention on the Elimination of All Forms of Discrimination Against Women**

The Convention on the Elimination of All forms of Discrimination Against Women was adopted by the UN General Assembly in 1979 and describes what discrimination against women is and what national efforts are required to end discrimination. One of its distinguishing features is that it is the only human rights treaty that mentions culture and custom as having an impact on constructing gender and family roles.<sup>162</sup> The definition of discrimination against women is stated in Article 1 as;

“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”<sup>163</sup>.

Violence is not mentioned in the text but can be interpreted as being within the definition.<sup>164</sup> This is due to a general recommendation (No. 19) adopted by the Committee on the Elimination of Discrimination against Women in 1992, which formally accepted that violence against women is gender discrimination and is in breach of freedom and human rights according to international law. Furthermore, the States cannot justify violations of the Convention with reference to customary practices. In other words, the States breach the Convention if they either;

“(i) fail to condemn any specific form of violence against women; or

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<sup>160</sup>van Leeuwen, Fleur, “Women's rights are human rights!": the practice of the United Nations Human Rights Committee and the Committee on Economic, Social and Cultural Rights", 2013, p. 248. In: Hellum, Anne, Aasen, Henriette Sinding, "Women's Human Rights: CEDAW in International, Regional and National Law", Chapter 8.

<sup>161</sup>van Leeuwen, Fleur, “Women's rights are human rights!": the practice of the United Nations Human Rights Committee and the Committee on Economic, Social and Cultural Rights", 2013, pp. 249-250. In: Hellum, Anne, Aasen, Henriette Sinding, "Women's Human Rights: CEDAW in International, Regional and National Law", Chapter 8.

<sup>162</sup>Convention on the Elimination of All Forms of Discrimination against Women, 1979, <http://www.un.org/womenwatch/daw/cedaw/>, retrieved: 2013-09-25.

<sup>163</sup>The Convention on Elimination of All Forms of Discrimination against Women, 1979, Article 1, retrieved from:

<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article1>, 2013-09-25.

<sup>164</sup>Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45, E/CN.4/1995/42, para 85, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G94/148/72/PDF/G9414872.pdf?OpenElement>, retrieved: 2013-10-14.

(ii) fail to pursue, by all appropriate means and without delay, a policy to eliminate such violence, regardless of whether the violence is grounded in traditional, religious or cultural practice.”<sup>165</sup>

### 5.3.2.1 CEDAW India – Praise and Critique

India signed the convention in 1980 and ratified it in 1993.<sup>166</sup> Even though India ratified it, they made two declaratory statements and one reservation to the CEDAW. The first declaratory statement was regarding Articles 5 (a) and 16 (1), stating that they would abide and ensure these provisions as long as they followed the policy of not interfering in the personal affairs of communities without their initiative and consent.<sup>167</sup> Article 5 (a) concerned the unequal balance and roles between men and women and sought out the States parties to alter this by changing the social and cultural rules of behaviour. 16 (1) also deal with discrimination against women when it comes to marriage and family structures. It mentions the right to choose one’s own spouse in (b), and in (h) they state that both spouses should share the same rights when it comes to ownership of property.<sup>168</sup> The second declaratory statement was that, even though they agree with the principle stated in Article 16 (2) regarding the compulsory registration of marriages, it is not possible to realise in India with its large territory and its many traditions and religions.<sup>169</sup> The declaratory statements were followed by a reservation of Article 29 regarding the solution of disputes concerning interpretation or application of the convention.<sup>170</sup> The reservation does not matter as much, as it does not involve the Convention’s foremost obligations, contrary to the two declarations.<sup>171</sup>

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<sup>165</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, “Intersections between culture and violence against women”, A/HRC/4/34, para 28, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, retrieved: 2013-10-15.

<sup>166</sup> United Nations Treaty Collection, Status of Treaties, CEDAW [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec), retrieved: 2013-09-25.

<sup>167</sup> United Nations Treaty Collection, Status of Treaties, CEDAW, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec), retrieved: 2013-09-30.

<sup>168</sup> Convention on the Elimination of All Forms of Discrimination Against Women, 1979, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article5>, retrieved: 2013-09-30.

<sup>169</sup> CEDAW, India, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec), retrieved: 2013-09-30.

<sup>170</sup> CEDAW, India, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec), retrieved: 2013-09-30.

<sup>171</sup> Mehra, Madhu, “India’s CEDAW story”, 2013, p. 386. In: Hellum, Anne, Aasen, Henriette Sinding, *Women’s Human Rights: CEDAW in International, Regional and National Law*, Chapter 13.

The CEDAW response<sup>172</sup> acknowledged the difficulties of implementation in India. In sections 51-53, they proclaim that a lot of people in India live in poverty and it is specifically the growing feminization of poverty that makes it difficult for women to take an active part in economic development.<sup>173</sup> This poverty and “social practices as the caste system and son preference, as reflected in a high incidence of violence against women, significant gender disparities and an adverse sex ratio, present major obstacles to the implementation of the Convention.”<sup>174</sup> The fact that there are differences from one region to the other makes implementation challenging.<sup>175</sup>

In the CEDAW response, they followed with the praise of India’s achievements. The Committee commended India for making it possible to enforce fundamental human rights, among others the right to gender equality and non-discrimination, by turning to the Supreme Court.<sup>176</sup> The fact that social action litigation and that the Constitution have been a part of domestic law by the Supreme Court is also commendable.<sup>177</sup> Furthermore, the introductions of programmes and policies in order to develop women’s rights, by the Indian Government, have shown some results.<sup>178</sup> Also, the creation of the National Commission for Women, which has the responsibility for creating projects and law reforms, is a step in the right direction.<sup>179</sup>

The CEDAW Committee also expressed their discontent in their response by stating that the Convention and the Beijing Platform for Action had not been implemented or become a part of India’s policies and programs. There was also a lack of implementation when it comes to women’s development,

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<sup>172</sup> CEDAW/C/2000/I/CRP.3/Add.4/Rev.1, retrieved from:  
<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/f1e04b43b6059b32c12568c0003992b9?OpenDocument>, 2013-09-30.

<sup>173</sup> CEDAW/C/2000/I/CRP.3/Add.4/Rev.1, retrieved from:  
<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/f1e04b43b6059b32c12568c0003992b9?OpenDocument>, retrieved: 2013-09-30.

<sup>174</sup> CEDAW/C/2000/I/CRP.3/Add.4/Rev.1, para 52, retrieved from:  
<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/f1e04b43b6059b32c12568c0003992b9?OpenDocument>, retrieved: 2013-09-30.

<sup>175</sup> CEDAW/C/2000/I/CRP.3/Add.4/Rev.1, para 53, retrieved from:  
<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/f1e04b43b6059b32c12568c0003992b9?OpenDocument>, retrieved: 2013-09-30.

<sup>176</sup> CEDAW/C/2000/I/CRP.3/Add.4/Rev.1, para 45, retrieved from:  
<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/f1e04b43b6059b32c12568c0003992b9?OpenDocument>, retrieved: 2013-09-30.

<sup>177</sup> CEDAW/C/2000/I/CRP.3/Add.4/Rev.1, para 46, retrieved from:  
<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/f1e04b43b6059b32c12568c0003992b9?OpenDocument>, retrieved: 2013-09-30.

<sup>178</sup> CEDAW/C/2000/I/CRP.3/Add.4/Rev.1, para 47, retrieved from:  
<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/f1e04b43b6059b32c12568c0003992b9?OpenDocument>, retrieved: 2013-09-30.

<sup>179</sup> CEDAW/C/2000/I/CRP.3/Add.4/Rev.1, para 48, retrieved from:  
<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/f1e04b43b6059b32c12568c0003992b9?OpenDocument>, retrieved: 2013-09-30.

which prevents the progress of human rights for women in India.<sup>180</sup> One example is the absence of implementation of existing laws that ban traditional practises like dowry, *sati* and *devadasi* and called upon the State to promote law enforcement.<sup>181</sup> Even though the National Commission for Women has been created, it has no authority to enforce law proposals or end discrimination by intervention in either the private or the public arena. This is also difficult, since the National Commission for Women is missing financial aid.<sup>182</sup> What is more, the Convention in Article 28, paragraph 2, prohibits reservations that are against its object and purpose – in the light of the 1969 Vienna Convention on the Law of Treaties, and the question is if India's responses are against this regulation.<sup>183</sup>

### 5.3.2.2 CEDAW Sweden – Praise and Critique

Sweden both signed and ratified the CEDAW in 1980. It made no reservations but declared some other nations' reservations as inconsistent with the Convention.<sup>184</sup> In the sixth and seventh periodic report by Sweden in 2008, they explained the measures they are obliged to take according to the CEDAW and the development since the fourth and fifth country report in 2001. When it comes to domestic violence, they agree that this can be a hindrance for women to enjoy basic human rights. It would require a gender equality policy that deals with the subjectivity of women to overcome violence against women.<sup>185</sup>

The United Nations 1993 Declaration on the Elimination of Violence Against Women was deemed to be a good place for the Government to begin to stop this violence.<sup>186</sup> Further work by the Government was the Government Bill on Violence Against Women. In 2003, this Bill and the public agencies that had received instructions in the Bill were put under

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<sup>180</sup> CEDAW/C/2000/I/CRP.3/Add.4/Rev.1, para 54, retrieved from:  
<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/f1e04b43b6059b32c12568c0003992b9?OpenDocument>, retrieved: 2013-09-30.

