

# Examining a Conceptual Fallacy on Culture under the Women's Convention

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## Review Article

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## ABSTRACT

This Article conceptualizes culture under the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), which states that traditional, cultural attitudes cause gender-based violence (GBV) as an empirical puzzle. Prominent western scholar Merry (2003) critiques this reference. However, non-Western scholars from Israel, Latin America, India and Africa concur in the legal opinion that traditional, cultural attitudes cause GBV. Empirical evidence on the sati (widow burning) of Roop Kanwar (1987) and the Parliamentary reversal of the Shah Bano Judgment (1986) demonstrate that traditional cultural attitudes cause GBV. This negates Merry (2003) and demonstrates the intensity of GBV in non-Western cultures.

## INTRODUCTION

This Article conceptualizes the concept of culture under the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), aka the Women's Convention, as an empirical puzzle in terms of the discipline of political science. Thus, it speaks directly to the debate between political science and public international law as a principle of a legal treaty is analyzed as a research puzzle in social scientific terms. The standard enquiry between the disciplines of political science, especially international relations, and public international law has taken place in the context of studying the causal conditions under which nation-states comply with the rules of public international law [1]. This Article speaks to this debate by uncovering another facet in the relationship between the two disciplines. For the first time in the history of public international law, the CEDAW's due diligence obligation is conceptualized as an empirical phenomena or puzzle as is normally understood within the contours of political science. The due diligence obligation contains the foremost exposition on the concept of culture under the CEDAW. The due diligence obligation is conceptualized as a research puzzle to detect a fallacy in the arguments of one of the foremost Western scholars on the CEDAW. The CEDAW Committee is quite incorrect to reference the concept of 'culture' in its discussions with state parties. The CEDAW Committee for viewing culture

as static and unchanging in non-Western contexts. This usage of culture is critiqued for embodying a colonial metaphor and for its assumption that traditional, cultural attitudes cause gender-based violence (GBV) in non-Western cultures. Human rights cultures in non-Western contexts are fluid and dynamic. They encompass harmful cultural traditions as well as a new human rights activist culture that contests the conception of culture as static and unchanging.

However, the current Article argues that legal scholars in the global south who are familiar with the material contexts of the role of harmful cultural traditions in causing GBV have specifically argued that traditional, cultural attitudes cause GBV. This concurs with the legal conception of culture by the CEDAW Committee. Hence, this Article specifically demonstrates that is at variance with the legal discourse of non-Western scholars as well as the CEDAW Committee [2]. This issue is decipherable only when the CEDAW's conception is set up as an empirical puzzle within the discipline of political science. The various explanations and the legal scholars predominantly from non-Western cultures can be conceptualized as alternative explanations within the jargon of political science. These explanations will be adjudicated by empirically observing GBV in Indian society vis-à-vis the CEDAW.

This entire puzzle is set up in the context of India's Declaration to CEDAW's Article 5(a). India acceded to the CEDAW with a Declaration to Article 5(a) in 1993. This Declaration states that the Indian state will not affirmatively intervene in the religious traditions of its minorities even when so required under the CEDAW. The Indian state has reserved its obligations from interference into local cultural traditions that cause GBV. Ostensibly the Declaration reserves India's obligations from interference into the religious customs of its minority religious communities. But, this Article will demonstrate that India's Declaration actually protects the harmful cultural practices in Indian society and culture that cause GBV flowing from both the majoritarian Hindu religion as well as the minority Islam religion. The empirical evidence then is at variance with explanation that the CEDAW Committee is incorrect to castigate the role of harmful, cultural traditions in causing GBV. This Article demonstrates that the CEDAW Committee is quite right in stating that traditional, cultural attitudes cause GBV. This is done by examining empirical evidence in India. This empirical evidence comprises macro-structural moments prior to CEDAW accession by India in 1993. They comprise the sati of Roop Kanwar in 1987 and the Parliamentary reversal of the Shah Bano Judgment in 1986. These two moments indicate that in India traditional, cultural attitudes indeed cause GBV. These moments are a mixture of moments situated within Hinduism as well as Islam. They permit a macro-structural crucible of observation on the nature of traditional, cultural attitudes in Indian society. Cogently, they demonstrate the validity of the CEDAW's conception of culture and contest the conceptualization.

This Article is organized as follows: contains the basic conceptualization of an empirical puzzle within political science. The CEDAW's conception of culture as an empirical puzzle in terms of political science using the theoretical framework explained presents alternative or differing explanations on the phenomenon of the CEDAW's concept of culture by Western scholar- and other non-Western scholars from India, Latin America and Africa. The CEDAW Committee's jurisprudence as representing a static and colonial metaphor. However, this Article presents an alternative discourse by non-Western legal scholars who concur in the view of the CEDAW Committee. The presence of alternative explanations converts the conception of culture by the CEDAW Committee to an empirical puzzle within the methodology of political science. The variance in scholarship between Western and non-Western scholars represents alternative explanations. These require adjudication on the basis of empirical evidence to determine which explanation is correct. To undertake this enterprise, two historical moments prior to CEDAW accession by India are utilized. Thus, the empirical evidence revolves around India's Declaration to the CEDAW, which has reserved India's obligations from interference into the harmful, cultural traditions of its minority community. These moments are significant for representing the macro-structural scope of GBV in Indian society. They represent critical junctures on CEDAW accession as the sati of the Parliamentary reversal of the Shah Bano Judgment are situated closest in time to India's accession to the CEDAW. These moments serve as historically fortitudinous occurrences of the macro structural nature of GBV in Indian society and permit some empirical and scientific observations on the nature of India's compliance with the CEDAW as well. These moments attest to the validity of the CEDAW Committee's conception of culture that traditional, cultural attitudes indeed cause GBV. They imply has been quite wrong to castigate the CEDAW's conception of culture as static and unchanging. The CEDAW Committee has articulated an accurate legal conception of culture and non-Western feminist movements is in the forefront of redressing the harmful cultural traditions that cause GBV. The variance with alternative explanations by non-Western legal scholars has not been accounted for by existing scholarship. This variance needs to be seriously considered for a proper global worldview on the material nature of GBV.

## LITERATURE REVIEW

This Section will explicate the methodology of political science which is utilized by this Article. Currently there exists a lack of specialized discourse that can speak across both disciplines of political science as well as public international law. This artificial divide can be bridged by utilizing basic elements and concepts of political science to enable conceptual disciplining of the concepts of public international law. The arguments of “Designing Social Enquiry- Scientific Inference in Qualitative Research” which is a basic foundational text in political text will be presented. The basic building blocks of conceptualization in political science are utilized by this Article in conceptualizing the CEDAW’s conception of culture, the arguments of non-Western legal scholars and evidence in the context of India’s CEDAW compliance as an empirical puzzle.

