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Gender, Culture and the Law: Approaches to 'Honour Crimes' in the UK

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Abstract This article examines the debate on whether to analyse 'honour crimes' as gender-based violence, or as cultural tradition, and the effects of either stance on protection from and prevention of these crimes. In particular, the article argues that the categorisation of honour-related violence as primarily cultural ignores its position within the wider spectrum of gender violence, and may result in a number of unfortunate side-effects, including lesser protection of the rights of women within minority communities, and the stigmatisation of those communities. At the same time it is problematic to completely dismiss any cultural aspects of violence against women, and a nuanced approach is required which carefully balances the benefits and detriments of taking cultural factors into account. The article examines the issues within the context of the legal response to cases involving honour-related violence, arguing that although the judiciary has in a number of cases inclined towards viewing 'honour' as primarily cultural rather than patriarchal, in some cases they have begun to take a more gender-based or 'mature multiculturalism' approach.

Keywords Culture · Criminal justice · Ethnic minorities · Forced marriage · Gender violence · Honour crimes · Honour killing · Multiculturalism · Provocation · Violence against women

Introduction

In the UK today there is an increasing focus on honour-related violence within ethnic minority communities, whereby the professed or alleged motivation for the

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violence revolves around a perceived violation of male or family 'honour'.[1] A number of recent high-profile cases of so-called 'honour killings' have received unprecedented media attention and have caused much debate on the subject of how to prevent and punish such crimes. Additionally, the issue of forced marriages has been highlighted by attempts to introduce criminal or civil sanctions specifically aimed at combating them.[2]

This article will examine the extent to which 'honour' should be interpreted either in the context of cultural tradition, or as an aspect of broader, cross-cultural, gender-based violence. It argues that a nuanced approach to the relative roles of culture and gender in the perpetration of 'honour crimes' is necessary, in order to ensure effective protection from and prevention of such violence. Analysis of recent UK cases involving 'honour killings' and forced marriages illustrates how the legal system can be complicit in upholding or even promoting views of 'honour' as primarily or purely cultural, rather than as motivated by patriarchal or other values. However, the possibility that the courts are beginning to incorporate more of a gender-based approach may also be emerging.

'Honour Crimes': Gender Violence?

Whilst it is beyond the scope of this article to fully dissect the various conceptualisations of 'honour' and honour-related violence,[3] for the present purposes it is adequate to state that the term 'honour killing', though much debated, envisages a scenario where usually (but not always) a woman is killed to either prevent or repair perceived violations of male or familial 'honour'. The latter include not only perceived sexual impropriety, but also any behaviour not approved of by family members and seen as challenging to patriarchal authority (Touma-Sliman 2005, p. 186; Araji 2000, p. 3). A number of scholars and activists also theorise forced marriage as both a type of 'honour crime' in itself, and the precursor to or result of other types of honour-related violence (Welchman and Hossain 2005, p. 4). Forced marriage may lead to ongoing marital rape, as the lack of consent to the marriage may be paralleled by ongoing lack of consent to sexual relations (Siddiqui 2003, pp. 88–89). Once married, attempts to escape from a forced

[1] I use quotation marks around the term 'honour' in order to convey the fact that I am in agreement with an increasing number of activists and academics critical of its overall utility in distinguishing between types of gender violence. See Welchman and Hossain (2005) for in-depth analysis of this point.

[2] A summary of responses to the consultation exercise on the proposed criminalisation of forced marriage is available at http://www.fco.gov.uk/en/fco-in-action/nationals/forced-marriage-unit/fmconsultation.

The Forced Marriage (Civil Protection) Act 2007, which received assent in July 2007 and is to be implemented in Autumn 2008, provides for the making of Forced Marriage Protection Orders (with an attached power of arrest) by the family courts.

[3] I would also theorise rape as a type of 'honour crime', since it is used as an enforcement mechanism to control behaviour or punish transgressions of 'honour' codes, and may also lead to other forms of violence, such as 'honour killing' or forced marriage, to remove the perceived stain to male or family 'honour'. However, the scope of this essay permits only examination of 'honour killings' and forced marriage in more detail. See Welchman and Hossain (2005) for a detailed analysis of the issues surrounding the definition of 'honour crimes'.

marriage are often the catalyst for further violence including 'honour killing' (Siddiqui 2000, p. 50). Forced marriage may also be used to prevent women from exercising a range of autonomous behaviour or actions such as attempting to choose their own partner. Thus women may also be 'forced out' of a marriage which they have freely chosen to enter (Chakravarti 2005, p. 308).