<sup>181</sup> CEDAW/C/2000/I/CRP.3/Add.4/Rev.1, para 68-69, retrieved from:  
<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/f1e04b43b6059b32c12568c0003992b9?OpenDocument>, retrieved: 2013-09-30.

<sup>182</sup> CEDAW/C/2000/I/CRP.3/Add.4/Rev.1, para 84, retrieved from:  
<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/f1e04b43b6059b32c12568c0003992b9?OpenDocument>, retrieved: 2013-09-30.

<sup>183</sup> United Nations, Audiovisual Library of International Law, CEDAW,  
<http://legal.un.org/avl/ha/cedaw/cedaw.html>, retrieved: 2013-10-14.

<sup>184</sup> United Nations Treaty Collection, Status of Treaties, CEDAW,  
[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-8&chapter=4&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-8&chapter=4&lang=en#EndDec), retrieved: 2013-10-21.

<sup>185</sup> Sixth and seventh periodic report of the Swedish Government on measures taken to give effect to the Convention on the Elimination of All Forms of Discrimination against Women, para 65, retrieved at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/559/87/PDF/N0655987.pdf?OpenElement>. 2013-10-21.

<sup>186</sup> Sixth and seventh periodic report of the Swedish Government on measures taken to give effect to the Convention on the Elimination of All Forms of Discrimination against Women para 66, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/559/87/PDF/N0655987.pdf?OpenElement>. 2013-10-21.

evaluation.<sup>187</sup> When it comes to Swedish institutions, the Prosecution Agency had gotten more resources to deal with violence against women and was given a high degree of attention – for example, by providing different educational measures such as specialisation of work methods, but also by improving knowledge through different projects.<sup>188</sup> The Swedish Prosecution Agency is required to report back these measures to the Government, since development in combating violence against women is crucial.<sup>189</sup> This extends to securing the situation for victims, and, in 2003, the Office of the Prosecutor-General adopted an action plan for this. This has since then been a part of courses on how to deal with victim support.<sup>190</sup> Cooperation with the prosecution, gender equality and effective victim support must prevail in the court system.<sup>191</sup> To ensure this, the National Courts Administration has increased training on violence against women for judges<sup>192</sup>, which included information on violence against women in the name of honour.<sup>193</sup>

The first thing the Committee stated that was positive about Sweden's efforts to promote gender equality was the founding in 2007 of the Ministry of Integration and Gender Equality, and the Division for Gender Equality in the Ministry.<sup>194</sup> Additionally, the adoption of a national human rights plan of action was welcomed, as well as the Delegation for Human Rights.<sup>195</sup> This was illustrated in the increase of the State budget for gender equality

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<sup>187</sup> SOU 2004:121, retrieved from:

<http://www.brottsoffermyndigheten.se/Filer/Remissvar/Remissvar%20SOU%202004%20121.pdf>, 2013-10-21.

<sup>188</sup> Sixth and seventh periodic report of the Swedish Government on measures taken to give effect to the Convention on the Elimination of All Forms of Discrimination against Women para 81, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/559/87/PDF/N0655987.pdf?OpenElement>. 2013-10-21.

<sup>189</sup> Sixth and seventh periodic report of the Swedish Government on measures taken to give effect to the Convention on the Elimination of All Forms of Discrimination against Women para 82, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/559/87/PDF/N0655987.pdf?OpenElement>. 2013-10-21.

<sup>190</sup> Sixth and seventh periodic report of the Swedish Government on measures taken to give effect to the Convention on the Elimination of All Forms of Discrimination against Women para 85, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/559/87/PDF/N0655987.pdf?OpenElement>. 2013-10-21.

<sup>191</sup> Sixth and seventh periodic report of the Swedish Government on measures taken to give effect to the Convention on the Elimination of All Forms of Discrimination against Women para 89, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/559/87/PDF/N0655987.pdf?OpenElement>. 2013-10-21.

<sup>192</sup> Sixth and seventh periodic report of the Swedish Government on measures taken to give effect to the Convention on the Elimination of All Forms of Discrimination against Women para 90, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/559/87/PDF/N0655987.pdf?OpenElement>. 2013-10-21.

<sup>193</sup> Sixth and seventh periodic report of the Swedish Government on measures taken to give effect to the Convention on the Elimination of All Forms of Discrimination against Women para 92, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/559/87/PDF/N0655987.pdf?OpenElement>. 2013-10-21.

<sup>194</sup> CEDAW/C/SWE/7, para 6, retrieved at:<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/298/66/PDF/N0829866.pdf?OpenElement>, 2013-10-21.

<sup>195</sup> CEDAW/C/SWE/7, para 7, retrieved at:<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/298/66/PDF/N0829866.pdf?OpenElement>, 2013-10-21.

policies.<sup>196</sup> Another important action plan, the Committee noted, was the plan to decrease men's violence against women, including when it is made in the name of honour.<sup>197</sup> The protection of women's rights were not only commended regionally, but also Sweden's international obligations were mentioned, as they have reached and exceeded the goal of 0.7 per cent of the Gross National Product (GNP) by giving 1.0 per cent of the GNP to developing countries.<sup>198</sup>

Even though the Committee acknowledged the efforts made by the Swedish Government to combat violence against women, it was still worried about the high number it still consisted of, especially when it came to honour-related violence. This is not abetted by the low prosecution rates. Furthermore, that the help from social services can be different from one municipality to another is a source of concern.<sup>199</sup> In order to follow the general recommendation No. 19, the ratifying states must provide tools to combat violence against women, which means both domestic violence and honour-related violence. To ensure this, Sweden has to implement the 2007 action plan on violence and create and implement policies that have the purpose to prevent such violence. Financial recourses, statistical data and more collaboration between the central Government, regional county administrative board and the municipalities are essential for making this a reality. Above this, social services must be able to provide shelter homes for all victims of violence, which requires financial aid.<sup>200</sup> These issues are required to be dealt with and responded to in the next reports, the eighth and ninth, which will be given in September 2014.<sup>201</sup>

### **5.3.3 Vienna Declaration and Programme of Action and the Declaration on the Elimination of Violence Against Women**

At the World Conference on Human Rights in 1993 the Vienna Declaration and Programme of Action (A/CONF.157/23) was adopted. With this, the World Conference wanted the UN General Assembly to adopt the Draft Declaration on Violence Against Women. Assisted by States, this would help prevent violence.<sup>202</sup> One fundamental aspect was to remove the "harmful effects of certain traditional or customary practices, cultural

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<sup>196</sup> CEDAW/C/SWE/7, para 8, retrieved at:<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/298/66/PDF/N0829866.pdf?OpenElement>, 2013-10-21.

<sup>197</sup> CEDAW/C/SWE/7, para 9, retrieved at:<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/298/66/PDF/N0829866.pdf?OpenElement>, 2013-10-21.

<sup>198</sup> CEDAW/C/SWE/7, para 12, retrieved at:<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/298/66/PDF/N0829866.pdf?OpenElement>, 2013-10-21.

<sup>199</sup> CEDAW/C/SWE/7, para 28, retrieved at:<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/298/66/PDF/N0829866.pdf?OpenElement>, 2013-10-21.

<sup>200</sup> CEDAW/C/SWE/7, para 29, retrieved at:<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/298/66/PDF/N0829866.pdf?OpenElement>, 2013-10-21.

<sup>201</sup> CEDAW/C/SWE/7, para 46, retrieved at:<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/298/66/PDF/N0829866.pdf?OpenElement>, 2013-10-21.

