

## USES OF CULTURE AND ‘CULTURAL RELATIVISM’ IN GENDER VIOLENCE DISCUSSIONS\*

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### ABSTRACT

This paper aims at analysing whether the concept of cultural relativism is useful in discussing gender violence in multicultural societies, particularly, in the cultural defence cases. It is based on a theoretical discussion supplemented by some qualitative case studies. It concludes that although cultural relativism highlights “toleration” and helps to understand “the contextual nature of any principles of justice”, it has more negative implications than benefits. It prevents normative judgement about harmful cultural practices; it equates culture to views of some dominant groups and therefore obscures some underlying reasons for violence against women; it undermines some women’s agency by constituting them as victims of “cultures” and it might articulate with “nationalist” and “racist” discourses by freezing group differences. In accordance with this, it also provides further thoughts on Turkey by examining the implications of the framing “honour killings” as a matter of “tradition” or “custom” (tre).

**Keywords:** Culture, Cultural Relativism, Women’s Human Rights

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## TOPLUMSAL CİNSİYET ŞİDDETİYLE İLGİLİ TARTIŞMALARDA KÜLTÜRÜN VE “KÜLTÜREL GÖRECELİĞİN” KULLANIMI

### ÖZET

Bu makalenin amacı çokkültürlü toplumlardaki cinsiyete/toplumsal cinsiyete dayalı şiddet tartışmalarında, özellikle kültürel savunma vakalarında, kültürel görecelilik kavramının kullanımını analiz etmektedir. Çalışma, niteliksel örneklerle desteklenmiş teorik tartışmaya dayanmaktadır. Makalede, kültürel göreceliliğın toleransı vurguladığı ve adalet ilkelerinin bağlamsal doğasını gösterdiği teslim edilmiş ancak faydasından çok negatif içerimleri olduğu ifade edilmiştir. Bu kavramın kullanımının; zararlı kültürel pratikler hakkında normatif değerlendirmeyi önlediği, kültürlü egemen grupların görüşleriyle eşitlediği ve böylelikle kadına yönelik şiddetin altında yatan nedenlerin üstünü kapattığı, kadınları “kültür”lerin kurbanı şeklinde göstererek onların failliğini zayıflattığı ve grup farklılıklarını dondurarak milliyetçi ve ırkçı görüşlerle eklemlenebileceği sonucuna varılmıştır. Bu doğrultuda, “namus cinayetlerinin” bir “gelenek” ya da “töre” meselesi olarak ele alınmasının/ifade edilmesinin ima ettiği anlamların incelenmesi suretiyle, Türkiye üzerine de düşünceler sunulmuştur.

**Anahtar Kelimeler:** Kültür, Kültürel Görecelilik, Kadınların İnsan Hakları

### 1. Introduction

One of the areas where cultural relativism comes to the forefront is women’s human rights issues in multicultural societies. In some instances, “culture” is used as an explanation or an excuse for gender based violence in order to justify some harmful cultural practices and/or to obtain mitigation in some criminal justice cases. This point raises important questions about the role of “culture” in men’s control over women, in the form of violence against women (VAW) and the degree to which a “culture” should be respected or tolerated in multicultural societies, when it violates women’s human rights.

Some feminists argue that if a “minority culture” perpetuates gender violence, it is better to let them to become extinct rather than protecting them under the rubric of multiculturalism -or at least promote change so that they could catch up with the equality standards held in the “majority culture”. They claim that multiculturalism could be partly blamed for the legitimation of gender based violence. Others draw attention to the fact that no “culture” is exempt from gender based violence, though there might be changes in the form of violence against women in different “cultures”, and

suggest that more thorough analyses should be done in order to understand the relation between gender violence and culture.

In the context of these, this paper discusses whether the concept of cultural relativism is useful in discussing gender violence in multicultural societies<sup>1</sup>, particularly, in the cultural defence cases.<sup>2</sup> It is based on a theoretical discussion supplemented by some qualitative case studies. It begins by explaining the gender violence discussions in multicultural societies. In the following section, it looks at the relationship between “multiculturalism” and “cultural relativism”. It analyses the way that cultural relativism approaches to “culture” and then suggests a more plausible account of culture. Lastly, it criticizes the cultural defence cases and discusses the challenges that cultural relativism poses in gender violence discussions. It concludes that although cultural relativism helps to understand “the contextual nature of any principles of justice”, it deters normative judgement about harmful cultural practises; it reduces culture to its partial representations and therefore obstructs important factors that contribute violence against women; it undermines women’s agency by constituting them as victims of “cultures” and it might articulate with “nationalist” and “racist” discourses by freezing group differences. In accordance with this, this article also provides further thoughts on Turkey by examining the implications of the framing “honour killings” as a matter of “tradition” or “custom” (töre).