'Honour' is constructed through dualistic notions of male 'honour' and female 'shame', whereby masculinity is largely constructed in terms of female chastity. Conceptions of 'honour' are tied to male self-worth and social worth, but most closely in relation to the reputation and social conduct of female family members (Spierenburg 1998, p. 2; Araji 2000, p. 2). Men retain masculine self-worth not only through the regulation and disciplining of the behaviour of their female relatives, but also by protecting them from potential dishonouring by other males (Lindisfarne 1994, p. 85; Goksel 2006, p. 56). Historically, including in the European context, this has been linked to ideas of women as the property of their male relatives, which again results in attempts to control female behaviour, particularly female sexual autonomy (Bashar 1983, pp. 30–32; Harris 1989, p. 299; Clark 1989, p. 231; Clark 1983, p. 14). 'Shame' is redressed through punishment of the deviant female (Araji 2000, p. 4), and the alleged 'shame' caused by such actions can be 'washed away' through the eradication of the source of the 'shame'—the woman. In fact if men do not attempt to repair or renew the male family 'honour' in this way they are seen as emasculated (Gilmore 1987, p. 10; Abu-Odeh 1996, p. 152). Women are viewed as chattels, conduits through which male property is to be passed, and to be disposed of or controlled for this purpose. Women and children are thus dehumanised, making it easier to justify violent behaviour towards them if they attempt to resist or undermine this patriarchal structure through their actions (Hassan 1999, p. 590).

'Honour' codes depend largely upon control and objectification of women, and the maintenance of strict codes of gendered behaviour to police concepts of 'shame' and property associated with female sexuality. Thus 'honour' adheres differentially, and unequally to men and women. Women are responsible not only for their own 'honour', but for that of their male family members, and women who transgress 'honour' codes are treated far more harshly than their male counterparts (Baker et al. 1999, p. 168). Sen (2005, p. 48) argues that "codes of honour serve to construct not only what it means to be a woman but also what it means to be a man, and hence are central to social meanings of gender". Likewise, other authors note that the upholding of 'honour' is inextricably aligned with concepts of masculinity (Spierenburg 1998). Women are undoubtedly the primary victims of 'crimes of honour' at the hands of largely male perpetrators (Welchman and Hossain 2005, p. 6; Sen 2005, p. 48). Additionally, concepts of 'honour' and 'shame' largely revolve around female sexuality, and violence against women in general has been closely linked to the regulation of female sexuality (Coomaraswamy 2005a, p. xi). For these reasons, it would seem appropriate to classify such crimes as a form of gender-based violence against women.

A major difficulty with the framing of honour-related violence as a gendered abuse is the issue of male victims of such violence. According to the non-governmental organisation Southall Black Sisters, in the UK context there have been attempts by politicians and governmental officials to argue that such violence

is gender-neutral, since men have been the victims of 'honour killings' and forced marriages (Siddiqui 2003, p. 71). This is indeed the case, and at least one major legal case on forced marriage in the Scottish family courts has involved a male petitioner.[4] Nevertheless, Siddiqui argues that even where men suffer forced marriage it is still easier for them to escape from the situation. Women, by contrast, face far greater pressure to reconcile themselves to abusive situations and to suffer ongoing abuse (Siddiqui 2003, p. 71; Araji 2000, p. 5; Baker et al. 1999, p. 168). Men are more easily able to escape the negative sanctions triggered by a breach of 'honour', and even if they are subject to violence, their female counterparts still do not escape punishment themselves (Baker et al. 1999, p. 168). Even cases where men are the victims of an 'honour killing' usually occur because the victim is alleged to have ruined a woman's reputation by reneging on a promise of marriage, or through an actual or suspected relationship with her (Siddiqui 2005, p. 264). In this way, without attempting to simply dismiss or deny the victimisation of males in certain cases, it is still possible to argue that their victimisation revolves around attempts to control women, and that it is a form of gender-based violence.[5]

However, beyond this analysis there are also broader issues of gender and sexuality that require examination. For example, gay women may suffer honour-related violence if their sexual orientation becomes known and is deemed to bring shame or dishonour to their family or community.[6] Under the analysis set out above, such honour-related violence results from patriarchal attempts to control women's behaviour, particularly sexual behaviour. However, this alone would not explain why gay men may also be targets of honour-related violence, for reasons of their sexual orientation alone, and without any attachment to a female victim to provide a motivator for violence.[7] Therefore arguably honour codes, and any resultant violence, are concerned not only with the upholding of patriarchal heterosexual norms in relation to women, but also of broader norms of heteronormativity which affect both men and women more generally.[8] In conjunction with this, male competition over masculinity and attempts to dominate in the masculine hierarchy may also affect some men, as well as women, in relation to honour codes

[4] *Mahmud v Mahmud* [1994] SLT 599. There have also been a number of cases of 'honour killing' of male victims reported in the press, one example being the 2004 case of Zafar Iqbal in Bradford, who was murdered by his wife's relatives after they married without their approval (see Grattage 2004).

[5] Other factors relevant to this aspect of the discussion, which cannot be explored in detail here, are the role of female perpetrators and the intergenerational nature of much honour-related violence. However, the writing of Kandiyoti (1988) on 'patriarchal bargaining' is potentially of great help in analysing both of these aspects of honour-related violence.

[6] See Safra Project (2002) for a more detailed analysis of how 'honour' affects Muslim lesbian, bisexual and transgender women in accessing social and legal services in the UK.