<sup>202</sup> Vienna Declaration and Programme of Action, A/CONF.157/23, para. 38, retrieved from: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf.157.23.en](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en), 2013-10-01.



prejudices and religious extremism”<sup>203</sup>. The Declaration on the Elimination of Violence Against Women (A/RES/48/104) then became a resolution that was adopted by the UN General Assembly in 1994, which among other issues sought to implement the goals enshrined in the CEDAW. In the preamble, there is a description of the concern that:

“violence against women is an obstacle to the achievement of equality, development and ... constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women”<sup>204</sup>.

In Article 2, the definition of violence is stated, and in 2(a) dowry-related violence is one example. In Article 4, the Declaration looks to States’ behaviour towards violence against women and prohibits the use of custom, tradition or religion as reasons for not acting against it.<sup>205</sup>

### **5.3.4 UN Special Rapporteur on Violence Against Women, its Causes and Consequences**

In the aftermath of the above-mentioned declaration, the United Nations Commission on Human Rights decided in 1994 to instate a Special Rapporteur on violence against women<sup>206</sup>, a mandate that was prolonged in 2003.<sup>207</sup> Since 2006, it is the Human Rights Council that has the authority over the Special Rapporteur<sup>208</sup> and the latest mandate was given in 2013.<sup>209</sup> The goal for the UN Special Rapporteur is summarized as to find information about violence against women and determine its origins and results, and after this, to find solutions and possible changes that can be made both locally and globally.<sup>210</sup> In a report submitted in 2011, the UN

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<sup>203</sup> Vienna Declaration and Programme of Action, A/CONF.157/23, para. 38, retrieved from: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf.157.23.en](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en), 2013-10-01.

<sup>204</sup> Declaration on the Elimination of Violence Against Women, preamble, retrieved from: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/48/104](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/48/104), 2013-09-25.

<sup>205</sup> Declaration on the Elimination of Violence Against Women, retrieved from: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/48/104](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/48/104), 2013-09-25.

<sup>206</sup> Resolution 1994/95, retrieved from: <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>, 2013-10-04.

<sup>207</sup> Resolution 2003/45, retrieved from: <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>, 2013-10-04.

<sup>208</sup> Office of the High Commissioner of Human Rights, Special Rapporteur on violence against women, its causes and consequences, retrieved from: <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>, 2013-10-09.

<sup>209</sup> Resolution 23/25, Accelerating efforts to eliminate all forms of violence against women: preventing and responding to rape and other forms of sexual violence, A/HRC/RES/23/25, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/150/98/PDF/G1315098.pdf?OpenElement>, 2013-10-09.

<sup>210</sup> Resolution 1994/95, para 7 (a)-(b), retrieved from: <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>, 2013-10-04.

Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, sought to show the Special Rapporteur's work, the problems that need to be faced and what solutions that can be offered. These solutions were to be holistic and rely on States' actions – that is their obligation to make sure that human rights are followed.<sup>211</sup> When it comes to violence within the family, there are two categories: domestic violence and other violent and humiliating actions – no matter if they are the result of a tradition, social law or religion.<sup>212</sup> This is reducing the role of women, and it often still exists without the perpetrators being punished, even if there is legislation that bans it. The fact that early, forced and/or unregistered marriages still continue in some places is a problem and can be causing domestic violence.<sup>213</sup> The domestic violence that is conducted by husbands and their families due to dowry has its basis in the belief that they have bought their bride and have the right to do what they seem fit with her, which can include violent behaviour.<sup>214</sup> This violence is solely against women and the most dangerous form of it is femicide, which means the murdering of women due to them being women alone. This can have many motives and results, and one outcome is dowry death.<sup>215</sup> Regarding the States' obligation to make sure that violence against women is stopped, the UN Special Rapporteur looked to the due diligence standard in international human rights law. It is according to the 1993 Declaration on the Elimination of Violence against Women that the State, through due diligence, sees to it that preventive measures and sanctions in their legislation are followed. This is relevant no matter if the acts were done by a private citizen or by the State itself.<sup>216</sup> These sanctions should be penal, labour, civil and administrative, and women should have easy access to report the offences.<sup>217</sup> However, the States' responsibilities are not only relevant when the crimes have occurred, but also to the prevention of them, especially to investigate the root cause as to why violence occurs. This means looking at the family situation – only

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<sup>211</sup> "Report of the Special Rapporteur on violence against women, its causes and consequences", Rashida Manjoo, A/66/215, Summary, retrieved from:

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/66/215](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/215), 2013-10-09.

<sup>212</sup> "Report of the Special Rapporteur on violence against women, its causes and consequences", Rashida Manjoo, para 25,

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/66/215](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/215), retrieved: 2013-10-10.

<sup>213</sup> "Report of the Special Rapporteur on violence against women, its causes and consequences", Rashida Manjoo, para 30,

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/66/215](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/215), retrieved: 2013-10-10.

<sup>214</sup> "Report of the Special Rapporteur on violence against women, its causes and consequences", Rashida Manjoo, para 31,

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/66/215](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/215), retrieved: 2013-10-10.

<sup>215</sup> "Report of the Special Rapporteur on violence against women, its causes and consequences", Rashida Manjoo, para 37,

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/66/215](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/215), retrieved: 2013-10-10.

<sup>216</sup> "Report of the Special Rapporteur on violence against women, its causes and consequences", Rashida Manjoo, para 47,

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/66/215](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/215), retrieved: 2013-10-10.

<sup>217</sup> "Report of the Special Rapporteur on violence against women, its causes and consequences", Rashida Manjoo, para 48,

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/66/215](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/215), retrieved: 2013-10-10.

then can they choose appropriate methods.<sup>218</sup> The reason is that nowadays, States' responsibility in international law does not restrict itself to the public life, but the due diligence standard forces States to address violence in the private life as well.<sup>219</sup> To get the word out into society is a part of this, and education, campaigns and programs that focus on violence against women is one way of doing that.<sup>220</sup> Another way is to reassure that judges, prosecutors and the police can conduct the legal enforcement. They should also have the right regulations that can include criminal codes, specific regulations and new forms of investigation and prosecution. For this, the nature of the crime is relevant, which can be shown in policies; for example, the victim does not have to be present in court and testify.<sup>221</sup> The creation of women's police stations can help reporting procedures and work to protect the victims, which the UN Special Rapporteur encouraged in her rapport.<sup>222</sup> However, there are still many States that do not respond and react to their obligation of prevention and protection of victims of domestic violence. This can be traced back to the patriarchal justice and enforcement system – which is not helped by the lack of knowledge about the law and insufficient financial aid.<sup>223</sup>

### 5.3.5 Beijing Declaration and Programme of Action

The fourth World Conference on Women was set in Beijing, China, in 1995. There, they created the Platform for Action as a follow-up of the goals enshrined with the Nairobi Forward-looking Strategies for the Advancement of Women and sought to endorse gender equality by providing women a more active role in the public and private life.<sup>224</sup> This was basically because they saw that the goals in the Nairobi Forward-looking Strategies had not been realized.<sup>225</sup> Above this, the Platform for Action wanted to confirm that

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<sup>218</sup> "Report of the Special Rapporteur on violence against women, its causes and consequences", Rashida Manjoo, para 49, retrieved from:

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/66/215](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/215), 2013-10-10.

<sup>219</sup> "Report of the Special Rapporteur on violence against women, its causes and consequences", Rashida Manjoo, para 57, retrieved from:

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/66/215](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/215), 2013-10-10.

<sup>220</sup> "Report of the Special Rapporteur on violence against women, its causes and consequences", Rashida Manjoo, para 56, retrieved from:

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/66/215](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/215), 2013-10-10.

<sup>221</sup> "Report of the Special Rapporteur on violence against women, its causes and consequences", Rashida Manjoo, para 58, retrieved from:

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/66/215](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/215), 2013-10-10.

<sup>222</sup> "Report of the Special Rapporteur on violence against women, its causes and consequences", Rashida Manjoo, para 59, retrieved from:

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/66/215](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/215), 2013-10-10.

<sup>223</sup> "Report of the Special Rapporteur on violence against women, its causes and consequences", Rashida Manjoo, para 60, retrieved from:

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/66/215](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/215), 2013-10-10.

<sup>224</sup> Report of the Fourth World Conference on Women Beijing, 1995, para 1, retrieved from: <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>, 2013-10-10.