## **2. Gender based violence discussions**

### **A. Gender based violence and forms of it**

“Gender violence” or “gender based violence” terms are used interchangeably to highlight the role of power in the practice of such violence and endorses that sex is not the sole factor designating the power that a person has. It shows that gender based violence is not limited to violence against women also covers the experience of men and boys. However,

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<sup>1</sup> Here, I use the term “multicultural societies” as nation states that adopt policies of multiculturalism officially.

<sup>2</sup> This article will examine the gender based violence discussions in terms of multicultural societies, i.e. the U.S, considering the scope of the article. Nevertheless, it will include an analysis of a case study in Turkey, a country which does not adopt multiculturalism officially. The reason for including Turkish is to reflect on the ways in which this debate relates to another social context.

women are influenced by gender based violence disproportionately for a long time.<sup>3</sup> Therefore, I will concentrate on violence against women in the remainder of the article.

Violence against women has started to be regarded as an international priority and a universal harm in late 1980s through ongoing efforts of women's activism. The Economic and Social Council and the Commission on the Status of Women put forth that further international measures should be undertaken to combat this problem in 1991. As a result of this, general recommendation No. 19 on VAW was adopted by the Committee on the Elimination of Discrimination against Women (CEDAW) in 1992 (Coomaraswamy, 2003, p.5). For the first time, "gender based violence" is interpreted as form of discrimination and was defined as "violence directed against a woman because she is a woman or which affects women disproportionately" (CEDAW, 1992). It also gave an impetus to the adoption of the UN Declaration on the Elimination of Violence against Women in 1993 (Merry, 2006, p.76 cited in Reilly, 2009, p.72-73).<sup>4</sup> This Declaration recognizes that "violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men" (U.N. General Assembly, 1993). Thus, it acknowledges that VAW "is not an endemic but it is socially constructed and historically justified" (Coomaraswamy and Kois, 1999, p.183). The Declaration defines violence against women as: "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" (U.N. General Assembly, 1993). Therefore, it reduces the public and private distinction and holds states responsible for the acts of violence that occurs in private sphere. As violence against women is accepted as a human rights violation, it calls on state "to ensure the

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<sup>3</sup> For more info, see <http://prajnya16days.blogspot.com/2008/10/what-do-we-mean-by-gender-violence.html>.

<sup>4</sup> This Declaration on the Elimination of Violence against Women "is not a treaty that states may ratify and be bound by, but rather it is a non-binding resolution that sets out a common international standard that states should follow" (Thomas and Levi, 1999, p. 141). However, it passed unanimously by the United Nations General Assembly (Coomaraswamy and Kois, 1999, p.177). Therefore, it could be said that there is worldwide consensus on the Declaration.

prevention, investigation and punishment of perpetrators” (Coomaraswamy and Kois, 1999, p.178) and “not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination” (U.N. General Assembly, 1993). Therefore, according to the Declaration custom, tradition or religious beliefs should not be accepted as an excuse for violence against women. One of the former Special Rapporteurs on Violence Against Women lists cultural practices which are violent towards women as female genital mutilation, honour killings, the pledging of girls for economic and cultural appeasement, witch-hunting, caste, marriage, discriminatory laws, son preference, restrictive practices (i.e. foot binding), practices that violate women’s reproductive rights, beauty and incest.<sup>5</sup> She also adds that cultural relativism poses an important challenge to the realization of women’s rights.

### **B. How is gender based violence discussed in multicultural societies: Cultural defence cases**

One of the most salient examples where cultural relativism is used in gender violence discussions in multicultural societies is cultural defense cases. “Cultural defense” is based on the idea that “persons socialized in a minority or foreign culture, who regularly conduct themselves in accordance with their own cultural norms, should not be held fully accountable for conduct that violates official law, if that conduct conforms to the prescriptions of their own culture” (Magnarella, 1991 cited in Philips, 2010, p.84). Some state that if there is a cultural defense, there should be also a cultural offense, which is an act -by a member of minority culture- that conforms to minority culture, however, constitutes an offense according to majority culture.