[7] Whilst I am unaware of reported cases of 'honour killings' on the basis of sexual orientation to date in the UK, the recently reported murder of young gay man Ahmet Yildiz in Turkey is suspected to have been an 'honour killing' motivated by the victim's outspoken work as a gay rights activis (see Birch 2008).

[8] As An-Na'im (2005, pp. 67–68) argues, all societies regulate sexuality to some extent, and attempts to argue that families and communities should have no right to do so may be counterproductive, since this may result in increased risks to victims as attempts are made to ensure even tighter regulation of sexuality. Thus, it is not the regulation of sexuality in itself which is problematic, but rather the excessive or discriminatory regulation of sexuality.

(Lindisfarne 1994, p. 85). Whilst it is beyond the scope of this article to fully address the wider issues of masculinity and sexuality potentially underlying honour-related violence, it is to be hoped that this brief discussion of their relevance highlights the need for more detailed debate in the near future.

'Honour Crimes' Within a Multicultural Context

In contrast with this gender-based approach to the problem of 'honour crimes', is that which argues that such crimes are more specifically located within certain cultures. This is very relevant within the multicultural context of the UK, where reporting of such crimes has to date only taken place in relation to ethnic minority communities. The definition of multiculturalism varies according to context and jurisdiction, but in the UK, multiculturalism was introduced with the aim of combating racism at the same time as promoting an integrated, tolerant and egalitarian society, where the diversity of cultures and races are valued equally (Patel 2000, p. 6). However, problems may arise where the minority cultures in question disagree with egalitarian principles espoused by the majority community, including in relation to the treatment of women (Cohen et al. 1999, p. 4). Feminist theorists argue that multiculturalism pays more attention to the differences between groups than within them, and that consequently, power imbalances within groups are left unquestioned (Okin 1999, p. 12; Patel 2000, p. 7; Siddiqui 2005, pp. 271, 278). Indeed, attempts to create equality and tolerance between groups may unwittingly serve to actively reinforce power hierarchies within groups, leaving already disempowered members further vulnerable to injustice in a "paradox of multicultural vulnerability" (Shachar 2001, pp. 2–3).

Multiculturalist discourses often assume minority communities to be homogenous, with static or fixed cultures (Bhavnani 1993, p. 38; Patel 2000, pp. 6–7; Volpp 2001, p. 1191). It has been argued that the focus on the differences between groups encourages the idea that cultures are monolithic or reified, rather than evolving and open to debate from within (Okin 1999, p. 12). But this begs the question, raised by feminists and others, of what is meant by the term 'culture' and who decides its meaning (Okin 1999, p. 12; Pollit 1999, p. 28). The strengthening of existing dominant sub-groups which can result from multicultural policy means that dissenting voices are less able to contribute to the construction or interpretation of what is meant by 'culture' (Tamir 1999, p. 47). This is a particularly important debate in the context of honour-related violence, because 'honour crimes' have been described as 'cultural traditions' or practices which are somehow innate to certain communities. For example, in its attempts to avoid being seen as racist or Islamophobic after the terrorist attacks of 11 September 2001, the Council of Europe stated that 'honour crimes' emanate from cultural rather than religious roots.[9]

[9] Council of Europe Parliamentary Assembly, Resolution 1327: So-called 'honour crimes' (4 April 2003).

Such viewpoints add to the perception of culture as fixed and immutable, rather than selected according to context by powerful members of a group in order to preserve existing power structures such as gender hierarchies (Bauer and Helie 2006, pp. 71–72). This overlooks the possibility of resistance or contestation within groups as to the nature of 'culture' (Volpp 2001, pp. 1192–1193). The contingent nature of culture is specifically shown in the multicultural context by the fact that those within minority cultures are able, to varying degrees, to navigate the majority culture as well as their own. As Ballard (1994, p. 31) argues in relation to the ability of second generation South Asian migrants in the UK to negotiate different cultural arenas, "Cultures, like languages, are codes, which actors use to express themselves in a given context; and as the context changes, so those with the requisite competence simply switch code".

This context-based analysis is relevant because it indicates that cultures are neither closed nor necessarily always imposed. Thus identity, including cultural identity, can be "chosen, and actively used, albeit within particular social contexts and restraints" (Bulmer and Solomos 1998, p. 826). This is particularly revealing in the case of alleged 'cultural traditions', because it offers the prospect of individual agency within certain circumstances. It may help to explain why the majority of those within communities affected by such traditions still do not carry them out, despite the allegedly inflexible nature of the practices in question. Linked to this, it may be that an explanation for those incidents of violent behaviour that do occur, is that the victim is perceived to have navigated 'too far' out of accepted cultural restraints, or without 'code-switching competence' in certain contexts. Furthermore, if culture is thus not necessarily as oppressive or all-encompassing as is often argued, then other, more cross-cultural dynamics such as patriarchal ones may also be at work in dictating behaviours, including violent ones.

