

Cultural Violence and Human Right Discourse

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Wide use of culture to restrict the right and growing culture identity issue, due to the violation of rights, has emerged as a critical challenge in the world. Looking into the intersectionality and culture has now become a part of the human rights discourse. Though culture and religion simultaneously used, in reality, they are different. Within one religion itself, there can be various cultures, and within one culture there can be different religious belief. There are many cultures, which we value as it is our identity. Therefore, it is very important that we need to challenge only those culture that violates rights. It must be noted that all communities do not practice discriminatory culture, and at the same time, all culture are not discriminatory. A lot also differs because of individual mindset. Some western people see a lot of harm in eastern culture! However, all western people do not have the same understanding. There is a need to be careful in use of our language and judging the perception.

Cultural values are shaped by social, political and economic context. Therefore, it is changeable. If this context is not taken into consideration, even if you have law to criminalize certain cultural behavior, it becomes defunct such as the Social Reform Act. Asia, on the whole, can no longer be generalized in traditional culture. Japanese wives are expected to be most adorable, and due to this stereotyping expectation, now 50% of Japanese girls want to lead single lives. Nuclear families were never our culture.

Attention must be drawn to the fact that when women raise a discourse on issues related to their rights it is labeled as being influenced by western culture! Is discrimination, exclusion and violence eastern culture? Some criticize traditional culture for promoting violence, however, modern culture of stereotyping beauty and food habits to maintain patriarchy and market driven concepts is no different either. Should not we also discuss emerging values of masculinity that is taking place against women migrant worker, in marriage, in refugee camps, at workplace, in the street? Migrated men usually come to choose brides from their native country to maintain their culture. Has anyone realized the implications of such practices?

Culture is mostly seen as a private matter. Is not it a matter of the state to intervene what when it leads to violence? State has already intervened in many private matters in marriage including criminalizing marital rape and providing punishment. But what should be the demarcation for interventions? If any behavior is consensual, then why relation between *Sali* and *bhinaju* not a crime, but considers crime if it occurs between, *bhauuj* and *dewar*? Why only male is assumed to have right to sexuality, why not women? Why relationship whether hetro or homosexual needs to be criminalized if it is consensual?

Is it that only tradition practices follow moral values? Is beating a wife our culture? Is sexual violence, linked with only shame and chastity? Are all women vulnerable for violence or only

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some? Are all male stronger than women? We now need to analyze each question critically from the rights based approach. Prejudice expectations: Women have to walk without making noise! Should not laugh loudly! *Dhol, nari, sudra*, is subject to torture! We need to challenge stereo-typed myth. Why boy has to be more educated, more earning, taller than girls! Are not we promoting structural subordination by our self?

At times culture is formed and practiced by the society. Other times institutionalized by law such as denying right to acquire citizenship through women to their spouse and only guarantees right for naturalization citizenship if residing permanently in Nepal with the cultural norms that women are subject to give away and right to be created in the fathers country. Law still permitting bigamy or state still practicing *Kumari Pratha*. In India when a *dalit* women was raped the court saying it cannot be assumed that a Brahman would rape a *dalit*. Therefore, depending on the forms, effect and institutionalized process, different strategies are required to address cultural violence. Society is changing, values are changing, together with which stereotyping role for women are also changing. Unpacking of culture has already begun.

Harmful or discriminatory cultural practices need to be recognized as a crime against women through the formal expression of law. *Sati pratha* was abolished after recognizing it as crime. Simultaneously, State's response to law, creation of sensitive and strong structure is critical along with adequate resources and changing the human kind.

The underlying cause need to be addressed. Although, gender based abortion has been criminalized, but female sex ratio is also decreasing as subordinate position of women has not been changed. The family and caste from which the *Kumari* is selected takes pride in being "chosen". There are traditions of women fasting for the longevity of husband or for asking forgiveness for committing sins during menstruation. In these cases awareness must be made to encourage them to make informed choice as opposed to doing anything under any social pressure.

Culture can be challenged, a different sets of norms fixed for the practicing widowhood has been changing now with the growing awareness campaigns through social movement. Keeping girls isolated in dark place *barah* in *newar* community is changing with the time and education. Many families have refused to do *kanayadan*. Now many women are continuing their own family name after marriage, we all live in cultural and religious diversity. If it is discriminatory culture, universality of human rights standard should be applicable. Declaration of Nepal as a secular country is a benchmark in addressing cultural violence. GR 19 f CEDAW and other human right instruments should be used broadly in dealing with relevant cases for making state accountable.

Fact finding for accessing justice, victim hearing, interventions through the school curriculum and media campaign and paralegal group can be strategic. PIL has also become strategic tool to eliminate cultural violence, for the enactment of laws or for the enforcement of laws. To eliminate *Cheupadi* practices, the Court has issued directive order to criminalize such action but also asked government to do study on implications and launch massive awareness campaign. Similarly, order has been issued to enact law criminalizing the practices of witchcraft and addressing the problem of *badi* and their children. Similarly when following

cultural norms, law that allowed husbands to divorce for not having child by women and women's right to dispose of exclusive property was denied, was challenged and court declared both of the provisions unconstitutional. Concept of marriage as a license for sex is challenged by the court verdict. Concept of right and duties for only son has been interfered by court decisions and reformation has taken place by the Parliament. Now a daughter can inherit parental property and even after marriage she does not have return the property.

Educating the religious, political and local leaders, has also helped to prevent certain cultural practices. CEDAW committee when raised the concern on court justifying discrimination on the basis of culture had tremendous positive effect in the later Supreme Court judgments in Nepal. Empowering women's right defender with the support system, who have deeper threat for challenging culture is critical. Majority verses minority, can no longer be justification for cultural violence. Public private diactomy should not be barrier for establishing right. We need to differentiate between cultural essentialism and cultural sensitivity. Need to negotiate for the right challenging violence.