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<sup>5</sup> This list is taken from the report no. E/CN.4/2002/83 entitled “Cultural practices in the family that are violent towards women. For more info, see [http://www.unhcr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/42e7191fae543562c1256ba7004e963c/\\$FILE/G0210428.pdf](http://www.unhcr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/42e7191fae543562c1256ba7004e963c/$FILE/G0210428.pdf). A more comprehensive list of all forms of gender based discrimination throughout a woman’s life which made by the UN Population Fund, includes prenatal sex selection, battering during pregnancy, coerced pregnancy (rape during the war), female infanticide, emotional and psychological abuse, differential access to food, medical care, and education; child prostitution, dating and courtship violence, economically coerced sex, sexual abuse in the workplace, rape, sexual harassment, forced prostitution, abuse of women by intimate partners, marital rape, dowry abuse and murders, partner homicide, abuse of women with disabilities, abuse of widows and elder abuse (which affects mostly women). For more info, see <http://www.unfpa.org/gender/violence.htm>.

In addition to this, it is stated that a link should be established between the offense and cultural background before the cultural defense is admitted in the courts (Philips, 2010, p.85).

The use of cultural defense is problematic on four grounds. Firstly, it weakens legal universalism. It gives primacy to the cultural membership rather than other types of memberships. Secondly, it might lead to opportunistic defenses. Cultural practices are contested and it is not always clear whether the subject of cultural defense is a normal practice in that culture. Some people, who do not follow some harmful cultural practices, may rediscover them when they think that they will benefit from these practices in the courts. Thirdly, cultural defenses might contribute to patriarchy by acknowledging cultural practices as “a legitimate element in criminal defense”. Fourthly, cultural defenses can reproduce “stereotypical representation of Western other” (Philips, 2010, pp.85-87).

One of the most significant articles which covers three of the concerns related to the uses of cultural defence (impairment of legal universalism<sup>6</sup>, contested nature of cultural practices<sup>7</sup> and the strengthening of patriarchy<sup>8</sup>) is “Is multiculturalism bad for women?” by Susan Moller Okin. In this article, Okin argues that there is a marked tension between feminism<sup>9</sup> and multiculturalist commitment to group rights for minority cultures.<sup>10</sup> She states that despite the fact that most cultures are patriarchal; minority cultures, but not all of them, are more patriarchal than surrounding cultures. Some of the contentious customs such as clitoridectomy, polygamy, and the marriage of children or marriages that are otherwise coerced are retained in these cultures and declared as necessary for controlling women. Although

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<sup>6</sup> Okin refers to “legal universalism” by highlighting the universal principle of equality between man and women.

<sup>7</sup> Okin is aware of several possible interpretations of “culture”.

<sup>8</sup> Okin’s paper emphasises this point too much.

<sup>9</sup> What she understands from the concept of feminism is “the belief that women should not be disadvantaged by their sex, that they should be recognized as having human dignity equal to that of men, and they should have the opportunity to live as fulfilling and as freely chosen lives as men can” (Okin, 1999, p.10).

<sup>10</sup> She defines “multiculturalism” particularly as a “claim, made in the context of basically liberal democracies, that minority cultures and ways of life are not sufficiently protected by the practice of ensuring individual rights of their members, and as a consequence these should also be protected through special group rights or privileges” (Okin, 1999, pp.10-11).

there are different forms of discrimination against women in Western liberal cultures, they significantly move away from harmful traditional practices against women: at least, women enjoy freedoms and opportunities equally with man through legal guarantees (Okin, 1999, pp.14-17). Giving special rights to groups will reinforce dominant subgroups and conservative interpretations of cultural norms rather than reformative and innovative ones. Since women does not take place within the more powerful groups and advocates of women's rights do not attach themselves to these subgroups, both women and those supporting their rights and equal status are adversely affected by group rights (Tamir, 1999, p.47).