<sup>225</sup> Report of the Fourth World Conference on Women Beijing, 1995, para 42, retrieved from: <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>, 2013-10-10.

women's rights are an absolute part of human rights, a principle that emerged with the Vienna Declaration and Programme of Action<sup>226</sup> because women's rights are not to be separated as only a women's issue, but to be a part of social justice and all human rights.<sup>227</sup> Furthermore, they stated their support for the CEDAW.<sup>228</sup> The overall purpose of the Platform for Action, in line with the Charter of the United Nations and international law, was the empowerment of women. The responsibility to implement the Platform was delegated to the sovereign States and was meant to be in connection with human rights and fundamental freedoms, with the respect for different values and cultural experiences.<sup>229</sup> The Beijing Declaration and Programme of Action describes violence against women as a hindrance in the work of creating gender equality and damages their opportunity to enjoy their human rights and fundamental freedoms. The inability of States to give women this opportunity was seen as alarming. When it comes to the root of violence, the Committee believed that it can be traced back to the subordinate social and economic role women have, and this can be both a reason and a result of violence against women.<sup>230</sup> An example of this violence is dowry-related violence.<sup>231</sup> When it comes to human rights, the Programme of Action demanded the governments look into their own national laws, which also meant customary laws and legal practices, so that the implementation of human rights regulations could be done, and also eradicate those existing national laws that are discriminating against women. Violence against women was here stated to be a human rights violation, and it was up to the governments to prevent violence that stems from "harmful traditional or customary practices, cultural prejudices and extremism"<sup>232</sup>.

At the 2000 Beijing + 5 General Assembly Special Review, they evaluated the progress since the Conference in 1995 and reached the conclusion that there had not been enough improvement. It was reaffirmed that violence against women, performed or accepted by the State, is a human rights violation. It is the responsibility of the State to practice due diligence in order to prevent such events from happening and punish perpetrators, regardless of whether the actions are done by the States or private citizens.

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<sup>226</sup> Report of the Fourth World Conference on Women Beijing, 1995, para 2, retrieved from:<http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>, 2013-10-10.

<sup>227</sup> Report of the Fourth World Conference on Women Beijing, 1995, para 41, retrieved from:<http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>, 2013-10-10.

<sup>228</sup> Report of the Fourth World Conference on Women Beijing, 1995, para 7, retrieved from:<http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>, 2013-10-10.

<sup>229</sup> Report of the Fourth World Conference on Women Beijing, 1995, para 9, retrieved from:<http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>, 2013-10-10.

<sup>230</sup> "Violence against women", para 112, retrieved from:  
<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>, 2013-10-16.

<sup>231</sup> "Violence against women", para 113 (b), retrieved from:  
<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>, 2013-10-16.

<sup>232</sup> "Human Rights of Women", para 232, retrieved from:  
<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>, 2013-10-16.

The UN General Assembly recognised that there had been efforts to improve the situation for women, among others, when it comes to domestic violence. The works by the governments included creating policies and renewing legislation such as interdepartmental committees and different violence-oriented programmes. Development regarding the opportunities for victims of domestic violence to seek remedies, such as legal services and shelters, had also been done. The staff members working at such facilities have, moreover, had opportunities to receive education on the subject, and researchers had started to look into the background of violence against women and the roles of women and men. The UN General Assembly, furthermore, acknowledged the prosperous relationship between governmental and non-governmental organisations when it comes to preventative measures, backed up by the civil society. This included trying to remove certain harmful traditions, and governments have tried to create programmes and legislation to reach these goals.<sup>233</sup> The reason for not attaining these goals completely can be based on the incomprehension of the reasons behind violence against women. The position of women in societies where they lack economic roles, makes them defenceless against, inter alia, dowry-related violence. There is, therefore, a need for interplay with many institutions, like the health system, the media and the justice system, which is not the reality today in many countries. This can be the outcome of inadequate information about domestic violence and how to stop it, as well as inappropriate or insufficient legal solutions.<sup>234</sup>

## 5.4 Development and Significance of International Human Rights Law

In the year 1764, it became known in the former colonies of present day America that England had the intention to impose taxes on them. This was believed to go against the natural right to life, freedom and property. The colonies had the right to enjoy the same rights, which were valid for all human beings. According to this belief, no man can be imposed taxes without his approval. The English Monarchy and its Government ignored this response<sup>235</sup>, and in 1775, the American and English troops endured their first armed collision. This led to a war to gain independence.<sup>236</sup> In 1776, the Declaration of Independence was created and - even though it was a result of the American history – it had an effect for other people as well.<sup>237</sup> These movements in America had a direct influence in France with the revolution

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<sup>233</sup> "Report of the Ad Hoc Committee of the Whole of the twenty-third special session of the General Assembly", A/S-23/10/Rev.1, para 13, retrieved from: <http://www.un.org/womenwatch/daw/followup/as2310rev1.pdf>, 2013-10-16.

<sup>234</sup> "Report of the Ad Hoc Committee of the Whole of the twenty-third special session of the General Assembly", A/S-23/10/Rev.1, para 14, retrieved from: <http://www.un.org/womenwatch/daw/followup/as2310rev1.pdf>, 2013-10-16,

<sup>235</sup> Strzelewicz, Willy, *De mänskliga rättigheternas historia*, 2004, pp. 29-30.

<sup>236</sup> Strzelewicz, Willy, *De mänskliga rättigheternas historia*, 2004, pp. 32-33.

<sup>237</sup> Strzelewicz, Willy, *De mänskliga rättigheternas historia*, 2004, pp. 34-35.

in 1789.<sup>238</sup> Both the American and French revolution had the same tendency and impact: to realise the development towards a liberal governmental and economical order.<sup>239</sup> The declaration on human rights was then a political manifesto. With the declaration of independence, the American people declared their freedom from the guardianship of another country. The people of France turned against absolutism and promoted a new state without inequalities. However, these manifestations were not intended to be time restrained but be applicable in all times, and they plead to a higher right. This unwritten right is something they want to realise as if it had existed forever, and every human who can use their reason would like to acknowledge and actualise.<sup>240</sup>

The development of human rights has, as illustrated above, a rich history, but one can say that it had its first clear expression through the creation of the United Nations and the formulation of the Universal Declaration of Human Rights after World War II. The purpose was to create a lasting peace through a global organisation of States and by this promote equal rights for everyone.<sup>241</sup> The reality has changed after World War II, and the transformations are even more comprehensive than at the beginning of the 20<sup>th</sup> century and after World War I. This does not only apply to countries where human rights were developed, in Europe and North America, but also Asia, Africa and South America. Old principles have been reaffirmed, and the quest to put these into practice has lead, inter alia, to the abolishment of slavery and the promotion of equality between men and women.<sup>242</sup> At that point in time, there begun also a development of the international relations that are consistent with programmatic demands in the declaration on the human rights, which was showed in the decolonisation. This liberation was not always motivated by the idea of human rights, but was only one of many factors. Nonetheless, the result of this was consistent with human rights. In 1947, the Indian Union got its independence but remained voluntarily as equal members in the British Commonwealth of Nations, and principles formed by Clement Attlees' government made an important contribution to the development.<sup>243</sup> This movement of liberation did not mean that the indirect dependency and the economical influence ceased, but remained because of the former colonial power interest in trade. It also remained due to the newly formed States' economical need and political interest. Regardless, it demonstrated a development for a higher degree of independence and a shift in international power relations, and thereby shows the efforts being made in the name of the Universal Declaration of Human Rights.<sup>244</sup>

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<sup>238</sup> Strzelewicz, Willy, *De mänskliga rättigheternas historia*, 2004, p. 42.

<sup>239</sup> Strzelewicz, Willy, *De mänskliga rättigheternas historia*, 2004, p. 44.

<sup>240</sup> Strzelewicz, Willy, *De mänskliga rättigheternas historia*, 2004, p. 63.

<sup>241</sup> Strzelewicz, Willy, *De mänskliga rättigheternas historia*, 2004, p. 245.

<sup>242</sup> Strzelewicz, Willy, *De mänskliga rättigheternas historia*, 2004, p. 255.

<sup>243</sup> Strzelewicz, Willy, *De mänskliga rättigheternas historia*, 2004, p. 264, see also: UK Government, "Clement Attlee", retrieved from:

<https://www.gov.uk/government/history/past-prime-ministers/clement-attlee>, 2013-10-25.

<sup>244</sup> Strzelewicz, Willy, *De mänskliga rättigheternas historia*, 2004, p. 265.

After stating what international human rights is, what obligation it gives rise to, what forms it comes in and its history, the question is whether it has provided any significance. International law has been accused of being too vague to even be categorized as “law”. It has also been said that the negotiation of the different treaties is unfair, and that only certain developed States have the possibility of participating, and therefore only their goals and desires were agreed upon.<sup>245</sup> Therefore, international law could not be described as ideal, but it fulfils a purpose by providing the world with a set of values that can be called norms of the international community, and breaking these can be called violations. With the overall globalisation of the world, international law can also affect individuals, and it can be as important to them as their respective domestic laws.<sup>246</sup> One sign that international law has an impact is the fact that no state anymore claims that they do not have to obey international law standards. States that have been accused of violating the rules do not say that international law does not exist, merely that they had some other explanation or different interpretation of what the international law consist of.<sup>247</sup>

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<sup>245</sup> Islam, Rizwanul, *Nordic Journal of International Law* 78, 2009, ”Is the Doomsday of International Law Looming Around in the Twenty-First Century?: A Response to the Sceptics of Efficacy of International law”, p. 294.