The goal of social science is to produce an inference about the social world. Social science research involves posing a question about a phenomenon in the real world, examining data and making valid inferences about that phenomenon. A descriptive inference comes to a conclusion about unobservables based on observable data. This logical step is a necessity and an essential aspect of a research puzzle. A reasonable inference about unknowables is made on the basis of data and empirical evidence. Social science research poses questions about the world and answers it in a creative way that should potentially change existing social science perceptions on that issue. Four basic components exist in any research design- a theory, data and use of the data. First “a research project should pose a question that is important in the real world”. A research design should demonstrate something important about the real world.

This Article takes up the timely question of the role of traditional, cultural attitudes in causing GBV. It hypothesizes that the due diligence obligation to the CEDAW has accurately characterized the situation of GBV worldwide. Thereby, it infers that traditional, cultural attitudes cause GBV worldwide on the basis of the phenomenon of the due diligence obligation. Particularly, in Third World cultures like India harmful traditions emanating from cultural and religious practices are responsible for causing GBV. Hence, the question that this Article engages in in classic social scientific jargon is whether traditional, cultural attitudes indeed cause GBV. Western scholarship exemplified by the foremost scholar on the CEDAW Sally Engle Merry, seems to believe otherwise.

This Article uses the building blocks of conceptualization of a research puzzle in political science to conceptualize the legal concept of culture under the CEDAW as a puzzle. The beauty of empirical research is that its methodology is public. This means that the research methodology uses “explicit, codified and public methods to generate and analyze data whose reliability can therefore be assessed”. Research methodology involves observation of phenomena, posing questions about those phenomena and inferring scientific observation off this data. The primary aspect of a research puzzle in political science is its scientific method. Social scientific research is inherently a “social enterprise” meaning that it presents conclusions that are not the sole prerogative of a researcher but belongs to the community of social scientists. The errors and fallacies in conceptualization can be publicly demonstrated.

This Article demonstrates that has committed some errors scientifically. This is done by conceptualizing the CEDAW’s concept of culture as a research puzzle or an empirical phenomenon. The CEDAW has articulated that traditional cultural attitudes cause GBV [3]. This Article demonstrates that castigates this reference as “static and unchanging” and reflecting a colonial mentality. However, legal scholars from non-Western cultures argue that traditional, culture causes GBV. This converts the CEDAW’s concept of culture to an empirical phenomenon. The most prominent of Western scholar on the CEDAW, Merry, and a concatenation of non-Western legal scholars are proffering different legal judgments. This can be adjudicated by application of the scientific method of inference of social science. This method is easily verifiable as all data and inferences are presented herein. Readers can evaluate the empirical evidence for themselves and judge the conclusions.

Social scientific research observes reality and simplifies it. This Article abstracts the concept of culture on the basis of the CEDAW. For, the CEDAW’s legal conception of culture is a statement on the material experience of GBV worldwide. One characteristic of generalizability is that it represents “a class of events about which meaningful generalizations can be made”. Since the CEDAW’s conception of culture has been crafted on the basis of feminist voices worldwide, it is a generalizable statement on the nature of GBV. Thereby, it satisfies the important criteria of generalizability. This criterion of generalizability is essential to bring the CEDAW’s concept of culture within the domain of social science.

A hypothesis presents an explanation of an empirical phenomenon by permitting evaluation of evidence in the real world. It presents “new” and “formerly unobserved” facts. A hypothesis is evaluated against data in the social world. A hypothesis presents an explanation of the causal link between empirical phenomena. This should be capable of being observed empirically in the social scientific world.

Social scientific research is “a process of discovery within a well-established scientific structure of enquiry”. It involves collection of research data that questions existing knowledge and proposes a new way of looking at the world through empirical observation. A theory is basically propounded by the researcher and then evidence is presented that contests existing conceptualization. In this context, this article contests the conceptualization of the CEDAW’s concept of culture. This Article argues that the CEDAW and the CEDAW Committee have articulated a correct conceptual link between traditional, cultural attitudes and GBV. Empirically, a fallacious conceptualization of culture reflecting a Western world view. The four analytical building blocks of research- “the research question, the theory, the data and the use of the data” will be used to elucidate the research puzzle of the current Article. The research question interrogates an important phenomenon in the social world that really matters. This Article interrogates whether the conceptualization of the CEDAW Committee’s articulation of culture is empirically valid. This is important in the context of the international movement against GBV as a view that is quite different from the legal and material understanding of culture in non-Western contexts. Culture in a way that is at variance with the international movement against GBV. In this way, this concept of culture has obfuscated scholarly discourse as this theoretical and empirical fallacy has not been hitherto detected. Scholarly literature assumes that presents an accurate view on the CEDAW Committee’ concept of culture. Thus, it is necessary to clarify the concept of culture under the CEDAW to determine the veracity of the explanation. This Article is part of the larger endeavor to build some normative conceptual building block within political science that can accurately capture the empirical nature of GBV worldwide. As part of that effort it is necessary to conceptually clarify the concept of culture under the CEDAW so that it can be properly used as a jurisprudential tool of analysis. This conceptualization should reflect the material experience of GBV worldwide to be accurate. Currently, the predominant explanation of Merry presents a fallacious conceptualization as it has conflated the concept of static culture within anthropology and incorrectly applied it in the context of the international movement against GBV. The process of scientific inference is deliberately used by this Article to make conceptualization accessible and fool-proof to other researchers. In order to avoid the traps caused conceptualization, this Article utilizes the concepts of a research design under political science [4]. Hence, simultaneously this Article speaks back to the disciplines of political science and public international law thorough the analytic of gender. Both these disciplines have been castigated for insufficiently representing gender. This Article uses an understudied concept under public international law- the due diligence obligation to the CEDAW to make its case. Therefore, this Article is an interdisciplinary endeavor. This Article constructs an explanation on the precise relationship between traditional, cultural attitudes and GBV that can be easily verified across cultures worldwide. Furthermore, a research design should deliberately choose a research hypothesis that is suspected to be false. This is part of the scientific endeavor to generate verifiable and testable theory that can materially aid the international movement to end GBV. A solid social scientific conceptualization of GBV will present a clear roadmap for research on this issue and also speak back empirically to the experience of GBV. This Article has picked conceptualization of culture suspecting it to be false and tests it against empirical data to confirm its validity.