In the context of cultural defence cases in the U.S., Okin suggests that main argument presented by members of cultural groups is the idea that women are not morally equal to men; they are subordinates whose main duty is to serve man sexually and domestically. To exemplify this, she lists four cases where cultural defences have been successfully employed and bring about reduction in sentence or secure dropped charges or sentences:

(1) kidnap and rape by Hmong men who claim that their actions are part of their cultural practice of *zij poj niam*, or "marriage by capture"; (2) wife-murder by immigrants from Asian and Middle Eastern countries whose wives have either committed adultery or treated their husbands in a servile way; (3) murder of children by Japanese or Chinese mothers who have also tried but failed to kill themselves, and who claim that because of their cultural backgrounds the shame of their husbands' infidelity drove them to the culturally condoned practice of mother-child suicide; and (4) in France- though not yet in United States, in part because the practice was criminalized only in 1996- clitoridectomy. (Okin, 1999, p.18)

Okin claims that cultural defences breach women's and children's right to equal protection of laws through accepting culture as an excuse or mitigating factor and therefore "by failing to protect women and sometimes children of minority cultures from male and sometimes maternal violence" (Okin, 1999, p.20) Okin's emphasis on the minority women to be affected by group rights is quite similar to the language used in the UN Declaration of Elimination on the Violence against Women. In its preamble, Declaration states that "some groups of women, such as women belonging to minority groups, migrant women... are especially vulnerable to violence" (U.N. General Assembly, 1993). In general, Okin's arguments comply with protection of women's

human rights. However, her approach differs from human rights doctrine with regards to the protection of right to culture.<sup>11</sup>

### 3. Multiculturalism, cultural relativism and culture

Okin accuses cultural defences of violating women's right to equal protection of laws (Okin, 1999, p.20). In parallel with this, multiculturalism is blamed for holding the idea that all cultures are equally worthy of respect. Building on this idea, it is claimed that multiculturalism instigated a cultural relativism and this has led to impossibility in setting apart right from wrong. Critics assert that culture, in this sense, "is operating as a reason for public inaction and an excuse for immoral behaviour" (Philips, 2007, p.73).

When multiculturalism is regarded as depending on cultural relativism, this interpretation brings it in conflict with feminism, since feminism suggests that gender violence should not be justified by culture. This interpretation of multiculturalism is similar to the Okin's position.<sup>12</sup> There is a merit in

<sup>11</sup> Right to culture has given place in human rights discourse and "rights to individuals to "belong to" and "enjoy" a culture is enshrined in different international instruments... in this formulation, cultural features are seen as intrinsically valuable and worthy of recognition and legal protection" (Cowan, Dembour, and Wilson, 2001, p.8). One reflection of the renewed interest in the "minority rights" and "right to culture" could be seen in the liberal theories of multiculturalism. Okin criticizes multiculturalism with reference to Kymlicka's liberal egalitarian theory. Kymlicka tries to incorporate and balance both individual rights and group rights together. According to him, there is no discrepancy between minority cultural rights and a weak form of universalism. Kymlicka makes a distinction between two kinds of groups rights, namely 'external protections' and "internal restrictions". "External protections" aims at decreasing "groups vulnerability to economic and political power of the larger society...[and] can help to promote justice between ethno-cultural groups" (Kymlicka, 1999, pp.31-32). "Internal restrictions" impede the individual members to challenge, change and leave traditional cultures and practices. Therefore, a liberal theory of minority group rights, according to Kymlicka, does not allow internal restrictions, as they result in the violation of autonomy of individuals as well as condoning of injustice in the group (Kymlicka, 1999, p.31). Therefore, Kymlicka's solution to the problems posed by Okin is recognizing external protections and dismissing internal restrictions.

<sup>12</sup> There is a difference in the way that Kymlicka and Okin approaches the relationship between feminism and multiculturalism. Whereas Okin thinks there is a tension between feminism and multiculturalism, Kymlicka suggests that there is much in common between them: both feminism and multiculturalism suggest more focus on the structure of societal institutions, considering the inadequacy of individual rights; they point out the inadequacy of liberal theory to guarantee the minority rights and



the argument that multiculturalism does not represent true interpretations of culture (i.e. it may lead to conservative interpretations) or it gives priority to the preferences of the group over the rights of individuals (Philips, 2007, p.73). However, it is not true that multiculturalism is per se leading to cultural relativism, therefore justification of gender violence by culture. Most of the supporters of multiculturalism do not assert that all cultures have equal moral value. In addition to this, in the policy level, it is hard to find any single country that acts impartially towards different cultures in its territory without prioritising some norms and values. Furthermore, more evidence is needed in order to establish whether or to what extent violence against women is not intervened or unchecked in practice because of multicultural policies (Philips, 2007, p.73).

In order to make clear the relationship between multicultural policies, cultural relativism, culture and gender violence; first cultural relativism will be examined and then I will assess uses of culture in gender based violence discussions in multicultural societies.