<sup>246</sup> Islam, Rizwanul, *Nordic Journal of International Law* 78, 2009, ”Is the Doomsday of International Law Looming Around in the Twenty-First Century?: A Response to the Sceptics of Efficacy of International law”,pp. 303-304.

<sup>247</sup> Islam, Rizwanul, *Nordic Journal of International Law* 78, 2009, ”Is the Doomsday of International Law Looming Around in the Twenty-First Century?: A Response to the Sceptics of Efficacy of International law”,p. 306.

# 6 Law, Violence and Culture

## 6.1 Purpose of Law

Norms are meant to act as guidelines and show people how they should behave. The persons that create such guidelines, in the role as legislators, are imposing their impression and will on how people should act. But why does this fact transcend into being a norm that a citizen has an obligation to follow?<sup>248</sup> This could stem from the theory of the social contract originated by Thomas Hobbes. In the state of nature, men were free and there were no such things like societies. This society was later transformed into a civil society due to war and other evils. In order to restrain these evils, a theory of a contract arose where the obligations of the citizens – both to each other and to the rulers - were written down.<sup>249</sup> Then, it is up to the State to make sure that the obligations are followed. Amnesty International writes in their report that violence against women shares the same origin, no matter the location or its shape. This also means that it does not exist separate from everything else, but is influenced by values and structures in society and inequalities between men and women. The task of combatting this violence is the obligation of States, according to international law, which includes protecting women's human rights, follow-up on accusations by victims and thereafter providing victim support.<sup>250</sup>

## 6.2 Combatting Violence

### 6.2.1 Campaigns

There are different methods that States can use to combat violence against women. With the resolution 54/134, the UN General Assembly concluded in 1999 that the 25<sup>th</sup> of November would be called the International Day for the Elimination of Violence against Women. They stated in the resolution their desire for the relevant entities, including governments, the United Nations and non-governmental organisations, to arrange activities on this day to put the focus on violence against women.<sup>251</sup> The UN Secretary General Ban Ki-Moon initiated the campaign UNiTE to End Violence against Women, at the Commission on the Status of Women at UN Headquarters, in 2008. It is indented to last to 2015, which is the same deadline as the Millennium Development Goals (MDGs), and by then have

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<sup>248</sup> Honoré, Tony, Making Law Bind, 1987, pp.90-91.

<sup>249</sup> Honoré, Tony, Making Law Bind, 1987, p.141.

<sup>250</sup> Amnesty International, "Not a priority issue" – A review of the work of Swedish municipalities to combat violence against women", 2005, p. 3, retrieved from: [http://www2.amnesty.se/svaw.nsf/mvaw/\\$File/Not\\_a\\_priority\\_issue.pdf](http://www2.amnesty.se/svaw.nsf/mvaw/$File/Not_a_priority_issue.pdf), 2013-11-06.

<sup>251</sup> Resolution 54/134, retrieved from: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/54/134](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/54/134), 2013-10-21.



worked towards gender equality and women's empowerment. This is meant to encourage countries to create laws and projects, both at national and local levels, for women that have experienced violence. The overall goal is to increase social organization and preventive action to halt violence against women.<sup>252</sup>

## 6.2.2 Gender Mainstreaming

In 2003, The Commission on Human Rights set out to emphasise women's human rights. This meant a gender mainstreaming throughout the entire United Nations system. The Commission works to create resolutions that highlight the gender and women's rights matters.<sup>253</sup> The Office of the High Commissioner of Human Rights (OHCHR) tries to involve women's human rights into its agenda<sup>254</sup>, however, more is required in order to intersect the United Nations with a gender perspective on human rights.<sup>255</sup> OHCHR is trying to improve this by providing the Members States with technical help. In order for this to get any result, there is a need to analyse and investigate gender issues and using sex-disaggregated data.<sup>256</sup> The Committee also wanted the UN Secretary General to bring up the issue of gender when mentioning the nomination for election of members in the treaty bodies.<sup>257</sup>

## 6.2.3 Research

In Sweden, the Commission on Violence Against Women's work included investigation on whether or not the criminal statistics should be gender diverse. The point to consider here is that criminal statistics only document violence that have been reported to the police, and since the unrecorded figures are huge when it comes to violence against women, a lot of crimes remain undetected.<sup>258</sup> Lack of knowledge about the real number of acts of violence against women influences the society's possibilities of combating

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<sup>252</sup> Framework for Action - Programme of United Nations Activities and Expected Outcomes, 2008-2015, retrieved from:

[http://endviolence.un.org/pdf/unite\\_framework\\_en.pdf](http://endviolence.un.org/pdf/unite_framework_en.pdf), 2013-10-22.

<sup>253</sup> "Integration of the Human Rights of Women and a Gender Perspective", E/CN.4/2003/72, para 50, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/105/09/PDF/G0310509.pdf?OpenElement>, 2013-10-22.

<sup>254</sup> "Integration of the Human Rights of Women and a Gender Perspective", E/CN.4/2003/72", para 38, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/105/09/PDF/G0310509.pdf?OpenElement>, 2013-10-22.

<sup>255</sup> "Integration of the Human Rights of Women and a Gender Perspective", E/CN.4/2003/72", para 50 retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/105/09/PDF/G0310509.pdf?OpenElement>, 2013-10-22.

<sup>256</sup> "Integration of the Human Rights of Women and a Gender Perspective", E/CN.4/2003/72", para 52, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/105/09/PDF/G0310509.pdf?OpenElement>, 2013-10-22.

<sup>257</sup> "Integration of the Human Rights of Women and a Gender Perspective", E/CN.4/2003/72", para 53, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/105/09/PDF/G0310509.pdf?OpenElement>, 2013-10-22.

<sup>258</sup> Heimer, Gun, Kalliokoski, Anne-Marie Westerstrand, Jenny, Lundgren, Eva, Captured Queen: Men's Violence against Women in "Equal Sweden" A prevalence study, p. 13, retrieved from: <http://www.brottsoffermyndigheten.se/Filer/Böcker/Slagen%20dam.pdf>, 2013-10-30.

the criminality this is. Furthermore, the statistics that existed did not say anything about the victim's situation or the results of the violence. This made it important to start a nation-wide survey regarding the victims of this violence. It was believed this could increase general awareness and also show what resources are necessary to prevent violence against women. The Government gave this task to the Swedish Crime Victim Compensation and Support Authority, and they, in turn, awarded Uppsala University to complete the investigation.

In the investigation, they discussed the background of the crime. When it comes to explaining the reason for men's violence against women, the individual psychology model is often used. Psychologists that do studies on clinical selection created this explanation model. According to this model, the violence is tied to the deviant abusive man, something that can be found in his own personality. Thereby, violence is seen as something individual and as an isolated event. This might also transcend to the victim that is seen as someone unusual – such as being provocative. A model with an alternative view is the socially-oriented perspective. This model is used in studies that are based on reports that are done about the criminal statistics on men sentenced, persecuted or suspected for different kinds of violence or sexual offences. These men can also be viewed as deviant, but the focus is on the social circumstances of the abusive men – for example, alcohol problems or unemployment. Both of the perspectives can be linked together when the social heritage is connected to re-victimisation. These circumstances, even if they are based on childhood or present situations, are seen as the reason for his violent behaviour. Another theory can be phrased a systems theory, where the “violent family” is put into focus and is linked to the family relations and structures. This kind of theory looks at the unbalance in family, but the parties are seen as equals<sup>259</sup>, and the power unbalance between men and women is ignored. The Commission on Violence Against Women here, instead, introduced a female perspective. It is defined as being synonymous with the feminist studies perspective, and the violence must be seen through a gender power perspective. According to the Commission, if a society deals with the problem of division of power between men and women, then this society is also confronting violence against women. So, structurally speaking, men's violence against women can be a result of men's superiority. This might not only result in violence, but also reinforce the male and female gender roles. The survey consequently set out to investigate how the forms this violence takes, and questions like “have you been abused” do not say enough about how often violence against women occurs. The form of method used was, therefore, a questionnaire in order to avoid reinterpretations and marginalisation about the violence.<sup>260</sup>

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<sup>259</sup>Heimer, Gun, Kalliokoski, Anne-Marie Westerstrand, Jenny, Lundgren, Eva, Captured Queen: Men's Violence against Women in "Equal Sweden" A prevalence study, p. 14, retrieved from: <http://www.brottsoffermyndigheten.se/Filer/Böcker/Slagen%20dam.pdf>, 2013-10-30.