Further, a theory in social scientific terms is a “reasoned and precise speculation” about an answer to a puzzle. A theory also demonstrates why it is correct in opposition to other explanation. This Article argues on a speculation of the nature of GBV worldwide that traditional, cultural attitudes indeed cause GBV. Hence, there exists reasonable suspicion that the CEDAW Committee’s articulation of the concept of culture is actually accurate. However, the CEDAW Committee’s jurisprudence is just contained in the form of legal principles, whereas applied anthropological concepts to analyze the same. This brings the issue within the interdisciplinary paradigm of social science and warrants application of social scientific methodology to determine the veracity of the theoretical claims. In order to disprove a theoretical claim, a new theory has to propose the reasons as to why the existing theoretical claim is fallacious. The theory should be proved with “observable implication.” This Article uses the evidence closer in time to India’s CEDAW accession in 1993- the sati (widow burning) of Roop Kanwar in 1987 and the parliamentary reversal of the Shah Bano Judgment in 1986 as observables to contest the theoretical implications of Merry. This theory uses the CEDAW’s conception of culture within the due diligence obligation as a parsimonious way of representing the phenomenon that traditional, cultural attitudes cause GBV.

Another major component of research is collection of information on the dependent variable. In this case, the dependent variable in the causal chain of the due diligence obligation is traditional, cultural attitudes. This Article uses the macro structural moments on the nature of GBV in Indian society to demonstrate the truth content of the causal chain of the due diligence obligation that traditional, cultural attitudes cause GBV. These moments are important for parsimoniously demonstrating the causal historical trajectory of GBV in Indian society. Hence, they satisfy the condition of “explaining as much as possible with as little as possible”. These two moments permit the greatest of leverage on assessing the validity of the causal trajectory of the due diligence obligation. Furthermore, they satisfy the concept of uniqueness and permit the testing of the generalizable statement of the due diligence obligation. For, this article reduces the legal principle of the jurisprudence of the due diligence obligation to an abstract generalizable statement- that traditional cultural attitudes cause GBV. Since, this is a complex statement potentially encompassing the situation of GBV worldwide, there needs to be a way of abstracting this casual frame and isolating it for empirical observation.

The two historical moments selected by this study demonstrate a conflict between the right against GBV and the right to freedom of religion. The sati of Roop Kanwar was an issue whereby an 18- year old bride was immolated on her husband’s funeral pyre in accordance with traditional Hindu custom. The reversal of the Shah Bano Judgment was a confrontation between traditional, patriarchal attitudes and the right against GBV. Both moments demonstrate a confrontation of retrogressive Hindu and Islamic attitudes on gender with the right against GBV. Hence, the statement of the due diligence obligation that traditional, cultural attitudes cause GBV can be tested by empirically observing these movements.

The puzzle then in terms of political science is whether traditional cultural attitudes actually cause GBV. This Article hypothesizes on an examination of the CEDAW Committee’s jurisprudence that traditional, cultural attitudes indeed cause GBV. Western scholarship exemplified present one version wherein she castigates the reference to traditional, cultural attitudes by the CEDAW Committee. Merry argues that this reflects a static view of culture. Instead she contends that non-Western societies have a fluid conception of culture that includes the new human rights culture as well as the backward cultural attitudes and practices. This implies indirectly that traditional, cultural attitudes do not cause GBV. Whereas, non-Western legal scholars have made a paradigmatic observation on their own societies. Analytical jurisprudence on the CEDAW’s concept of culture emanating from long and distinguished experience makes a completely different statement on the conception of culture. This Article simply demonstrates on the basis of political science that traditional cultural attitudes indeed cause GBV by evaluating these alternative or differing explanations in the context of India. India is actually a test case in as much as it manifests some of the worst empirical conditions of GBV.

The following section will explicate the dependent variable-the concept of culture under the CEDAW.

### **The concept of culture as articulated by the CEDAW**

The legal conception of culture under the CEDAW’s jurisprudence is contained in the foremost exposition against GBV worldwide- the due diligence obligation. This was initiated into the CEDAW through a General Recommendation (GR) known formally as GR No. 19. It is important from the perspective of legal scholarship to note that the due diligence obligation enunciated by GR No. 19 has not yet been recognized as a formal principle under public international law. Nevertheless, it carries the same sanctity as a legal principle as it has been articulated thus. In fact, the supplementary recommendation to GR No. 19, GR No. 35, recognizes this principle as having acquired a similar status as a principle of customary international law from state practice to this effect.

For a brief background on the due diligence obligation, it is important to note that when the CEDAW was promulgated in 1979, nation-states strongly interjected on the adoption of a principle condemning the role of cultural attitudes in causing GBV. Third World nation-states predominantly in Asia and Africa feared the adoption of a legal principle on GBV that forthrightly condemned harmful cultural attitudes. This international deadlock has been termed the worst in the compliance history of human rights treaties. The CEDAW possesses the notorious distinction of having the largest number of Reservations and Declarations to any human rights principle ever precisely on the ground that the right to freedom of religion cannot trump the right against GBV. It was also termed the “poor cousin” of human rights treaties as it was not even accorded a headquarters on par with other human rights treaties in Geneva.

However, due to the prolonged struggle of the international movement against GBV, the CEDAW Committee adopted a formal recommendation in 1992 termed as General Recommendation No. 19. This principle incorporated the jus cogens right against torture into the CEDAW. By implication, the right against gender-based discrimination under Article 2 of the CEDAW was interpreted to mean a right against GBV. This was formally explicated in the form of the due diligence obligation in this General Recommendation. This Recommendation is historically significant for incorporating the right against GBV explicitly into the CEDAW. Hence, the due diligence obligation is derived from this contentious history.

Paragraph 11 of GR No. 19 makes clear that “traditional attitudes by which women are regarded as subordinate to men” perpetuate GBV on a widespread scale. These attitudes result in occurrences of GBV like “family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision.” The justification of such acts of GBV stemmed from a desire to exert patriarchal control over women. The result of such violence and coercion deprived women of their legally guaranteed and protected rights under international conventions. Traditional patriarchal attitudes contributed to maintaining women in subordinate positions within and outside of the family. These attitudes contributed to the objectification of women and increasing stereotypical gender expectations in society.

The subsequent interpretation of this principle by the Special Rapporteurs appointed by the United Nations further present a cogent picture on the nature of GBV. A generalizable thread from the due diligence obligation to the reports of the Special Rapporteur runs intact. This generalizable thread as an empirical facet of the CEDAW's jurisprudence on culture indeed reiterates that traditional cultural attitudes cause GBV.