#### **A. What is cultural relativism?**

Cultural relativism assumes that “ethical standards are inevitably relative to culture or circumstance... moral norms and values of a group are uniquely determined by cultural and environmental factors, then it is impossible for them to be changed” (Nickel 1987, p.71). There are two accounts of cultural relativism: descriptive relativism and prescriptive one. The first form, an empirical sociological account, claims that moral beliefs, values and practices are so distinct from each other as they predicate on time and place. Therefore, it is impossible to pinpoint a moral code which is relevant for all human groups (Fagan 2009, p.54). The second form as a moral position accepts normative diversity and tolerance among diverse human groups. In its strongest form, tolerance is accepted as the only valid universal norm whereas the modest form holds a small number of broad universal norms which would not contradict with local standards and practices (Nickel 1987, p.74).

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women's rights, being indifferent to the special needs of the groups and they indicate a similar remedy which is “a group right that is not available to the rest of the population” (Kymlicka, 1999, pp.32-22). Therefore, Kymlicka locates this relationship between two different sets of rights at the intersection of the pursuit of social justice. According to Okin, this relationship is as a clash between women's human rights and culture, in other words, universalism and cultural relativism.

Cultural relativism is important with regards to revealing “the contextual nature of any principles of justice”. It shows that the change in values and ideas depends on historical conditions (Philips, 2010, p.16). However, it raises some problems. Firstly, it exaggerates “the incommensurability of discourses that arise in the contemporary societies” (Philips, 2010, p.17). If radical incommensurability holds true, people would not have been able to identify and interpret each other’s beliefs, desires and utterances. Moreover, some accounts of incommensurability obscures “many subtle epistemic and moral negotiations that take place across the cultures, within cultures...in dealing with discrepancy, ambiguity, discordancy and conflict” (Benhabib, 2002, p.31). Secondly, it misrepresents cultures and societies as “internally coherent and seamless wholes” (Benhabib, 2002, p.25). It develops a view of a culture which corresponds to a society, therefore to a nation (or nation of origin). Thus, cultural relativism overlooks the complexity of interactions between cultures and it strengthens the binary opposition between “us” and “the others”. By assuming there is an overlap between community of solidarity and community of ethnicity, it tries to delimit one’s membership only to ethnically constituted community. However, people are members of different communities on the basis of different interests, ideas and needs and these may not necessarily build on ethnicity (Benhabib, 2002 pp.25-33). Cultural relativism might also lead to “a troubling suspension of judgment when competing principles collide” (Philips, 2010, p.17). However, the juxtaposition of gender equality and cultural equality as competing equality claims, or two different competing principles is wrong; since such a separation between culture and gender assumes that there is a de-gendered culture. However, when something is regarded as de-gendered, it is quite likely for masculine interpretations to override and dominate possible other interpretations (Philips, 2010, p.47). Therefore, this analytical separation between culture and gender could reproduce patriarchal interpretations of cultural traditions.

### **B. What is culture and how culture is understood by cultural relativism?**

As it is shown above, there are two different and related ways that relativism approaches to culture. Firstly, it views cultures as “internally coherent and seamless wholes”. This is what is termed as “cultural reification” - the belief that “cultures are monolithic, internally self-consistent and externally

sealed of from other influences” (Philips, 2010, p.31). Secondly, viewing cultures as monolithic and self-consistent entities and as incommensurable wholes assumes that there is an essence in each culture that characterises it and marks it out. Therefore, it leads to cultural essentialism that regards “culture as the property of an ethnic group or race” (Benhabib, 2002, p.4). However, the reification and essentialisation of culture and overemphasizing their homogeneity brings about “reductionist sociology of culture”. In addition to it, this account of culture constitutes a false epistemology (Benhabib, 2002, p.4). Therefore, first I will look at problems related to cultural essentialism and then, I will suggest a more plausible account of culture.

When essentialism<sup>13</sup> is interpreted in terms of culture, four points become prominent. Firstly, culture specific essentialist generalizations are similar to Universalist essentialist generalizations. The only difference between them is the “degree and scope of the generalization, not the kind”. Secondly, cultural essentialism builds on and creates the binaries between “Western culture” and “Non-Western cultures” or between “Western culture” and particular “Other cultures”. There is always a discourse about *culture difference*. This discourse naturalizes cultural differences as if the discourse itself does