<sup>260</sup>Heimer, Gun, Kalliokoski, Anne-Marie Westerstrand, Jenny, Lundgren, Eva, Captured Queen: Men's Violence against Women in "Equal Sweden" A prevalence study, p. 15,

## 6.2.4 Community Collaboration

One way of combatting domestic violence is with the help of the community. The "Duluth Model", created by the Domestic Abuse Intervention Project (DAIP) in Duluth Minnesota, consists of principles and networks created by shelters, human services programs and different justice agencies – all with the purpose of involving the community with victims of domestic violence. The community collaborators could be health care providers, child protection services and similar organisations to make the system faster and more effective and thereby protect the victims better and letting the culprits face justice.<sup>261</sup> According to the Duluth Model, there are eight goals with intervening in these issues, inter alia, promoting a supportive community organization for abused women and creating sanctions and rehabilitation for abusers.<sup>262</sup>

## 6.3 Culture

### 6.3.1 Meaning of Culture

Culture is a combination of different human experiences, which include both non-psychical and physical elements that have been created in societies. Therefore, culture is connected with people's everyday lives and makes the past practises possible as well as changes over time.<sup>263</sup> Culture exists all over the world and can provide opposing normative systems at the regional level. Ideals that are shared at the international arena have been transformed into international human rights law and different declarations and policies. The problem, therefore, does not lie in insufficient laws, but rather in lack of implementation.<sup>264</sup> It is the disproportions between nations, the distrust of universality of international human rights law that contradicts culture that have created this problem. There is a belief that the notion of human rights is a western idea that is incompatible with nations outside of its territory. This is illustrated especially when it comes to women's rights that are often ignored in many nations with reference to customary practices.

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retrieved from: <http://www.brottsoffermyndigheten.se/Filer/Böcker/Slagen%20dam.pdf>, 2013-10-30.

<sup>261</sup> The Advocates for Human Rights, "Coordinated Community Response", 2006, [http://www.stopvaw.org/Coordinated\\_Community\\_Response.html](http://www.stopvaw.org/Coordinated_Community_Response.html), retrieved: 2013-09-30.

<sup>262</sup> Ellen L. Pence & Melanie F. Shepard, Introduction, in *Coordinating Community Responses to Domestic Violence: Lessons from the Duluth Model* 3, 16 (Melanie F. Shepard & Ellen L. Pence eds., 1999), retrieved from: [http://www.stopvaw.org/Goals\\_and\\_Strategies\\_of\\_Intervention.html](http://www.stopvaw.org/Goals_and_Strategies_of_Intervention.html), 2013-09-30.

<sup>263</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, *Intersections between culture and violence against women* A/HRC/4/34, para 17, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

<sup>264</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, *Intersections between culture and violence against women* A/HRC/4/34, para 18, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

To excuse violence against women with referral to culture goes against the States' obligations to international human rights regulations.<sup>265</sup> Partners for Law in Development (PLD), a legal research group that works with combating discrimination of women<sup>266</sup>, states that culture is both the most common and most tolerated excuse for having laws and policies that are unequal towards women. They have, during their work in India, realised that by putting the blame to culture, other essential components, such as the patriarchal and gender foundations, get ignored.<sup>267</sup>

In a survey by the Eurobarometer in 1999 named "Europeans and their views on domestic violence against women", the highest percentage of 96 per cent of all respondents thought that alcoholism was the reason for domestic violence. Tradition was not even mentioned as an alternative to domestic violence, which amplifies the view of westernized countries being separated from culture. Furthermore, only 62 per cent thought that domestic violence against women is always unacceptable and should be punishable with law, 32 per cent said that it is always unacceptable but should not always be punishable by law, 2 per cent that it was acceptable sometimes and 0.7 per cent that it was acceptable always.<sup>268</sup>

### 6.3.2 Culture's Role in Human Rights Law

Human rights have arisen due to real events in the world, and they embody suffering and violence. They became part of international law as a result of negotiations due to the work of Members States of the United Nations.<sup>269</sup> Nonetheless, there has also been an inclination by some to give international human rights law the prime role of eliminating cultural traditions in the Global South, and thinking this alone would eliminate violence. Such an attitude ignores the unequal role of women both economically and politically and women's opposition to violence in the developing countries.<sup>270</sup> This opposition has taken many forms and involved trying to

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<sup>265</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 19, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

<sup>266</sup> Partners for Law in Development, "About PLD", retrieved from: <http://pldindia.org/blog/2013/02/15/about-pld/>, 2013-11-11.

<sup>267</sup> Partners for Law in Development, "Thematic Initiatives - Culture", retrieved from: <http://pldindia.org/blog/2013/05/22/what-we-do/>, 2013-11-11.

<sup>268</sup> Eurobarometer 51.0, "Europeans and their views on domestic violence against women", retrieved from: [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_127\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_127_en.pdf), 2013-11-14.

<sup>269</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 23, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

<sup>270</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 20, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

get representation in the public space, equal property laws and the public/private separation in international human rights law. These domestic movements were also often combined with a battle against, for example, colonial oppression.<sup>271</sup> These movements have been extra vocal since the 1970's, and one of the most important results of this is the CEDAW. This Convention shows the connection between gender discrimination and culture, and proclaims that it is up to the States to redeem the problems this causes. Even so, many countries have made reservations to the Convention; especially Articles 2 and 16, based on religious or cultural beliefs. This is legally impermissible according to the Convention's Article 28(2) since it is against the Convention's object and purpose.<sup>272</sup> States must instead condemn that kind of violence, which includes the cultural practice that might be used to justify the breach of women's rights.<sup>273</sup> This condemnation does not merely consist of criminalizing harmful practises, but also seeking out the cultural traditions behind the violence and construct systems to redeem them.<sup>274</sup> On the one hand, this has helped identify types of violence formerly unacknowledged, but on the other hand, it has enhanced the notion that the west has no cultural aspects that lead to violence against women, and the violence that is practiced is rather the outcome of individual behaviour. There is the idea that western practises and traditions are two different things, and the latter only exist in the developing world. This has created a problem with the concept of tradition since domestic violence does exist in the western society, in spite of developed legal institutions, but is seen as something separable from culture.<sup>275</sup> By placing violence against women into one specific tradition, it might also overlook the root problem, and the underlying reason for violence might just alter from one tradition to another if eliminating one of them. One example of this is that the female genital mutilation in Cameroon started at one point to decline due to campaigns but was only replaced by "breast-ironing", which is meant to prevent girls' breasts from growing too soon – and becomes just another way of controlling women's sexuality and rights.<sup>276</sup>

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<sup>271</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 25, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

<sup>272</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 27, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

<sup>273</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 30, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

<sup>274</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 31, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

<sup>275</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 33, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

<sup>276</sup> Report of the Special Rapporteur on violence against women, its causes and

According to some, the rights of indigenous groups might be able to win over women's rights with reference to for example Article 27 of the International Covenant on Civil and Political Rights. The Human Rights Committee has responded to such beliefs by saying that even though minorities have a right to have their own culture, it does not excuse them from violating women's rights. States are even responsible for acting against cultural traditions in minority groups that are harmful against women.<sup>277</sup> There has long been a view of difference between cultures and the universal international human rights. One sees culture as their own identity, but ignores that the interaction between oppression, power hierarchies and culture results in the preference for some cultures over others. In this sense, culture itself is used as a new form of oppression.<sup>278</sup> In these power battles, women have been put in-between the colonial ideas and their traditional regional practises. In India, the imperialistic rulers used the development of women's movements as a reason for colonisation. They especially focused on *sati*, child marriage and providing education. Today, this connection between imperialistic actions is used to challenge women's rights movements.<sup>279</sup>

There are two features that illustrate the sphere of women's rights and culture. Firstly, culture, as mentioned, is seen as non-western and secondly, the notion of culture is seen as something mystified.<sup>280</sup> In comparison, gender structures and aspects of western societies that seem to subordinate women, are not seen as derived from culture, but still do not explain why domestic violence is a reality in western countries even though there has been a development of women representation in the public sphere.<sup>281</sup> This diversion of opinions and viewpoints means that it is crucial to truly investigate and understand these cultural phenomena and hold on to the

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consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 34, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