The focus on immigrant cultures as determined by violence against women supposes that the culture of the dominant society is inherently less patriarchal and violent towards women, and fails to sufficiently interrogate patriarchal practices that exist in majority or Western cultures. So in the dominant society, gender violence is assumed to be the work of individual deviants rather than emanating from cultural beliefs or traditions, with the effect that only immigrant women suffer "death by culture" (Volpp 2001, pp. 1187, 1190). The view that culture belongs only to non-Western societies is problematic, since it results in a failure to interrogate the (erroneous) idea that majority groups are somehow neutral or lacking in culture. The refusal by some Western feminists to accept the contingent nature of cultural norms also leads to an at least implicit assertion of superiority over women of other cultures, and diverts attention from the subordination of women within their own culture (Volpp 2001, p. 1214; Prins and Saharso 2006, p. 6). Culturally-focused responses to issues such as honour-related violence may ultimately prove counterproductive, causing communities to turn further inwards and reinforce the practices in question, in part as a response to fear for their survival, cultural or otherwise, as a community (An-Na'im 2000). They could also have the effect of providing "windows of opportunities for racist and xenophobic actors and organisations" to manipulate the discourse around such crimes in order to further

anti-immigration agendas (Hellgren and Hobson 2006, pp. 1–2).[10] Thus, there is a need for caution in associating 'honour crimes' with particular minority communities, because of the risk that this could lead to stereotyping and stigmatisation of communities as backward or 'other', especially in the post-September 11 context of Islamophobia (Welchman and Hossain 2005, pp. 13–14; Sen 2005, p. 44).

However, to completely ignore cultural issues in relation to violence against women may also lead to a lack of contextualisation, and the potential for compounding the discrimination faced by minority women. Appropriate acknowledgment of cultural context can potentially benefit female victims of violence if it adds to an understanding of the specific nature of the difficulties they face. The problem does not lie with the acknowledgment of cultural contexts and factors per se, but rather with the importance given to them, and the uses to which they are put, in the assessment of theoretical and practical responses to violence against women. One such approach would balance the rights of women and equality within groups, against the aims of diversity and equity between groups. However, others argue that where violence is involved, cultural factors should not be taken into account if to do so would undermine women's fundamental rights. UK activists such as Southall Black Sisters have described this approach as a 'mature multiculturalism' whereby acts of violence against women are "understood as abuses and violations of women's fundamental human rights, irrespective of the cultural or religious contexts in which they occur" (Women Against Fundamentalism and Southall Black Sisters 2007, p. 17). They argue that this would help to address problems relating to gender power imbalances, including violence against women, which are compounded by the focus of multiculturalism on relations between, rather than within, groups (Siddiqui 2005, p. 271). One advantage of the 'mature multiculturalism' approach is that it nonetheless recognises the many benefits of multicultural policy, and argues for its redefinition rather than outright rejection (Patel 2008, pp. 11–12). Specifically, this redefinition could take the form of deconstructing preconceived notions of culture as bounded and reified (rather than rejecting notions of culture altogether), whilst still retaining the more positive aspects of multiculturalism.[11]

A question raised by the phrase "irrespective of (the) cultural or religious context(s)", is whether it could be interpreted by critics of the 'mature multiculturalism' approach as a requirement to preclude the acknowledgment of *any* cultural issues, even where it may be necessary to do so in order to ensure the best possible outcome for a woman suffering from violence. For example, the use of cultural evidence in cases of women who have killed abusive partners could be crucial in informing the court as to the ways in which issues such as gender and culture can intersect to compound and alter the difficulties women face in attempting to escape violence. However, this presents a further question, which is that if cultural evidence is used to the benefit of women then arguably it should also be available to male defendants, which could result in further injustice to female

[10] See also Razack (2004) for detailed discussion of these points in the Norwegian context, in relation to policy on immigration and forced marriages. .

[11] See Phillips (2007) for a detailed and convincing argument that multiculturalism can be reconciled with gender equality if it moves beyond essentialist notions of culture.

victims. On what basis, then, is the decision as to when to allow such evidence made? One possibility is that if violence against women such as honour-related violence is viewed as gender-based to a greater extent than it is viewed as cultural, then the gender discrimination intrinsic to such violence becomes a key factor in deciding whether to allow such evidence.

Related to this is whether the 'mature multiculturalism' approach inadvertently perpetuates earlier suggestions by feminist theorists of an intractable conflict between gender and reified concepts of culture (Okin 1999, p. 22). The question then arises as to whether "there is a limit to the practices or behaviours that can be condoned in any given society, and if so, what justifies this limit?" (Phillips 2007, p. 32). However, as Phillips argues, it is uncontroversial to suggest that the principles limiting multicultural accommodation should include the protection of minors from harm, the prevention of mental and physical violence, and gender equality (2007, p. 34). Given the current media and governmental focus on these abuses in the UK, it is unlikely that even the most conservative of community leaders or members would now openly or directly advocate 'honour killings' or forced marriages, or claim that they were cultural traditions which they have a 'right' to continue with. Thus, it is not a question of crudely balancing the rights of women to be free from violence against cultural rights.[12] Rather, the problem lies with the more subtle way in which multicultural policy facilitates communities in claiming that the problem is not as acute as is being claimed, and that if there is a problem, it is being adequately managed within the community. Furthermore, the government and its agencies, such as the police, may hesitate to intervene for fear of accusations of racism (Siddiqui 2000, p. 51; Patel 2000, pp. 6–7; Siddiqui 2005, p. 270). The result is that responsibility for tackling abuses such as 'honour killings' is evaded, and the protection of women is, although more subtly, nonetheless superseded by multicultural concerns (Patel 2008, p. 18).