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<sup>13</sup> There are four different meanings of essentialism (Philips, 2010). First meaning of essentialism is the belief that everyone identified with a particular category carry particular characteristics. This view raises some problems, since overgeneralization of particular characteristics leads to stereotyping and it deter people from seeing different characteristics that do not match with their prejudices. Therefore, it results in discrimination. The second form of essentialism claims that particular *category* itself, not individuals constituting this category, carry some inherent characteristics or essence in it. The difficulty with this account is that it regards socially and historically constructed differences as natural, not the product of social relations. The third version of essentialism, is the way that social movements and political groups recognizes social groups and “the attribution of essential personhood to group” (Philips, 2010, pp.69-80). However, it is contested whether we could regard these kinds of groups as homogenized and unified entities. The final account of essentialism is a more normative claim. It puts forth that everyone in a group have same “essential characteristics”. This view holds that members of the group can act within the framework of the essential characteristics. Therefore, any deviation from to the essential component of the category results in member’s losing its membership in the eyes of the outsiders, at the theoretical level. This form of essentialism reinforces the naturalization of differences. At the same time, it is more subtle and sometimes difficult to distinguish it from “innocent forms of generalization” (Philips, 2010, pp.69-82).

not construct differences, and as if cultural differences are pre-given and prediscursively real. Thirdly, cultural essentialism presumes that dominant subgroups in the culture represent the values, worldview, and practices of all members of that culture. It, thus, has a partial picture of culture. Fourthly, according to this view, culturally dominant norms of femininity and practices that adversely affect women constitute fundamental elements of “cultural identity”. “They often equate women’s conformity to the status quo with “the preservation of culture” and cast feminist challenges to norms and practices that adversely affect women as “cultural betrayals”” (Narayan, 2000, pp.81-85).

In short, cultural essentialism, therefore cultural relativism views cultures as natural and as they exist in isolation from each other. It does not grasp that “cultural difference” is created by human beings who wants to distinguish between cultures for different aims. “It rely on a picture that presents cultures...as “unchanging givens”...whereby their “values, practices, and traditions,” as well as their sense of what their culture amounts to and what its “preservation” entails, appear immune to history”(Narayan, 2000, pp.86-88). However, “to delineate a culture” is a political act. Therefore, treating cultures as “unchanging givens” is quite problematic (Philips, 2007, p.45). Cultures come into being, “change and are maintained through social interactions and political struggle” (Song, 2005, p.474). Therefore, more plausible account of culture is necessary to understand the relationship between gender violence and cultural relativism.

If it could be seen that cultures are socially constructed through social interactions, it would be clear that they are always subject to change (Song, 2005, p.474). When cultures are made and remade by people, they rely on different local, national and global resources (Philips, 2007, p.45). Global economy, transnational communications, migrations of people across borders are important factors that contribute cultural change. It is possible to suggest that “almost all cultures are multiculturally constituted” (Parekh 2000 cited in Song, 2005, p. 475). Therefore, cultures are “constant creations, re-creations, and negotiations of imaginary boundaries between “we” and the “other(s)” (Benhabib, 2002, p.8). Boundaries between cultures are permeable. It could be said that there are internal struggles over values, practices, and meanings in each culture. Therefore, authoritative interpretations of culture could not be understood without comprehending the political agenda of some of the

subgroups (Philips, 2007, p.45). These views weaken the notion of cultures as “internally coherent and seamless wholes” and suggest that culture is better understood if their “hybridity” and “polyvocality” are recognized. Cultures are “multilayered, decentered and fractured systems of action and signification” (Benhabib, 2002, p.25).

#### **4. Discussion: The critique of uses of culture and cultural relativism in gender based violence discussions**

##### *Uses of culture*

As we have seen above, Okin states that despite the fact that most cultures are patriarchal; minority cultures, but not all of them, are more patriarchal than surrounding cultures. However, there are some issues this view raises. Cultures are not *as patriarchal as* Okin states and it could not be said, without reservation, that minority cultures are more patriarchal than Western majority cultures. Okin’s view of minority cultures obstructs us from seeing “sources of minority women’s subordination that do not stem from within their cultural communities but structural forces beyond their communities” (Song, 2005, p.486). Okin does not state what majority cultures should do in order to meet equality standards whereas it imposes some solutions on the minority cultures (An-Na’im, 1999). It treats majority cultures as neutral and value-free. Equalizing the “information submitted as evidence for criminal cultural defense” to the culture itself, Okin reproduces monolithic discourse of cultural stereotype (Bhabha, 1999, p.81).