The foremost exposition of the role of cultural attitudes in causing GBV can be found in the Preliminary Report of the Special Rapporteur on Violence (hereinafter “Report”). GBV has been recognized as emanating from the historically unequal relationships of power between men and women by this Report. This male dominance is rooted in cultural traditions and precepts flowing from socialization. Cultural specificities like female genital mutilation, dowry murders and sati exacerbated violence against women. The Report specifically notes that patriarchal suffering and perpetration are universal. The Report emphasizes the obligations of the state in redressing violence as it stemmed from societal and cultural relationships. Thereby, the role of cultural attitudes and traditions in causing GBV has been made explicit by this Report.

Further, economic and social factors exacerbated to create a culture of violence against women. The family was especially an institution which rationalized and perpetrated behavioural patterns of violence. Cultural attitudes in the family negatively primed women into believing in their inherent subordination. Historical patterns of subordination are also resurrected through patriarchal control over the systems of knowledge. Cultural patterns of GBV stemmed from an inherent desire to control female sexuality. Perpetration of male lineage by demarcating reproductive capabilities of women, traditions of violence stemming from conceptions of honor and imposition of restrictive attitudes on the everyday behavior of women permeate to create a superstructure of cultural violence. Further cultural ideology is utilized to justify and perpetrate GBV. Religious traditions sanctified the use of force by husbands. Perceptions of masculinity reiterated these controlling tendencies. Cultural factors like exacting beauty standards also exacerbated violence against women.

The Report specifically quoted the Declaration on the Elimination of Violence against Women and issued an injunction to states from invoking custom or religion as a factor for failing to take action to redress GBV. The Report noted that “custom, tradition and religion” were frequently the causes invoked in justifying state inaction in GBV. Specifically, the Report noted that cultural practices formed an ideological superstructure that were “resistant to change and transformation.” Further, the Report noted that traditional and customary practices emanating from religion resulted in violence against women. Fundamentalist religious practices perpetrated acts of gender-based discrimination against women. Cultural factors like “foot binding, male preference, early marriage, virginity tests, dowry death, female infanticide and malnutrition” specifically resulted in violence against women. Practicing these traditions in an undiscerning way perpetrated and exacerbated violence against women. The Report noted that all customary practices did not require castigation but cautioned that those perpetrating GBV required severe condemnation and elimination. The media perpetrated traditional gender stereotypes by “glamourizing” violence against women. The perpetration of cinematic images of women humiliated, raped and battered in the media exacerbated societal and cultural factors that resulted in violence against women. The private sphere curtails the ability of women to express acts of GBV committed against them by cultural inhibitions.

Therefore, a brief abstract of this Report emphasizes the role of cultural attitudes and traditions in causing and exacerbating GBV. The cultural acceptance of GBV could be witnessed in governmental inaction as government acts were wont to intervene in culturally accepted practices of violence against women. This culture generates a silence based on fear. Women are bullied into non-expression of the acts of GBV committed against them. Culture rationalizes and creates tolerance for acts of violence against women.

Further in 2017, GR No. 35 supplemented and strengthened the concept of GBV under GR No. 19. GR No. 35 recognized that social, political and economic factors contributed to gender stereotyping and maintaining the situation of GBV intact. It reiterates the argument that cultural, social and political factors exacerbate GBV. Nation-states continued to refuse intervention into GBV citing traditional, cultural attitudes.

Therefore, a cogent reading of GR No. 19, the Report of the Special Rapporteur and GR No. 35 permits a parsimonious conceptualization of the role of traditional, cultural attitudes in causing GBV. Translated into the jargon of political science the empirical phenomenon under investigation is whether traditional, cultural attitudes indeed cause GBV? Jurisprudence under the CEDAW makes an affirmative answer explicitly clear that indeed traditional, cultural attitudes cause GBV. The next section demonstrates how the conceptualization by Merry (2003) is at variance with this legal understanding of culture under the CEDAW. Thereby, this converts Merry (2003) to one alternative explanation on the concept of culture under the CEDAW.

### Alternative explanations on the CEDAW's concept of culture

Ms. Sally Engle Merry, one of the most prominent scholars on the CEDAW, has analyzed the role of culture under the CEDAW in an Article entitled "Constructing a Global Law- Violence against Women and the Human Rights System" which will be the subject matter of analysis of this section. Merry has analyzed the role of culture in the CEDAW and argues that despite the fact it is a 'law without sanctions' it has created a new concept of human rights culture in conceptualizing GBD and GBV. In an ethnographic analysis of the CEDAW she has identified that government representatives, members of the CEDAW Committee and feminist activists refer to 'harmful, traditional, practices' rooted in cultural and religious practices as the main obstacle to gender-based equality. Culture within the CEDAW is critiqued by Merry as a 'relatively static and homogenous system, bounded, isolated and stubbornly resistant'. The assumptions of the CEDAW Committee on culture as 'integrated', 'habitual' and 'consensual'. This conceptualization of culture is critiqued for referring to a historically homogenized system. Therefore, a scathing critique of the conceptualization of culture by the CEDAW Committee for its reference to traditional, cultural attitudes.

Further, the obligation requiring states to condemn and outlaw 'traditional, cultural attitudes against women' found in the other foremost legal documents conceptualizing violence against women- the Declaration on the Elimination of Violence Against Women, 1993, the Vienna Declaration and Program for Action, 1993, and the Beijing Declaration and Platform for Action, 1995, for embodying this concept of culture. The CEDAW Committee and human rights groups are also critiqued for their reference to 'traditional, patriarchal culture' when referring to other aspects of GBD. Hence, the reference to the role of traditional, cultural attitudes in causing GBV within the CEDAW as embodying a static and colonial version of culture.

This critique is explicit in her interpretation of CEDAW compliance in Guyana wherein posits a dichotomy between a 'modern legal system' and the 'apparently ancient and unchanging traditional culture of the rural areas...riddled with patriarchal culture' and critiques its colonial connotations. The current Article presents empirical evidence subsequently to demonstrate that this dichotomy can be re-conceptualized as representing opposite ends of a continuum, which better explains the empirical contradictions. The CEDAW discourse on India's compliance as demonstrating anxiety about India's policy of 'non-intervention' in the personal laws of its religious communities which retained 'patriarchal traditions' intact. In this context, the CEDAW Committee commented on the fact that the persistence of 'customary practices such as sati, the dowry system and the devadasi (temple prostitute) system' exacerbated practices of GBV, thereby drawing a link between culture and GBV. Merry interprets the Hindu right-wing demand for codification of all personal laws on a system akin to the Hindu Personal laws which is contested by the feminist movement, as an outcome of political contestation rather than 'tenacious ancient culture.'

Finally, the discourse of 'patriarchal culture' to resonate in the compliance commitments of Egypt, which justified its new legislation on divorce, permitting women to unilaterally divorce their husbands, on an egalitarian Islamic culture that was perverted by everyday patriarchy. Hence, a common discourse of patriarchal culture that dominates description of local cultures by the CEDAW Committee in the three countries' compliance commitments that she reviews. This concept of culture to being 'fixed, homogenous and as a barrier to change'.

