

Could Culture, Religion and Tradition justify Violence and Discrimination? The role of the Law.

Since ever, culture, religion and tradition (custom) have played a crucial role in history. These three words indicate close-related matters but are different in nature and definition.[1] They are not homogeneous and there are always tensions, pluralism and diversity contained within.[2] The term “culture” is an abstract one and also evolving and fluid concept, in fact it is not a fixed or immutable entity.[3] Likewise, similar argument can be used to explain the meaning of religion. The principles for living sustainably that flow from these and other cultural and religious beliefs vary between groups and countries.[4] They have also changed over time as circumstances demand. For centuries in many countries, people has invoked different arguments based on the misuses through the anti-rights interpretations of religion, culture and tradition to justify and encourage any kind of violent behavior, discrimination, and marginalization.[5] In particular, religion tends to have a deterring influence on crime-related attitudes and behaviors.[6] These serious human rights violations and crimes are perpetrated especially against vulnerable groups [7] such as women and girls, ethnic and religious minorities, people who dissent from or challenge fundamentalist movements, and people expressing non-normative gender identities and sexualities.[8] These particular groups are weak and vulnerable or have traditionally been victims of violations and consequently require special protection for the equal and effective enjoyment of their human rights.[9] Discrimination and marginalization are endemic, systematic and widespread at work, at home, at school, in all aspects of daily life.[10] This does not necessarily mean that customs and religion itself causes violence, but that people often use these tools as a justification for violent actions.[11] No custom or tradition, no cultural values or religious belief, can justify depriving a human being of their human rights.[12]

The development of universal human rights in the twentieth century has been triggered by two main factors. The first one was the atrocities perpetrated against civilians and non-combatants in the two World Wars; the second one was the Holocaust.[13] Nowadays, the freedom of thought, conscience and religion is a fundamental right in the catalogue of civil and political rights, being essential to the full realization of the human being.[14] This right is guaranteed by the Article 18 of the Universal Declaration of Human Rights and also by the Article 18 of the International Covenant on Civil and Political Rights. However, this freedom may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.[15] Different religions, cultural and social norms are sometimes used to justify any kind of violence and abuse.[16] Indeed, on the one hand these norms can protect against violence, but on the other hand they can also support and encourage its adoption.[17] Cultural and social norms are rules or expectations of behavior within a specific cultural or social group. These norms persist within society because of individuals’ preference to conform.[18] A variety of external and internal pressures are thought to maintain cultural and social norms.[19] Thus, individuals are discouraged from violating norms by the threat of social disapproval or punishment and feelings of guilt and shame that result from the internalization of

norms.[20] Cultural and social norms are vary widely and they are different from one country to another. For this reason, behavior acceptable to one social group, gang or culture may not be tolerated in another.[21]

Even if human rights violations cannot be justified on any religious or cultural basis, there are still some violent behaviors unacceptable in some country but well tolerated in others.[22] These behaviors are so-called “cultural offences, or culturally motivated crimes”. Those offences are primarily motivated by or find their source within the cultural background of the offender, which means there is a relevant link between the offence and the cultural background of the offender.[23] Female Genital Mutilation (FGM) is often touted as a traditional and cultural practice about what is considered appropriate sexual behavior.[24] However, the FGM lacks basis in any major religious text [25], but practitioners often believe it has religious support.[26] FGM is also a result of the patriarchal power structures which legitimize the need to control women’s lives and sexuality. In Mugumu (Nigeria), FGM is illegal but still practiced for different reasons: it is seen as a rite of passage; or because if the girl is cut, she is more marketable.[27] In Iran, Nigeria, Sudan and Pakistan, stoning is the most commonly associated with Muslim contexts as a punishment for a *zina* (adultery), even though there is no reference to stoning in the Qur’an.[28]

In the past, in China, the female infanticide was a common process, but the practice has diminished dramatically in recent decades.[29] Likewise, sex determination test and female feticide were widespread practice in India. Moreover, there are forced marriages in Afghanistan, virginity testing in Indonesia, so-called “honor” killings and crimes in Iraq, and marital rape in Kyrgyzstan, which has come to be a socially accepted norm.[30]

In Cambodia almost one in five girls are married before their 18th birthday and two percent are married before the age of 15.[31] Traditions are the root cause of child marriage, which is most prevalent in rural, remote areas with high ethnic minority populations, including Ratanakiri and Mondulakiri provinces.[32] Some countries (Sudan, Iran, Saudi Arabia, Yemen, Mauritania, Afghanistan, Pakistan, Qatar, UAE, parts of: Nigeria, Somalia, Syria and Iraq) still punish same-sex relationships with life imprisonment or even through public executions. In Kenya, the customary laws of some ethnic communities discriminate against women when it comes to property ownership and inheritance.[33] In Saudi Arabia, authorities cite cultural norms and religious teachings in denying women and girls the right to participate in sporting activities.[34] Meanwhile in Lebanon, corporal punishment in school is still a common practice, even if Lebanon’s Education Ministry has prohibited this method in public school since 1974.[35] Pregnant girls continued to be excluded from school in countries including Sierra Leone and Equatorial Guinea.[36] These behaviors are not always legislated as crimes in Penal Code, even so they are violations of internationally recognized human rights standards.[37]