##### *The critique of cultural defence*

Okin thinks that cultural defence is violating women’s equal protection of law, therefore, violates the equality principle, therefore it weakens legal universalism and it leads to conservative interpretation of culture. This critique of culture defence also raises some problems. Firstly, this interpretation overlooks the fact that cultural defences are successful when there is an overlap between the norms of minority and majority culture, in other words, when evidence “enable judges and juries to fit defendant’s actions into a pattern already familiar through mainstream culture...in the end, is it the sameness not the difference that matters” (Philips, 2010, p.103). Therefore, the way culture is used in these types of defences are gendered. They characterise women as

passive and create a background where men's violent actions would be justified. As Benhabib perceptively states "the cultural defence strategy imprisons the individual in a cage of univocal cultural interpretations and psychological motivations; individual's intentions are reduced to cultural stereotypes; moral agency is reduced to cultural puppetry" (Benhabib, 2002, p.89)

*Critique of cultural relativism in gender violence discussions*

In the light of the above critiques, it could be said that the use of cultural relativism in gender violence debates is not beneficial, rather it is problematic. Although it demonstrates "the contextual nature of any principles of justice", this fact does not alone make it beneficial for gender violence discussions. Firstly, cultural relativism might deter normative judgement on the basis of universal standards under the pretext of respecting "culture" in the instances of gender violence. Cultural relativist view allows "selective labeling" through which dominant social groups have the ability to determine what types of changes are "cultural losses" and what kind of changes are to be resisted under the guise of "cultural preservation" (Narayan, 2000, pp. 86-89). For example, it is suggested that Hindu practice of Sati, according to which a recently widowed woman immolates herself on her husband's funeral pyre, was rather a marginal practice in Hindu communities and reinvented as a tradition as a result of negotiations between British colonials and local Indian elites (Narayan, 1997 cited in Benhabib, 2002, p.6). Therefore, what is tolerated as a cultural tradition may be tricky. Cultural practices are always in flux. Therefore, a women's human rights defender should be able to raise universal standards, on which there is a huge consensus, when there is violence against women. Secondly, cultural relativism reduces culture to its partial representations through selective labelling, therefore wrongly represents as if only "the culture" is responsible from violence against women. However, it is not culture *per se* that's responsible from violence against women, but man's control over man, the social relations which produced patriarchy (Walby, 1990). Thirdly, the use of cultural relativism in gender violence discussion reduces the agency of 'Third World Women' as if all of them are passive victims (Mohanty, 1991, p.57). However, 'Third World Women' are not "passive victims". In many countries, including Turkey, when women are exposed to violence and go to the police department in order to make complaint about their husbands,

it is most of the time police officials who thinks that these cases as “private matters”, therefore, do not take complaints seriously. Fourthly, the use of cultural relativism in these discussions risks ‘freezing existing group differences’ (Benhabib, 2002). Therefore, it might articulate with “nationalist” and “racist” discourses about different cultures through stereotyping and it could feed xenophobia. Moreover, by claiming that there is a “fixed, homogenous culture” to be respected, it overlooks intra-and inter cultural interaction. This may block useful cultural interactions which would create positive changes about violence against women. As Philips shows, cultural defences are accepted when there is conformity between majority and minority culture. Thus, cultural defence is accepted in the Courts when two culture share the same idea. Therefore, the use of cultural relativism in gender violence discussions shields majority-Western- culture from criticism about violence against women. As a last point, no “culture” is exempt from gender violence; it is not the “culture” per se but the patriarchal relations in the “culture” that perpetuates violence against women, therefore, rather than the “culture”, the patriarchal relations within it should be addressed and changed to combat violence against women.

### **5. Conclusion and further thoughts on Turkey**

This article has considered the question of whether the concept of cultural relativism is useful in discussing gender violence in multicultural societies. It concludes that although cultural relativism highlights “toleration” and helps to understand “the contextual nature of any principles of justice”, it has more negative implications than benefits. It prevents normative judgement about harmful cultural practices; it equates culture to views of some dominant groups and therefore obscures some underlying reasons for violence against women; it undermines some women’s agency by constituting them as victims of “cultures” and it might articulate with “nationalist” and “racist” discourses by freezing group differences.

In the light of these, I will make some observations about Turkey and highlight some points feminists should beware of. The uses of culture as a mitigating circumstance in cultural defense cases and the broader theoretical and social consequences of it have been outlined above. Contrary to the U.S. example, “culture” framed under the name of “custom” or “tradition” (töre) leads to an aggravated penalty in the case of “honour killings” (*namus cinay-*

*etleri*) in Turkey. In that sense, “cultural difference” is not tolerated by the law and this has some negative consequences in terms of the stigmatization of a certain community. From this perspective, another dimension of uses of culture in gender violence discussions will be briefly examined below.