A final question is how the 'mature multiculturalism' approach is applicable in practice in protecting women in ethnic minority communities from gender violence. Conceptually the 'mature multiculturalism' approach appears similar to cross-cultural or universalistic approaches to women's human rights.[13] However, there may be differences in the way these approaches can be implemented within the law. The latter approach would seek to rely on the principles in the Human Rights Act 1998 (HRA)[14] to protect victims of gender violence. However, in the UK context of

[12] For this reason the 'balancing' or 'proportionality' principle in human rights law is not strictly relevant here, since in the UK there is no direct claim being made by perpetrators of honour-related violence that they should have a 'right' to commit 'honour killings', for example, in response to a perceived transgression by the victim. Rather, it is that for a number of reasons they are unwilling to accept that where they do so, the state should be able to take action to punish them, and the severity of that punishment.

[13] Since this discussion is restricted to the UK context, I do not engage with the broader debate around universalism and cultural relativism. However, see Coomaraswamy (2005b), Afkhami (1999), Steiner and Alston (1996, Chap. 4), Rao (1995) and Bunting (1993) for exploration of the international human rights dimensions of the debate.

[14] The HRA implements the European Convention on Human Rights (ECHR) in UK law. 'Honour crimes' such as 'honour killing' and forced marriage may violate a number of articles of the ECHR, including Article 2 (the right to life), Article 3 (freedom from torture or inhuman or degrading treatment

gender violence, the protection offered by the HRA relies on the extent to which the principles contained therein create not only 'vertical' obligations between the individual and the state (in the form of public authorities, such as police and prosecution authorities), but also 'horizontal' obligations between individuals and non-state actors who are outside state machinery.[15] Although there is growing support amongst activists and scholars for the existence of positive or 'horizontal' obligations in relation to domestic violence (using the argument that the state machinery has failed in its obligations to adequately respond to and prevent domestic violence between private individuals), the jurisprudence on this issue is still developing.[16] In relation to honour-related violence, it also requires a conceptualisation of such violence as part of a broader spectrum of gender violence, rather than as culturally differentiated from it, as is largely the case at present in the UK. Thus, whilst the discourse of women's human rights will undoubtedly be of great importance in the future, it is currently of somewhat limited assistance in protecting potential victims of 'honour crimes' in the UK. The 'mature multiculturalism' approach, whilst not formally embodied in the law in the same way as the provisions of the HRA, nonetheless still represents a gender-focused approach to the protection of women from violence, including honour-related violence, which may be incorporated into judicial understandings and interpretations. The next section will demonstrate how this approach is being used by the courts in cases of forced marriages, in substance if not explicitly. However, in cases of 'honour killings' in which the defence of provocation has been raised, a more culturally-focused approach prevails at the expense of sensitivity to broader issues of gender violence.

'Honour Crimes' in the UK Courts

This final section will examine the impact of some of these issues on UK case law pertaining to honour-related violence. In cases of 'honour killing', cultural evidence may be relevant where the defendant attempts to plead not guilty to murder, but instead guilty to manslaughter by reason of provocation. In order to establish the defence of provocation both a subjective and an objective test must be satisfied. The subjective element determines whether the evidence shows that there was in fact a sudden and temporary loss of self-control on the part of the defendant. The objective

Footnote 14 continued
or punishment), Article 5 (the right to liberty and security of the person), Article 8 (the right to respect for private and family life), Article 12 (the right to marry and form a family), and Article 14 (non-discrimination in the enjoyment of the foregoing rights and freedoms).

[15] In effect, this is an 'indirect horizontal obligation' dependent on recognising that state authorities have failed in their duties to an individual by not adequately protecting or preventing a violation of their rights by another private individual. See *Osman v UK* (2000) 29 EHRR 245 and *X & Y v Netherlands* (1986) 8 EHRR 235 as key cases which establish this principle in European human rights jurisprudence. For more general commentary and case law on this issue, see Emmerson et al. (2007, Chap. 18), Fenwick (2007, p. 249), Stone (2006, p. 38), Starmer et al. (2001, p. 151).