<sup>277</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 36, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

<sup>278</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 43, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

<sup>279</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 44, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

<sup>280</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 46, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

<sup>281</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 47, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

positive features, and at the same time bring the oppressive features out into the light.<sup>282</sup> This does not mean that customary practices need to be totally destroyed, but rather to remove their harmful elements. This might be a problem for those that benefit from these cultural practices, and by removing certain features, one is bound to shift power in some hierarchies. Nonetheless, to improve the culture, one will mend human rights and equality, and at the same endorse the culture in its new shape.<sup>283</sup>

### 6.3.3 Universalism and Cultural Relativism

The above discussion illustrates the clash between universalism and cultural relativism in international human rights law. Universalists believe that global human rights exist. These rights may be expressed differently but the basic meaning is the same. In comparison, cultural relativists claim that human rights are not global, but rather stated according to the cultural environment they belong to. One example is the above-mentioned female genital mutilation. Many have defined this as torture and a violation of children's rights. However, cultural relativists have described it as a rite of passage that is required for their future marriageability and a way to be formally accepted in their social groups. They recommended that it would be better to attack the problem from the roots with education, instead of imposing sanctions such as criminalization that only scares women that are subjects of the procedure to seek medical assistance.<sup>284</sup>

Human rights treaties often encourage States to create a balance between cultural differences and universal human rights, but they do not specify how they should handle, for example, clashing cultural traditions. Some scholars state that cultural practices are conflicting with international human rights, while others mean that human rights should take cultural diversity into consideration.<sup>285</sup> To support the latter position, one can say that without looking at the cultural background when applying international human rights, they will not have any influence in non-western countries, unless they have been in some way westernized. Nevertheless, without checking these cultural phenomena against international human rights standards, damaging practices will still exist and, over time, gain a form of regional legitimacy. A way to combine culture and international human rights is by agreeing to a basic level of dignity, which can separate those cultural practises that are following this level from those that are not. This means that international human rights have to create a balance between the regard

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<sup>282</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 52, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

<sup>283</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Intersections between culture and violence against women A/HRC/4/34, para 53, retrieved from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, 2013-09-30.

<sup>284</sup> Stark, Barbara, *International Family Law: An Introduction*, 2007, p. 251.

<sup>285</sup> Addo, Michael K., *The legal nature of international human rights*, 2010, pp.240-241.

for difference for cultural diversity and the consideration of sameness, through which normative authority is created.<sup>286</sup>

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<sup>286</sup> Falk, Richard, "Cultural Foundations for the International Protection of Human Rights", pp. 45-46. In: Ahmed An-Na'Im, Abdullahi, Human Rights in Cross- Cultural Perspectives. A quest for Consensus, 1992, Chapter 2.



# 7 Discussion and Conclusion

## 7.1 What is Violence Against Women in the Private Sphere, and is it Subject to International Human Rights Law?

Domestic violence is an ancient problem, and therefore, one could question if the situation is improving. When reading the reports, resolutions and research, the same arguments are repeated over and over again. However, that answers the question in hand. Due to it being a constant problem, it is necessary to mark it a continuous topic of discussion. The Millennium Development Goals are suppose to be achieved by 2015, and until then work must be done to end domestic violence. Because the facts remain, human rights in the public sphere have gotten more attention than those in the private sphere, because the former influence men more and the latter influence women. This male dominance is illustrated through the quote in the introduction; “[r]aising a daughter is like watering your neighbours’ garden.” We must remember the decision made with the Vienna Declaration and Programme of Action in 1993; women’s rights *are* human rights.

Violence against women is described in many resolutions, programmes of action and in literature – both on the domestic and the international level – but all descriptions have in common that it is something that subordinates women and is a hindrance for women to realise their basic human rights. Even though domestic violence can be carried out in different forms, like dowry violence in India and “ordinary violence” and honour-related violence in Sweden, it has its base in the patriarchal society that consciously or subconsciously uses its control over women’s sexuality and human rights. Domestic violence in India is the outcome of men’s ownership over women, which makes them lack control over their own lives. The features of the Indian marriage have shown the helplessness these women feel when they deal with demands for dowry and why dowry deaths occur. The different explanations for the beginning of the dowry tradition - British colonialists that say it is due to Hinduism and its caste system, an economic tradition according to Marxists and the feminist view on gender discrimination and unequal property rights, like stated by Oldenburg – become just variants of the same background problem.

Since domestic violence exists all over the world, one cannot say that it is isolated to one group or one nation but is a reality in a developing country as India, as well as in a developed nation as Sweden. Even though Sweden is vastly improving equality in the public sphere, there are still records of domestic violence in the private sphere. Consequently, although Sweden is number 7 in the International Development Index, and India is number 136, they still share the same difficulty. This is why, as Ertürk mentions, we cannot see different forms of domestic violence as separated from each

other. It is a danger with discounting a certain kind of violence, like honour-related violence, and naming it something “different”, which can lead immigrants to a feeling of exclusion in receiving States, and thereby neglect domestic values, even if they are based in international human rights. The risks are, otherwise, that it leads to an increase of anti-immigrant movements and that “ordinary” domestic violence gets ignored. The same applies when identifying another country’s problems as something different and blaming the culture in the Global South for realising domestic violence. Instead, it is important to unite the problem of domestic violence, so that the solution of it can be integrated under international human rights law. Because all forms of violence against women transcend back to the same root problem and it is the root problem that needs to alter: the entire structure of the patriarchal society that diminishes and controls women.

Ever since the International Bill of Rights became a part of International Law, States can no longer use their sovereignty to dismiss them from dealing with domestic human rights issues. Before this, domestic violence was treated as a national issue, and thus also ignoring the violence’s structural features. Furthermore, the connection between women’s rights movements and imperialistic control has been a problem. At the same time, the marginalisation of the problem has both influenced the creation and implementation of international human rights regulations, as well as neglecting to conduct studies to find out what the violence depend on. This is starting to change, and States nowadays have to ensure that their citizens can experience their human rights – regardless of gender. This means that violence against women is subject to international human rights law. Still, the standard setting has had more success than enforcing the matter, and it has proven difficult to make something general as human rights law regional specific, especially when some proclaim that international law is even too vague to be called law.

## **7.2 What should Member States do to Combat Violence Against Women According to International Human Rights Law?**

The first document that clearly shows the States’ responsibility when it comes to promoting women’s rights is the UDHR in 1948, but at the time of its adoption, only thirty of fifty-one Member States could offer equal voting rights or let women hold public office. The real inclusion of women’s rights in human rights was not realised until the adoption of the Vienna Declaration and Programme of Action in 1993. Here, States got an obligation to review their domestic laws and make sure that laws do not exist that are discriminatory, and that new laws prohibiting domestic violence have been created, in order to ensure the correct implementation of human rights in their legislation. The problem is that women’s rights lack

universality today due to States' inability of implementing international regulations, not in insufficient laws. This can be traced back to the disapproval of universality of international human rights that go against culture and the unequal relations between States.

The States' responsibility to perform due diligence is enshrined in the 1993 Declaration on the Elimination of Violence against Women. This includes preventive measures as well as penal, labour, civil and administrative sanctions – above having a functioning reporting and prosecution process in the enforcement machinery. The preventive work means that States should explore the root problem of domestic violence and also educate the society about it, as well as continue their research. If there is a misjudgement of the actual background of domestic violence, then the solutions will be misdirected. Additionally, in CEDAW, States have the obligation of both condemning and eliminating violence, no matter if it is based in traditional, religious or cultural practice. When it comes to the ratification of the CEDAW, the difference between India and Sweden is shown, since India cannot agree to all that is stated, which yet again question the universality of human rights law. Is it really possible to combat social evils and root problems, such as domestic violence, with law? According to the National Crime Records Bureau in India, no reports of *sati* occurred during 2012. This could be compared with the example of female genital mutilation in Cameroon that shifted to breast-ironing. Instead of banning every single act of violence against women – focus must be to find out the root problem and label it for what it really is, otherwise the problem will just choose another form. If banning dowry, it might disappear, like *sati*, but it might reappear in another form if not dealing with the basic issue. It is not a problem of dowries or domestic violence, but of what it shows about power and control. To simply boycott dowries does not solve the problem, as the women's rights journal *Manushi* mentions. Dowry violence, gender mutilation, honour-related violence, and "ordinary" domestic violence may seem different and, depending on one's own domicile, more or less severe, but based on the research on the area presented in this thesis, they share the same origin: the subordination of women. Then, a shared problem mechanism, international human rights law, should be able to work. However, there are different opinions on what international human rights really consist of. Nevertheless, it could be agreed that they have an impact on domestic affairs under treaty law or as stated in constitutions, and in this sense it could be claimed to inhabit, or at least pursue, universality. However, voices have been raised questioning if international human rights are not too westernized to be truly universal and do not take full consideration of different cultures. For example, British rule has influenced India and its legislation, and it is westernized and there exist laws that are coherent with international human rights law. However, they might not be in sync with the actual state of the country, so can they then be truly efficient? International law serves a purpose because it sets a standard, but different countries may find different paths to reach that acceptable level. Furthermore, there exists a belief that human rights are too focused on the male norm. In that case, how could international human rights law deal with