A difference between this reference to culture and an alternative one propounded by local NGOs when they draw upon gender emancipatory meanings present in different cultures to frame the legal principles of the CEDAW in localized formats. Particularly, Articles 2 and 5 of the CEDAW are critiqued for this particularized reference to culture which is contested by a newer anthropological conceptualization that views culture as 'fluid' and constantly in contestation. Hence, two apparently disparate concepts of culture- the static and unchanging one in the CEDAW Committee's formulations that conflicts with the fluid version of culture deployed by anthropologists and that, according to her, is evident in some discussions of the CEDAW Committee under observation.

This Article refutes conceptualization of culture by parsing the empirical record of Roop Kanwar's sati to demonstrate that an essentialized version of culture stretching right back to ancient times and embodying ancient metaphysical principles of Hindu gender subordination can be witnessed unhindered in the modern-day context. This negates the contention of that ancient, patriarchal culture does not cause GBV or that the CEDAW Committee's conceptualization of culture requires critique for embodying a universal vision of human rights. Similarly, the Parliamentary reversal of the Shah Bano Judgment reveals a similar conclusion. Prior to that examination, the next section presents an alternative discourse on the CEDAW's concept of culture by non-Western scholars.

Now, this article examines a set of discourses in the Third World that run contrary to the explanation. These theorizations which provide sufficient basis to ground the hypothesis that an empirical generalizable thread runs through them. These discourses unequivocally indicate that patriarchal, religious and cultural attitudes in Third World countries are the primary cause of GBV, thereby reiterating the explanatory causal trajectory of GBV identified by the CEDAW's due diligence obligation.

CEDAW lawyer from Israel, Frances Raday, explicates the relationship between culture and patriarchy by arguing that gender within traditional cultures is "that of the systematic domination of women by men, of women's exclusion from public power, and of their subjection to patriarchal power within the family". She unequivocally argues that "claims to protect traditional culture and to practice religious freedom" are carefully constructed obstacles against equality on the basis of gender. When the CEDAW refers to the concept of culture, it does not refer to the "collective identity" of a people but to the traditional, patriarchal attitudes that cause violence against women and GBD. That only when the patriarchal factors of a culture result in violations of gender equality, does it become problematic from the standpoint of secular human rights doctrine. The 'fundamental tenets of monotheistic religions' like Hinduism and Islam are at great variance with the notion of individualism embodied in human rights doctrine.

This opposition manifests itself in patriarchal injunctions against substantive claims of gender equality. This article argues that conventional religious doctrine has subordinated women within the family, restricted their access to the public sphere and perpetrated violence as a means to maintain dominance and subjugation. Hence, the very source of patriarchal oppression has been identified as emanating from religious practices and customs which rationalize the perpetration of violence. This article does perspicuously note that the defense of culture is deployed and masquerades as Western imperialism, in terms of post-colonial claims or as contradicting the rights of indigenous populations. The confrontation between anthropologists and culture occurs over the issue of traditional, patriarchal practices emanating directly from religion. The practices of female infanticide, female genital mutilation, forcible marriages, payment of bride prices, dowry violence, patriarchal control over property, the power of patriarchal kin to forcibly impose and enforce norms of gender subordination, malnourishment of female members of the family and restricting women from the public sphere are all identified as specific cultural practices that perpetrate violence against women has analyzed the role of three of the most popular monotheistic religions- Islam, Judaism and Christianity to argue that they have systematically institutionalized patriarchy. The role of institutionalized religion within secular states amounts to a "haven against social and cultural change, they preserve ethnic loyalties, permit the authority of the family to act as a barrier against rationalized education and scientific explanation".



In enumerating the 'theories of culture,' patriarchal practices cannot be defended as part of an essential culture. She interrogates the relationship between a law and the culture from which it emanates in the context of the CEDAW. She claims that the CEDAW's mandate of gender-based equality is meant to create legal change in an environment characterized by cultural attitudes that resists such change. The claim by nations that they will implement the provisions on gender equality only when they do not conflict with the principles of the Sharia is paradigmatic of a contest between traditional, gender norms and the modern concept of gender-based equality embodied by the rule of law traditions.

But, in articulating the relationship between law and culture the mirror imagist legal theorists believe that different rationales can result in valid law emanating from different cultures to argue that non-legal cultural practices can also be as effective as the law in effecting cultural change [emphasis supplied]. There seems to be an elision in the leap from culture to law in her argument and this article provides evidence to demonstrate that widespread societal preference for harmful, cultural practices legitimize practices of GBV. Hence, this renders it necessary for the existence of an international legal instrument like the CEDAW based on a common minimum consensus on the principles of gender equality, negating the idea that cultural practices can become law without reference to a universally accepted principle of gender equality.

Reiterating the above discourse of Third World scholars, noted Indian CEDAW lawyer Indira Jaising argues in the context of explicating the legal implications of Article 2 and 5 of the CEDAW and in reference to legislation on domestic violence in India, that "any law addressing violence must be cross-cutting, culturally neutral and universally applicable". She presents the argument that culture evolves historically and hence its contingency on lived-experiences warrants that women be given the right to "opt out" of cultural practices that deny them their constitutionally guaranteed rights which makes derogations from these basic principles of customary law illegal and impermissible.

Further, the Ugandan Constitution has a provision which is historic in the protection it affords to women against traditional cultural practices. Women "the right to affirmative action" to redress injustices arising from 'history, tradition or custom'. That CEDAW's Article 5 is highly relevant in the traditional, patriarchal atmosphere of Africa where men possess the right to determine inheritance and tend to exclude women. He provides the example of Nigeria where women in their role as 'widows, wives and daughters' are deprived of their right to inheritance by the prevalent customary laws. A Kenyan case, is cited where customary African traditions denied a woman the right to bury her husband and the court of Appeal stated that 'there is nothing repugnant or immoral...about the customary law'. The practices of 'child marriages, female genital mutilation and puberty rites' militate against the reproductive rights guaranteed under the CEDAW. Particularly, in Zambia, practices like sexual taboos, "dry sex" which refers to the self-inflicted practices of drying out the vagina and the forced sexual intercourse of a widow following the death of her husband increased the risk of sexually transmitted infection and emanated from cultural tradition. Certain valiant attempts by the courts of law to accord protection to women: when a Nnwei custom was declared void as it barred a woman from giving testimony in a court of law and when the Supreme Court of Nigeria held. that the customary practice of alienating a widow from the property of her deceased husband is a "barbarous and uncivilized custom, which should be regarded as repugnant to equity and good conscience and therefore unacceptable".