[16] For more detailed arguments as to why and how positive or horizontal obligations come into effect in relation to domestic violence in the UK, including case law, see Choudhry and Herring (2006a, b).

element of the test revolves around whether the alleged provocation was such that a reasonable man would have acted in the same way as the defendant. A succession of cases have struggled with this latter aspect of provocation, and in particular, with the question of what particular characteristics of the defendant can be imputed to the reasonable man in deciding whether he would have lost self-control and killed the victim in the same circumstances.[17] Overturning the earlier ruling in *Bedder*,[18] the House of Lords in *Camplin*[19] decided that since "the gravity of verbal provocation may well depend on the particular characteristics and circumstances" of the defendant, some characteristics could be taken into account. However, only characteristics which bear on the *gravity* of the provocation should be taken into account, whereas characteristics bearing on the accused's *level of self-control* should not. So if the provocation was based on taunts as to the defendant's impotence, then this characteristic of the defendant may be taken into account in assessing whether the gravity of the provocation was severe enough to provoke a reasonable man in his position; however, it may not be taken into account in determining the level of self-control a reasonable man, and therefore the defendant, should possess. The court deemed that the only exceptions to this distinction were the characteristics of age and sex, which could be relevant to both the gravity of the provocation and the expected standard of self-control.

In relation to 'honour killings', the question is whether cultural background or belief are characteristics which may be taken into account in assessing provocation. In one of the earliest 'honour killing' cases reported, this was left unclear.[20] Shabir Hussain had killed his sister-in-law, Tasleem Begum, by running her over with his car and then reversing back over her body. Although the defendant was initially convicted of murder, on appeal the conviction was quashed and at the retrial the prosecution accepted his plea of guilty of manslaughter by reason of provocation. Because of this, the question of objective loss of self-control was not directly tested in court. However, during sentencing the judge accepted that "something blew up in your head that caused you a complete and sudden loss of self control". Although the judge did not explicitly state that the loss of self-control was caused by the adultery of the victim, and the defendant's consequent perception of this as shameful, the preceding statement acknowledged that this "would be deeply offensive to someone with your background and your religious beliefs". He then went on to give a reduced sentence of six-and-a-half years rather than eight years due to "the mitigating factors that have been identified".[21] The fact that the prosecution did not contest his plea of manslaughter on grounds of provocation indicates that it considered that there was sufficient evidence to support the plea. However, the lack of explicit comment on the manner in which the objective limb of the provocation

[17] Although it is not possible to re-state the law on provocation in greater detail here, Clarkson et al. (2007, pp. 714–723) and Ormerod (2008, pp. 585–617) provide further reading on texts and case law on both the objective and subjective requirements of the legal test for provocation.

[18] *R v Bedder* [1954] 1 WLR 1119.

[19] *DPP v Camplin* [1978] AC 705.

[20] *R v Shabir Hussain* [1997] EWCA Crim 24.

[21] *R v Shabir Hussain*, Newcastle Crown Court, 28 July 1998.

test was satisfied makes it difficult to ascertain whether the defendant's cultural beliefs were taken into account as a characteristic which affected only the gravity of the provocation, or also the level of self-control he was expected to have. Likewise the "mitigating factors" mentioned in setting the sentence could well have included the cultural background referred to earlier. At the very least, the focus on cultural background in the sentencing remarks does show that cultural issues were deemed relevant enough for the court to comment on them in this early case.

The issue of cultural background or belief as a characteristic to be taken into account in assessing the objective element of provocation was examined more directly in the later case of *Faqir Mohammed*.[22] The defendant killed his daughter Shahida after finding a man in her bedroom, and pleaded provocation on the basis that the thought that his daughter had sexual relations outside marriage had so provoked him that he had lost self-control and stabbed her. At the original trial the judge directed the jury to follow the ruling in *Smith*.[23] Thus, they were directed to examine whether the defendant's cultural and religious beliefs on sex outside marriage and arranged marriage, especially with regard to daughters, should be taken into account in relation not only to the gravity of the provocation, but also the level of self-control he should be expected to exercise. The jury rejected his plea of provocation and found him guilty of murder. His appeal was also rejected; however, the appeal court did rule that *Attorney General for Jersey v Holley*[24] should have been followed instead, so that although the cultural and religious beliefs of the defendant could be taken into account in relation to the assessment of the gravity of the provocation he suffered, they could not be taken into account in assessing whether he had exercised the level of self control expected of a reasonable man in the same circumstances. The judge should instead have directed the jury to consider whether a person of the age and sex of the applicant, and with ordinary self-control, would have acted as the applicant did. This means that cultural characteristics are not to be viewed in the same way as an innate characteristic such as age, which the defendant has no control over. To this extent the courts seem willing to view cultural characteristics as less fixed. However, it is troubling that they can still be used to assess the gravity of the provocation (if not the level of self-control), in the same way as impotence, for example, in the earlier case law. Thus, even this aspect of the provocation test to some extent perpetuates a conception of culture as fixed and beyond the control of the defendant, rather than subject to intra-group power hierarchies and contingent on context.[25]

[22] *R v Faqir Mohammed* [2005] EWCA Crim 1880.