women's rights when they take their position in male standards, and how could it develop women's rights when the latter can only be improved if the patriarchal society shifts? This is why "more" than laws is required. For even if it is only States that have any direct legal obligations in international human rights law, except the examples in the Draft Articles on Responsibility of States for Internationally Wrongful Acts, and their actions are extremely important, they can not act alone. We have to recognize that law itself will be merely ideological if it is not supported and followed by government initiatives, community collaboration and changes in the fundamental society structure. According to the Commission of Violence Against Women in Sweden, if a society is working on the problem of power relations between men and women, then they are also handling the issue of violence against women. This illustrates that a holistic approach is required, and a solution should involve all areas in society to stop violence against women.

### **7.3 Can Culture and Regional Differences be used as Excuses to Ignore Obligations According to International Human Rights Law?**

Culture and other forms of customary and/or religious practices such as dowry violence, genital mutilation and honour-related violence are seen as outcomes in a non-western society. Therefore, one could draw the conclusion that domestic violence does not exist in the western part of the world, since culture as such does not exist there, or that culture could be separated from domestic violence. Based on the Eurobarometer, violence cannot have a sole base in tradition – since this was not even an alternative in their survey. This is, however, far from the truth as we have seen that it is the "standard man" in Sweden that is the most common perpetrator of domestic violence. Violence against women cannot be traced solely to customary practices, but this is just one way that it is illustrated, and it is instead based in the world's power structures. This demonstrates that domestic violence depends on many factors, such as the view on women, culture, economic situations, development as well as a result of a patriarchal system. To put it crassly, there is no better or worse form of violence against women. That some are more violent or serious does not change the fact that they have the same reason and are thereby equal. So, regardless of where this is occurring, it is a problem and needs to be amended with the collaboration of legislative, executive and community work. Only then will violence against women cease and the world will be more gender equal.

Irrespective of the form of domestic violence, to blame the realisation of it on culture or regional differences is against international human rights law. According to the PLD, culture is both the most usual and most accepted excuse for having unequal laws and policies. This is even more serious

when realising that when using culture as an excuse, it ignores other problems, like the patriarchal and gender foundations. That a State cannot use customary practises as an excuse to not follow international obligations is reaffirmed in the Declaration on the Elimination of Violence Against Women, in Article 4, by prohibiting the use of custom, tradition or religion as reasons for not acting against domestic violence. In order to change through law, culture has to be excluded according to CEDAW, and international law needs to be general in order to work. Even though the international community can force a State to sign a convention like the CEDAW, the implementation of it is not as easy. India has signed the CEDAW, but in comparison with Sweden, made declaratory statements that go against the very purpose of the Convention and used regional differences as an excuse. India has an extensive history, a large population of 1.21 billion people and many varied regions and this has of course an impact on the realisation of its legal obligations. Indian legal culture has relied on the cooperation between ancient rules and the present and moving reality, and international law may contradict this and makes changes challenging. The situation is very much distant from Sweden with its population of 9.6 million people and similar regions. However, this does not change the fact that international law must apply to everyone, and both India and Sweden got critiqued by the CEDAW Committee for certain features that were against the Convention. Some may say that culture is in conflict with international human rights, while others say that human rights must take cultural and regional differences into consideration. The former position is ruled by the belief that without judging customary practices in accordance with international human rights regulations, harmful practices will still exist in the world. The argument for the latter position is that, if not taking customary practices into consideration, non-western countries will not be influenced by international human rights law, if they have not been westernized. The solution may lie in balancing the two positions and creating equilibrium of difference for cultural diversity and consider sameness, and by this achieve normative authority. To once again mention the words by the first Prime Minister of India, Jawaharlal Nehru, law cannot be the sole solution to combat social evils. However, international human rights law at least fulfils its purpose by showing a commitment of States to improve the situation, and a condemning when failing doing so. Regulations should be guidelines and show people how to react and according to the social contract, it is even an obligation. It is clear that legislation needs time to show results, and if it does not, amendments are always possible. Law is not set in stone, but is changing in accordance with the society and altering depending on what is considered right in every era. This social contract should not have to be cancelled, but there should exist some kind of prescription time or at least some kind of guarantee period. Because time of delivery has been delayed, *now* seems like the perfect time to stop violence against women.

# Supplement A

**Crime head-wise incidents of crime against women during 2008 - 2012 and  
Percentage variation in 2012 over 2011**

Sl. No.	Crime head	Year					Percentage variation in 2012 over 2011
		2008	2009	2010	2011	2012	
1	Rape (Sec. 376 IPC)	21,467	21,397	22,172	24,206	24,923	3.0
2	Kidnapping & abduction (Sec. 363 to 373 IPC)	22,939	25,741	29,795	35,565	38,262	7.6
3	Dowry death (Sec. 302 / 304 IPC)	8,172	8,383	8,391	8,618	8,233	-4.5
4	Cruelty by husband and relatives (Sec. 498-A IPC)	81,344	89,546	94,041	99,135	106,527	7.5
5	Assault on women with intent to outrage her modesty (Sec. 354 IPC)	40,413	38,711	40,613	42,968	45,351	5.5
6	Insult to the modesty of women (Sec. 509 IPC)	12,214	11,009	9,961	8,570	9,173	7.0
7	Importation of girl from foreign country (Sec. 366-B IPC)	67	48	36	80	59	-26.3
<b>A</b>	<b>Total IPC crime against Women</b>	<b>186,616</b>	<b>194,835</b>	<b>205,009</b>	<b>219,142</b>	<b>232,528</b>	<b>6.1</b>
8	Commission of Sati Prevention Act, 1987	1	0	0	1	-	-100.0
9	Immoral Traffic (Prevention) Act, 1956	2,659	2,474	2,499	2,435	2,563	5.3
10	Indecent Representation of Women (Prohibition) Act, 1986	1,025	845	895	453	141	-68.9
11	Dowry Prohibition Act, 1961	5,555	5,650	5,182	6,619	9,038	36.5
<b>B</b>	<b>Total SLL crime against Women</b>	<b>9,240</b>	<b>8,969</b>	<b>8,576</b>	<b>9,508</b>	<b>11,742</b>	<b>23.5</b>
	<b>Total(A+B)</b>	<b>195,856</b>	<b>203,804</b>	<b>213,585</b>	<b>228,650</b>	<b>244,270</b>	<b>6.8</b>

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# Supplement C

ANNEX: Evolving UN Agenda for Gender Equality and Women's Human Rights

## **1945–1962: The norm of non-discrimination**

- 1946 establishment of the Commission on Human Rights (CHR) and the Commission on the Status of Women (CSW)
- 1948 Universal Declaration of Human Rights
- 1952 Civil and Political Rights
- 1957 Nationality of Married Women
- 1962 Consent on Marriage, Minimum Age of Marriage

## **1963–1975: Integration of Women into Development**

- 1966 Economic, Social, Cultural Rights
- 1967 Declaration on the Elimination of Discrimination against Women
- 1975 International Women's Year and the First World Conference on Women in Mexico City – theme: equality, development and peace; adoption of “World Plan of Action on Equality of Women and Their Contributions to Development and Peace”
- 1975 Recommendation to create INSTRAW and UNIFEM

## **1976 – 1985: The Decade for the Advancement of Women**

- 1979 CEDAW – Women's Bill of Rights
- 1980 Second World Conference on Women in Copenhagen (mid-term review of the Decade) – adoption of resolution of battered women in the family
- 1985 Third World Conference on Women in Nairobi – adoption of “Nairobi Forward Looking Strategies”

## **1986–1995: Empowerment of Women**

- 1986 UN expert group meeting on violence in the family
- 1992 CEDAW General recommendation 19
- 1993 The World Conference on Human Rights in Vienna – women's rights are human rights
- 1993 Declaration on the Elimination of Violence against Women
- 1994 CHR creates the post Special Rapporteur on violence against women, its causes and consequences
- 1995 Fourth World Conference on Women in Beijing – adoption of Beijing

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