Further, the role of 'harmful, traditional practices' in causing "forced marriages, virginity testing, widow's rituals, 'u ku ngena' (levirate and sororate unions), female genital mutilation, breast weeping/ironing and witch hunting" despite violating international law has been attributed in the instance of South Africa to a common conscience of morality that believes in these practices. Thereby, it can be seen that traditional, cultural attitudes emanating from religious practices have been deemed harmful in Africa and are subject to contestation by the liberal language of the law.

Therefore, the causal trajectory of harmful, cultural traditions resulting in GBV and the role of CEDAW's Article 5 in redressing these practices can be witnessed in the jurisdictions in Africa, India, Latin America and Israel. The above contending explanations have sufficiently problematized the explanatory cause of GBV identified by the CEDAW and its due diligence obligation. First World scholar castigates the mention of traditional, cultural attitudes in causing GBV, while Third World scholars notably from Israel, Latin America, India and Uganda concur in the argument that in their societies traditional, cultural attitudes do indeed cause GBV. It can be witnessed then that the empirical phenomenon of culture under the CEDAW possesses multiple explanations. One set of explanation castigates the reference to culture as static and unchanging and reflecting a colonial way of thinking, while, non-Western scholars differ and agree that traditional, cultural attitudes as identified by the CEDW are actually responsible for causing

GBV and GBD in their societies. Empirical evidence from India will be used to adjudicate the validity of these alternative explanations.

### Empirical evidence

The story of Roop Kanwar's sati (widow burning) is as follows: Roop was merely 18 and a bride of six months, when she was cruelly forced into the funeral pyre of her husband, in the wake of his death on September 4th 1987. It was clear that this sati was conducted with the "tacit approval of society." Spectators openly lauded and cheered the event on. Reportedly there were 900 people present which soon swelled to thousands at the time of the occurrence of the sati. This is evident from the fact that after Roop's death, attempts were made to glorify the sati and present it as a heroic act of self-sacrifice. Roop's sati has been presented as a "glorious tradition of Hindu and Rajput culture".

The sati was portrayed as emanating from rustic and rural ignorance. But evidence exists to indicate that support for Roop's sati was widespread and majoritarian. Deorala- the village where Roop's sati took place is certainly not backward but indicated urban prosperity even way back in 1987 when an independent feminist team of investigators undertook a serious examination of the sati and its aftermath. This shows that an insidious line of traditional cultural attitudes that cause patriarchy co-exist in the context of modernity. They are not disparate from each other as suggested when she posits a difference between the static culture reference of the CEDAW Committee and a fluid conception of culture. Roop herself was discovered as being an educated girl bred in the tenor of city life. Deorala too exhibited signs of modernity as per the feminist investigation and did not demonstrate any ostensible signs of poverty endemic to the Indian village. Women and men were found to be well-dressed in either Western clothes or in good Indian outfits negating presumptions of rustic backwardness. In the midst of all this modernity, this sati was committed.

In 1987 when the feminist team visited the site in October immediately after the sati was committed in September, they found it to be well-guarded by schoolboys. Political slogans were raised and the feminist squad also witnessed a rigorous religious ceremony- the arti or circulating a flame in front of the place where the sati took place. A significant crowd had gathered for this ritual evening ceremony. The entire ceremonies seemed deliberate and not one emanating from rustic ignorance. The people leading this evening ritual were estimated to be prosperous landowners with dominant political connection. They were categorized by the feminist report as a "religious elite." The religious cult that coalesced in the aftermath of Roop's sati was unprecedented. The state of Rajasthan where Roop's sati took place has witnessed many satis historically, but the practice of glorifying it was attributed to be a relatively new phenomenon. The nature of the worship that emanated around Roop's sati has been termed by the feminist report as a "big ceremonial cult." This was attributed to an elite religious revival that promoted such openly religious symbolism as worshipping at a site of the sati.

From the above evidence, it can be seen that modernity has ebbed and spurred a deep religiosity which has been cultivated by an urban elite. Roop's sati has become a site for the confluence of ultra religious sentimentality in the midst of modernity. This then demonstrates that ancient Hindu patriarchal culture that incites and causes GBV runs hand in glove with the elements of modernity. The symbols of modernity have not been able to wipe out ancient patriarchal customs emanating from Hinduism. The nature of the glorification of Roop's sati only demonstrates that modernity sans the liberal ideals of gender-based equality has spawned and fostered the tenacious tentacles of ancient custom. This implies that the CEDAW Committee is not wrong to reference the role of traditional, patriarchal culture in causing GBV. Mere modernity in India has been insufficient to generate widespread societal opposition or condemnation of Roop's sati. If anything, modernity has only encouraged the commission of this act. Hence, Merry (2003) is quite wrong to castigate the reference to traditional, patriarchal culture by the CEDAW Committee. This reference is an empirical reality and insidiously traditional, patriarchal culture that results in GBV co-exists in the presence of modernity making the requirement of the liberal principles of gender equality emanating from the CEDAW and imminent necessity. There may exist a minority culture that is fluid and which contests traditional patriarchal practice. But the majoritarian culture indeed consists of traditional cultural attitudes that cause GBV as is evident in the case of Roop's sati.

Further, the fluid culture that is not merely representative of a modern human rights culture that contests traditional, patriarchal culture. For, the bottom line of the reference to traditional, patriarchal culture is a static metaphor which should be replaced by an alternative version on the fluid conception of culture encompassing human rights. Culture is not static and merely consisting of ancient patriarchal attitudes but includes a modern notion of contesting human rights cultures. But an examination of the nature of Roop's sati presents a completely different picture. It reiterates the insidious role of traditional, Hindu patriarchal culture glorifying sati in the context

of modernity. This negates the presumption that modernity exclusively fosters human rights. In the macro-structural instance of Roop's sati it clearly has not done so.

Furthermore, the fluid version of culture is not the sole prerogative of modern society. The feminist investigation on Roop's sati in 1987 talks about Mirabai, a 15<sup>th</sup> century woman saint within Hinduism who rejected notions of sati and embodied a feminist spirit. Mirabai composed a lot of devotional songs which resonate in the hearts and minds of many Rajasthani and Indian women in the present day. Mirabai famously rejected the patriarchal confines of a husband and the extended patrilineal kinship system and refused subservience to her husband. Mirabai openly proclaims her reverence for the Supreme Being and refuses to be a sati evident in the statement– "Girdhar gasya Sati na hosya." This translates as a negation of sati. Therefore, this embodiment of freedom of the spirit is also a part of the spiritual culture of Rajasthan that in itself negates the idea that a human rights culture is exclusive to the modern age. In fact, the evidence on Roop's sati indicates quite the opposite- Mirabai and her ancient culture seems more feminist than the modern patriarchal cult glorifying sati. A religious political movement promoting the sati was formed in its aftermath known as the "Dharma Raksha Samiti" which is further evidence of modernity promoting the ancient patriarchal rite of sati. Therefore, this negates the fluid conception of culture posited. Modernity fosters patriarchal traditions while a 15<sup>th</sup> century lady saint could seamlessly negate and oppose patriarchal Hindu custom.