[23] *R v Smith (Morgan)* [2001] 1 AC 1. This case ruled that certain characteristics of the defendant, in this instance depression, could be taken into account in assessing both the gravity of the provocation *and* the level of self-control expected. However, this was overturned by the Privy Council in *Attorney General for Jersey v Holley* [2005] 2 AC 580, which returned the test to the earlier, pre-*Smith* position that characteristics other than age and sex could only be taken into account in relation to the gravity of the provocation and not in relation to the expected level of self-control. The decision in *Jersey* has since been followed in a number of cases including *Faqir Mohammed*. See Clarkson et al. (2007, pp. 732–734).

[24] [2005] 2 AC 580.

[25] The government is currently attempting to address critiques of the provocation defence as lacking in gender sensitivity. Under proposed reforms, sexual infidelity would no longer be relevant to establishing provocation, in order to prevent men who kill for this reason taking advantage of the defence. Conversely,

The overarching problems of cultural stereotyping and the disregard of the influence of patriarchal norms in 'honour killing' cases go beyond the specific problems found in the provocation test. The judge's summing up in the original trial of *Faqir Mohammed*[26] accepted evidence on the defendant's cultural background, attitudes to female sexuality, and behaviour towards the victim, which portrayed the Pakistani community in question as homogenous and uniformly restrictive in its attitudes towards sex outside marriage and honour and shame. This view was also referred to in the appeal court judgment. The evidence itself may well have been largely accurate; however, it is troubling that the courts at each stage unquestioningly accepted the evidence of largely male witnesses as to the cultural norms surrounding the defendant's actions. The effect of this is not only to perpetuate ideas of culture (rather than individual deviance) as determinative of the ethnic minority defendant's behaviour, but also to present a male-dominated and static view of the culture under scrutiny. This demonstrates how the use of cultural evidence can be harmful when it attempts to fix or reify culture into a form which can be easily digested within the adversarial legal process. Nuances as to the relative role of culture or gender in a case are thus lost, because of the law's need to categorise and define the culture on which evidence is being introduced.

Cultural issues were referred to in the re-sentencing of Shabir Hussain, and also in the sentencing of Abdulla Younes, after his conviction for the murder of his daughter Heshu. In the latter case the judge made reference in his sentencing remarks to the case as "a tragic story arising out of, to quote defence counsel, irreconcilable cultural difficulties between traditional Kurdish values and the values of Western society".[27] The murders of Heshu Younes, Tasleem Begum and Shahida Mohammed revolved around excessive patriarchal attempts to regulate or control female sexuality. Yet judicial discourse on an alleged 'clash of cultures' between ethnic minority and majority communities ignores this aspect and implies the cultural superiority of the majority community, as well as fuelling the stereotyping of minority communities. It fails to highlight the location of such crimes within a wider scheme of patriarchal violence against women, instead marking out a reified version of 'culture' as the sole or key factor in the motivation and perpetration of such crimes.

These cases highlight a number of potential problems with the use of cultural evidence in cases of 'honour killing'. The first is the role of the courts in stereotyping 'culture' and portraying it as static and immutable within the context of

Footnote 25 continued
fear of serious violence, or words or conduct which leave the defendant feeling justifiably wronged, would be taken into account, allowing women who kill as a result of domestic violence to take better advantage of the defence than is currently the case (see Pallister and Stevenson 2008). However, it is likely that whatever changes are ultimately made to this area of law, there will still be scope for judicial interpretation of the relevance of 'culture', and thus, potentially, for continuing problems of the type discussed here.

[26] *R v Faqir Mohammed*, Manchester Crown Court, 18 February 2002.

[27] *R v. Abdulla M. Younes*, Central Criminal Court, 29 September 2003. This was the first case the Metropolitan Police labelled as an 'honour killing', according to Southall Black Sisters (see Siddiqui 2005, p. 269).

ethnic minority communities. This reinforces, secondly, the inability of the courts to recognise the importance of cross-cultural gender issues, such as the control of female sexuality, in the perpetration of such violence. Thirdly, this upholds ideas of honour codes as primarily culturally rather than gender-based, which separates honour-related violence from other forms of violence against women on the basis of alleged cultural difference. This in turn hinders attempts to locate honour-related violence within wider gender violence, and to enable rights-based approaches for the protection of women, such as 'mature multiculturalism'. Fourthly, and importantly, it is not the intention of this article to argue that it is the use of cultural evidence per se that is problematic in cases of honour-related violence, but rather its inappropriate use, in ways that negate women's fundamental rights to be free from gender violence, and that accept male-dominated interpretations of culture instead. This is shown by the contrast between the cases involving male defendants discussed here, and cases involving female defendants such as Zoora Shah.[28] In the latter case, contextualising evidence on the cultural background of the defendant was disregarded by the court, even though it was crucial to understanding what had led her to behave in a certain way, and thus to the success of her appeal. A 'mature multiculturalism' approach would perhaps better ensure that the positive aspects of understanding cultural issues are utilised by the courts, at the same time as not allowing them to supersede the right to be free from gender violence, including honour-related violence.