In this century, hate crimes and hate speech are considered a plague. Hate crimes are criminal acts motivated by bias or prejudice towards particular groups of people.[38] To be considered a hate crime, the offence must meet two criteria: the act must constitute and offence under criminal law, and the act must have been motivated by bias,[39] often

caused by religion and tradition. Furthermore, hate speech is a public speech that expresses or encourages violence towards a person or group based on something such as race, religion, sex or sexual orientation.[40]

There are two specific situations where Muslim religion is playing an important role. from two different perspectives. In Iran, the biggest non-Muslim religious minority group, the Baha'is, are among one of the most persecuted religious minorities in the world.[41] The Iranian government labelled the Baha's community as "heretical sect".[42] They are not recognized by the State, and their political, economic, cultural and religious rights are denied, in particular they face severe restrictions on the freedom of thought, conscience, religion, and belief.[43] The government incites hatred, distrust, intolerance and any violence against them. There are Anti- Bahá'í pamphlets in shops, schools, and other public places. Graffiti is spray-painted in and on Bahá'í cemeteries, houses, shops, orchards, and vehicles.[44] Members of the Bahá'í community across Iran receive threatening telephone calls, text messages, and anonymous letters.[45] Another human rights foreseeable and planned catastrophe is represented by the humanitarian crisis where the victims are the Rohingya population. Since 2012, they have been suffered increasing discrimination and marginalization. The main reason is because the Rohingya are an ethnic group, the majority of whom are Muslim, who have lived for centuries in Rakhine State, in Myanmar, where the majority of people are Buddhist (87.9 per cent), follows by minorities such as Christian (6.2 per cent) and Muslim (only 4.3 per cent).[46] Here, they are the most persecuted minority in the world, are discriminated on the basis of ethnicity and religion, and the lack of legal status is the main reason of their oppression. Violent conflict began in Rakhine State in October 2016 and the Rohingya have suffered serious and persistent human rights violations and abuses, especially sexual and gender-based violence.[47] In 2018, the report drafted by the UN's Fact-finding Mission on Myanmar investigated the rampant hate speech in Myanmar disseminated through public pronouncements, religious teachings and traditional and social media.[48] The report explained how the social media had substantively contributed to the level of acrimony amongst the wider public, against Rohingya. Yanghee Lee, Special Rapporteur on the situation of human rights in Myanmar said that Facebook has turned into a beast in Myanmar, it was used to spread anti-Rohingya propaganda.[49]

What can be done? Legislation can be a key tool in changing behavior and perceptions of cultural and social norms.[50] Every country is different in the law applied to violent behavior. While almost all countries have laws that criminalize most forms of homicide, only some countries have laws in place to protect women from intimate partner violence, or from FGM.[51] In some country (Egypt, Ethiopia and Nigeria), there has been a recent move internationally towards the enactment and implementation of such laws, they have anti-FGM laws.[52] Failure to adhere to international human rights standards and protect human rights weakens peacekeeping and peacebuilding efforts in countries where the war or other disaster increased the criminal statistics.[53] For several reasons, the strategies for combating cultural and religious "crimes" and "human rights violations" need to be addressed through multi-levelled and multi-pronged strategies.[54] Laws alone cannot end these crimes and human rights violations; they

need to be applied alongside education on the rights from part of the community engagement around changing cultural and social norms.[55] During the selection of the strategy, international, national, and local contexts must be considered and local and international community must work together.[56] Civil society organizations and movements have been incredibly active in the fight against culturally and religiously justified human rights abuses.[57] Awareness raising campaigns, advocacy and governmental lobbying are among the actions taken by some local organizations and activists. These are often the most effective leaders for combating human rights violations because they know the cultural and religious context.[58] Since its creation, the United Nations has used conventions, campaigns, reports, resolutions and calls for state accountability and due diligence.[59] Under international due diligence standards demands that it is the obligation of the state to respect, protect, and fulfil the human rights of its citizens, as well as prosecute actors who violate these human rights.[60] Every country has the obligations under the due diligence standards to prevent, investigate and punish crimes and human rights violations, and also provide compensation to victims for such abuses.[61]

During the analysis of these crimes, it is necessary to identify and understand the role of “cultural defense”. It is the defense to the prosecution for a criminal act which, according to the defendant results from his/her cultural background.[62] The consideration of culture allows prosecutors, judges, and juries to determine the appropriate level of culpability.[63] Cultural defense is used to convince the courts to excuse their clients’ crimes.[64]

In order to decide whether or not a cultural defence is justified, and to which extent, one has to look at the facts and at the role the cultural elements have played.[65] The degree of motivation or of causation of the culture on the behaviour of the offender can vary.[66] The essential guideline is a situational approach, taking into account all the nuances of the specific case.[67]

Endnotes

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