It is also important to note that Roop's sati took place with active police complicity. This was proved by police behavior in the immediate aftermath of the sati. The police lent their force to oppose any attempts which challenged the glorification of Roop's sati. A religious leader at that time, Swami Agnivesh, was prevented from an anti-sati procession by the police. He was arrested 27 km away from Deorala and actively prevented from reaching the spot of the sati. The feminist activists preparing the current report were also stopped by the police and prevented from taking photographs. Policemen instead actively encouraged the worship of the sati sthaal- the place where the sati of Roop took place. In fact they even gave cheerful instructions to the female journalists to remove their shoes as a mark of respect under traditional Indian culture and attend the arti (rotating flame ceremony) later in the evening. Furthermore, the police actively encouraged sati worshipers from the surrounding villages who arrived by bullock carts. There was also "popular fervor" in the immediate aftermath of Roop's sati. Thousands of people continued to converge on Deorala at the site of the sati creating a "serious situation" for the State Government of Rajasthan. The police was deliberately asked to refrain from preventing the crowd from sati worship. Therefore, Roop's sati took place in the midst of modernity negating the idea that traditional, cultural attitudes that cause GBV are not an inherent facet of Indian society. Therefore, incorrect in castigating the CEDAW Committee for its reference to traditional, patriarchal customs as they are an empirical reality on the basis of evidence in Roop's sati.

Furthermore, there were attempts at that time to justify Roop's act as a voluntary act of wifely sacrifice. At a preliminary hearing before a trial court in Jaipur, it was reported that Roop was forced into the funeral pyre against her will. Four men, alleged to be relatives guarded the pyre, pushed her back when she tried to escape twice and covered her on the pyre with firewood upto shoulder height to prevent her escape. It is also pertinent to note that her cries were drowned by the din of around 400 spectators and she was seen to have attempted escape from the pyre twice. The feminist report also concluded that there was whole-hearted societal collaboration in the commission of Roop's sati. She was undoubtedly forced into the pyre with the active connivance of her in-laws. Her cries were drowned by the huge din created by the spectators with loud chants of "Sati mata ki jai," chants of veneration of the woman who was committing sati hailing the virtuous act.

Therefore, Roop's murder took place in modern-day India in accordance with ancient patriarchal customs. This clearly negates that traditional, patriarchal culture does not cause GBV. In fact, traditional patriarchal Hindu culture has been clearly responsible in causing Roop's sati and later on in creating a glorifying cult.

One of the witnesses at Roop's sati had this to state, "She had an aura about her. She was calm as the flames enveloped her. This witness admitted that Roop's body was half burnt when he came upon the scene. But this witness rationalized the sati as emanating from traditional custom when he stated that Roop was chanting mantras (Hindu sacred chants) and was sitting with her arms folded in the religious Hindu gesture. Thousands of people commemorated the occurrence of the sati on September 16<sup>th</sup>, twelve days after the event in a religious ceremony, where this witness admitted to his recollection of the event. Therefore, a forced act of sati took place very much in the presence of modernity with attempts to rationalize this act within traditional Hindu culture. This macro structural event then surely negates that ancient traditional culture does not cause GBV. It seems to be very much responsible in causing Roop's sati and in producing subsequent rationalizations.

In reporting the death of Roop, some of the ancient Hindu rationalizations of wifely subservience and subordination were quoted by one news report. It is pertinent to reproduce the same as evidence of the ancient Hindu traditional, cultural attitudes in causing GBV in explicit negation. Hindu mythology contains the classic metaphor on Sita- the subordinate and subservient wife of Rama who demonstrates her fidelity to her husband by throwing herself into a fire as an act of purification. Religious injunctions within Hinduism like the Padmapurana mandate the Hindu wife to treat her husband even when drunk and unruly with great respect. It states that it is commendable and a virtuous quality for a wife to burn along with her husband on his funeral pyre. Roop Kanwar came from the caste of the Rajputs which had traditionally permitted its women to jump into the funeral pyre of their dead husbands. In fact the state of Rajasthan is known for the handprints of women who have committed sati across its forts and monuments. In fact, these handprints are known as sati stones and remain in testimony to the memory of the women who have followed their husbands into the funeral pyre. Hindu tradition also mandates a denigrating and derogatory existence for widows who do not enter the funeral pyre of their husbands. Widows are not permitted to remarry, condemned to live in menial conditions, permitted food only once a day and commanded to shave their heads. They are considered as a sign of extreme bad luck and prohibited from socializing in family functions. Sati on the other hand is commended as an honor on families. Reverence is attached to the families of women who have committed sati- the father of the girl will attain religious merit, honor and become legendary. These attitudes demonstrate the intersubjective priming that occurs in Indian society and which rationalizes sati as a seamless everyday event.

Furthermore, the normal acceptability of sati in the hearts and minds of the people can be witnessed in the conduct of a ceremony, twelve days after the occurrence of the sati. This ceremony was known as the Chunari mahotsav and had Roop's bridal veil as its center piece of worship. This ceremony occurred despite its alleged ban by the Rajasthan state government. This ceremony was termed a carnival as it carried pictures of Roop nursing her dead husband on her lap. Spectators converged in their thousands in the immediate aftermath of the sati and left behind offerings of fruit, grain, clothes, jewels and cash. The huge collection of cash amounting to about \$230,000 actually fostered a desire to build a temple on the spot which was only lightly spurned by the government. Governmental recalcitrance brought forth vehement opposition from the Rajput community in favor of the temple.

Therefore, this Section has emphatically demonstrated on the basis of Roop's sati as a macro structural crucible that traditional, patriarchal Hindu attitudes very much persisted to cause an egregious act of GBV. The instance of Roop's sati abstracts the nature of GBV in Indian society closer to the time of CEDAW accession and permits empirical testing on her castigation of the CEDAW Committee for referring to traditional, cultural attitudes. This castigation is quite unfounded as traditional, cultural attitudes indeed cause GBV. The CEDAW Committee is accurate in referencing this conception of culture.