The case law surrounding forced marriages shows somewhat more development in terms of the appropriate admittance of cultural evidence, and highlights further the necessity of not ignoring such evidence where it may help protect victims. The civil courts were at first unreceptive to claims of culture in determining whether duress was present to vitiate consent to marry. Thus, in the early case of *Singh v Singh*,[29] before multiculturalism had become accepted in the UK, the Court of Appeal held that even though the petitioner had acted out of respect for her parents and cultural traditions, the marriage could not be declared void because no immediate or life-threatening danger was present. The Court did not consider more subtle coercion to be relevant to the validity of the consent, such as the fact that the petitioner was only 17 at the time of the marriage, spoke poor English, and would have been disowned by her parents had she refused. This case demonstrates how not admitting cultural evidence in certain circumstances can be as damaging to victims of honour-related violence as admitting it is in other circumstances. Fortunately, this

[28] *R v Zoora Ghulam Shah*, Court of Appeal, Criminal Division, 30 April 1998. See Phillips (2003, p. 524) and Patel (2003, p. 243) for discussion of this case, and of the crucial involvement of Southall Black Sisters in her appeal. Shah had left an abusive husband and was taken in by a drug dealer who proceeded to abuse her and prostitute her to his friends. When he began to show interest in her daughter, she put arsenic powder in his food in an attempt to dampen his libido, culminating in an overdose. At the initial trial Shah did not give evidence on these issues and was found guilty of murder. When she gave evidence of the abuse at her appeal, the court refused to entertain the idea that she had not done so at the initial trial for reasons of 'honour' and a fear of shaming herself and her daughters further in the community. In their view, the experiences she described were such that it was not conceivable that she in fact had any 'honour' left to salvage.

[29] [1971] 2 All ER 828.

was not followed in the later case of *Hirani v Hirani*,[30] where a decree of nullity was granted to a young Hindu woman who argued that she had only gone through with the arranged marriage because of threats by her parents, upon whom she was financially dependent, to turn her out of their home should she refuse. In the more recent Scottish case of *Mahmood v Mahmood*,[31] the court stated that the particular threats the applicant received were sufficient to overwhelm the will of a girl of her age and cultural background. These cases indicate that the willingness of the courts to acknowledge cultural factors where appropriate when investigating duress, has gradually increased over the decades alongside policies of multiculturalism and cultural diversity.

Alongside this, in the related area of abduction abroad for forced marriage, although still sensitive to cultural factors, the courts have been more aware of gender factors in their approach to protecting victims. The parents of Rehana Bashir were imprisoned for attempting to drug her and take her to Pakistan and marry her without her consent.[32] Most significantly, in the landmark decision in *Re KR*,[33] a 17-year-old Sikh girl abducted by her parents to India for forced marriage was made a ward of the court. In his judgment, Justice Singer made clear that whilst the courts acknowledged the difficulty faced by minorities in attempting to retain their cultural traditions, the usual sensitivity of the courts to the traditional and religious values of minority communities would give way to the integrity of the young person, whose voice would prevail in the context of arranged or enforced marriages. This decision sees culture as a more mutable factor, and unlike the provocation cases discussed above, represents a 'mature multiculturalism' approach to honour-based violence, since it is influenced by growing awareness of how to balance the aims of cultural diversity with the protection of victims from gender-based violence. It is to be hoped that the jurisprudence on forced marriages will continue to adopt this more nuanced approach; taking cultural factors into account when appropriate and relevant, but ensuring that they are not allowed to outweigh the rights of victims to be free from gender-based violence. However, it remains to be seen whether such an approach will also be adopted in future cases of 'honour killing' involving provocation.

Conclusion

Despite the problems arising from the identification of 'honour crimes' as a primarily cultural tradition or practice, and the promising sensitivity of judicial attitudes in certain cases involving 'honour', it seems that the law often continues to identify such cases primarily according to cultural criteria. However, elsewhere the law has taken a contradictory position and ignored cultural context, which can also result in injustice to victims of gender violence. Thus the solution is not for the

[30] [1983] 4 FLR 232.

[31] [1993] SLT 589.

[32] *Sakina Bibi Khan and Mohammed Bashir* [1999] 1 Cr App R (S) 329.

[33] *Re KR (a child) (abduction: forcible removal by parents)* [1999] 4 All ER 954.

courts to disregard all cultural evidence as a matter of course, but to be sensitive to the circumstances of its introduction in individual cases. As Sen (2005, p. 50) argues, "to posit a specificity that is flawed and that fails to see linkages is problematic; to deny specificity if it exists is also problematic". At the same time, greater focus on the gendered aspects of honour-related violence would place it more firmly within the spectrum of violence against women across all communities in the UK, with less risk of stereotyping and stigmatising ethnic minority communities. As more cases of honour-related violence come to light and are subjected to judicial scrutiny, it is to be hoped that the need to incorporate both gender and cultural factors appropriately into the legal process will become more evident. Until such time, the categorisation of 'honour crimes' continues to raise more questions than answers.

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