### **The Shah Bano Judgment**

The second macro-structural empirical instance that will be analysed herein is the Shah Bano Judgment. Shah Bano was a 73- year-old Muslim woman in India who claimed alimony, after her husband divorced her arbitrarily after 43 years of marriage in accordance with the traditional precepts of Islam. Her husband married Shah Bano in 1932 and married a second wife in 1946. Despite the second marriage, Shah Bano was a faithful and devoted wife and cooked Khan's meals and maintained his home in domestic docility. A spate of domestic quarrels resulted in Shah Bano being evicted from her own home and resulted in her divorce. This divorce was through the customary practice of Triple Talaq, wherein as was permissible under the Sharia law in India then a Muslim husband could arbitrarily divorce his wife for no rhyme or reason by mere utterance of the word "talaq" thrice in her presence. This was the strategy resorted to divorce Shah Bano after 43 years in marriage in 1975 and was in itself an instance of domestic cruelty. In 1978, Shah Bano filed a petition for maintenance under the prevailing Criminal Procedure Code for approximately \$40 a month. This was opposed by Khan who claimed relief under the Sharia. Ultimately, the case came up by appeal before the Supreme Court of India, which ordered that Khan pay a marginal alimony of USD \$ 40 a month.

This judgment by the secular court created a stir and controversy amongst the conservative Muslim Ulema in India at that time. They protested the "unwarranted intrusion" into their own affairs of religion. The Imam of Jama Masjid, representing New Delhi's largest mosque in India stated that "We don't recognize this decision. We will not accept such a direct interference with Moslem personal law." The critique of the Judgment by the conservative Muslim opinion centered on four distinct points- the application of the secular Criminal Procedure Code to Muslim Law, the interpretation of Qur'anic verses by the Supreme Court, the disparaging remarks against Muslim women by the Hindu Judge who proclaimed the Judgment and the recommendation in obiter dicta for the necessity of a Uniform Civil Code against polygamous Islam.

This surely demonstrates that in an allegedly modern society in 1986 the judgment of a secular court was engendered deep opposition. This is itself surely negates the argument that traditional cultural attitudes do not cause GBV and that they are a static colonial metaphor. Traditional attitudes seem to be deep-rooted in Indian society manifested in the widespread opposition to the Shah Bano Judgment.

This outrage was not the end of the story. This decision had political repercussions with the Muslim constituency of the then Prime Minister, Rajiv Gandhi's Party, The Indian National Congress, by allegedly handing an electoral defeat. This caused the administration of Rajiv Gandhi to pass the Muslim Women (Protection of Rights on Divorce) Act, 1986, which overturned the verdict of the Supreme Court with regard to maintenance. This law subjected the question of maintenance of divorced Muslim women to the Personal Laws which were vague and undefined. The law merely stated that maintenance was to be paid in whole during the Iddat period which was three months after the divorce. Essentially the concrete amount of maintenance stipulated under the secular provisions of the Criminal Procedure Code, 1973, were compressed to "fair and reasonable" to be determined by the Muslim husband by the new law. Clearly, traditional cultural attitudes caused the Parliamentary reversal of a secular Supreme Court Judgment as an instance of modern society in 1986. Therefore, this disproves Merry (2003) that traditional, cultural attitudes are not an inherent facet of modern society and that they do not co-exist in an insidious fashion in the context of modernity.

Therefore, this section has analysed two macro-structural instances as an abstract of the role of traditional, cultural attitudes in causing GBV to test the veracity of who castigates the CEDAW Committee for such a reference. In both instances, at the macro-structural level, traditional cultural attitudes persisted to cause GBV which holds a number of implications that will be explicated in the following section.

## DISCUSSION

Therefore, the thesis of that the concept of culture referenced under the CEDAW is static and unchanging has been countered by demonstrating that traditional, religious attitudes do indeed cause GBV. These two instances negate the CEDAW's characterization of culture draws on colonial metaphors referring to static images of cultures. The patriarchal Hindu traditions that caused Roop's sati can be traced to ancient times. Also, public international law is indeed not a colonial overture and has correctly identified the causes of GBV in patriarchal cultures.

The cultural relativist position implied observation that NGO's utilize local cultural concepts to frame gender emancipatory messages in a language different from the CEDAW is contested. Reconceptualization of the due diligence obligation as a mathematical continuum demonstrates that the discourse of local feminists during Roop's sati and the fight against the reversal of Shah Bano's Judgment unequivocally resonate with the CEDAW. The gender-equal messages of feminist activists validate the principles of gender-based equality in the CEDAW. Mathematically, both messages emanate from the universal discourse on human rights [5]. The different conceptualizations of gender equality can be plotted on a number line which encompasses their comprehension as intersecting sets. This negates a dichotomy or difference between the local cultural messages deployed by NGO's and the liberal language of the CEDAW.

Next, the empirical instances above refute the argument that the CEDAW is a set of universal gender rights imposed on localized contexts as implied. The conflict between traditional, cultural attitudes and GBV is not one artificially superimposed by Western human rights norms, but one which occurs materially. Hence, castigation of the CEDAW Committee for referring to an outdated version of culture is false on the basis of empirical evidence.

The due diligence obligation resonates intrinsically with Third World non-Western scholars. This negates the contention that there is a need for reliance on moral discourse separate from the CEDAW. The language of the law is also contested. The law is a living entity and dynamically intermediates practices of gender-based oppression in Third World societies. Therefore, a cogent critique has been presented.

## CONCLUSION

In conclusion, this Article has converted statement that the CEDAW Committee is quite incorrect to reference traditional, cultural attitudes in its analysis of CEDAW Compliance to an empirical verifiable hypothesis under the canons of political science. Explanation is quite at variance with the explanations of non-Western legal scholars on the conception of culture under the CEDAW. Ultimately, this Article has endeavored to correct some fallacies in the foremost Western conceptualization of culture under the CEDAW by using analysis grounded in non-Western contexts.

## REFERENCES

1. Kaufman NH, et al. Critiquing gender-neutral treaty language: The convention on the elimination of all forms of discrimination against women. *Women's Rights Human Rights*. 2018;114-125.
2. Wotipka CM, et al. World society and human rights: an event history analysis of the convention on the elimination of all forms of discrimination against women. *Global Diffus Markets Democ*. 2008;3096:303-43.
3. Meyer MK. Negotiating international norms: The Inter-American Commission of Women and the Convention on Violence Against Women. *Official J Int Soc Res Aggr*. 1998;24:135-46.
4. Tang KL, et al. Guaranteeing women's rights: The UN Women's Convention. *Int Soc Work*. 2000;43:7-20.
5. Stephen L. The Zapatista army of national liberation and the national democratic convention. *Latin Am Perspect*. 1995;22:88-99.