Article 82 (j) of the new Turkish Penal Code (Law Nr. 5237) identifies “killings in the name of custom” as “qualified form of felonious homicide” (voluntary manslaughter).<sup>14</sup> However, it does not directly refer to “honour killings”.<sup>15</sup> Whereas the imposition of an aggravated sentence is required for the homicide committed in the name of the “custom”, lenient sentences are given to the same sort of crimes if committed in the name of “honour”, since “honour” is not listed as one of the aggravating circumstances for homicide in the Penal Code. Although the Justification of Article 29, entitled “Unjust Acts”, prohibits sentence reductions in the case of “honour killings”<sup>16</sup>, there are some loopholes in the law<sup>17</sup> and Courts still grant sentence reductions in honour killing cases.<sup>18</sup>

<sup>14</sup> The use of the gender-neutral term “homicide” and gender biased word “manslaughter” is found problematic. Therefore, there is an increasing use of the word femicide/femicide (*kadın cinayeti*) to describe gender related killings of women. For the conceptual evolution of the terms, see [http://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16\\_En.pdf](http://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16_En.pdf)

<sup>15</sup> Honour is “a gender based power relationship” (Sirman, 2006, p.59) and aims at “controlling and regulating women’s sexualities, lives, choices, and autonomies within the hegemonic masculine order” despite being “culture and language specific and a historically contingent issue” (Pervizat, 2009, p.2). “Honour killing” is a form of “honour crime” and it includes but not limited to “killings in the name of custom” (“custom killings”). Honour crime, is a broader category which denotes the violation of women’s human rights such as right to work, right to travel, reproductive rights and right to life (Sirman, 2006) and committed in order to punish and control women who refuse to (or cannot) follow the principles of “honour code” prevalent in the society (Sirman, 2006, p.43)

<sup>16</sup> For the justification of the Article, see <http://www.cezakanunu.net/tck-madde-29/>.

<sup>17</sup> For detailed info, see “Honour Killings: Scourge of Turkey” <http://www.aina.org/news/20110710160625.htm>.

<sup>18</sup> For different cases where sentences are reduced because of “unjust provocation”, see “Namus Cinayetlerinde Ağır Tahrik Israrı: Yargı ağır tahrikte ısrarlı” <http://www.savaskarsitlari.org/arsiv.asp?ArsivTipID=5&ArsivAnaID=34120> and “Erkek adalet tahrik peşinde” <http://sosyalistfeministkolektif.org/feminist-gundem/kadin-cinayetleri-/118-erkek-adalet-tahrik-pesinde>. In her analysis of the decisions of the Second Higher Criminal Court of Şanlıurfa between 1974-2002 on murder and attempted murder cases in which women were slain or victimized, Belge (2006) traces the changes in the application of “unjust provocation” in the related Court’s decisions.



The absence of the term “honour” in the new Turkish Penal Code and framing “honour killings” under the narrow heading of “custom killings” (*töre cinayeti*) implies that “these killings only happen in certain communities, namely the Kurdish, in the country” (Pervizat, 2009, p.7; Sirman, 2006; Yıldız-Tahincioğlu, 2010a).<sup>19</sup> By doing so, this framing serves reification and essentialisation of the culture of this community as if their culture (or tradition) is a monolithic and self-consistent whole and as if it is “static” and “resistant to change” (Kogacioglu, 2004, p.121). The nationalist act of associating honour killings *only* with Kurdish culture has a consequence of “ethnicising honour killings” (Kogacioglu, 2004, p.122).<sup>20</sup> It reinforces the binary opposition between “this community” and “the others”.<sup>21</sup> This discursive framework leads to “stigmatization of Kurdish communities”<sup>22</sup> (Kogacioglu, 2004, p.122), whereas it shields the concept of “honour” prevailing in the dominant culture from the criticism. Therefore, the role and responsibility of institutions and structural forces which have contributed to the maintenance of “honour crimes” is obscured (Kogacioglu, 2004; Sirman, 2006).<sup>23</sup>

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She shows that “the application of unjust provocation” impairs the principle of equality before the law, and therefore ignores women’s citizenship status and reveals the failure of state to protect women’s right to life.

- <sup>19</sup> Kogacioglu (2004) uses the term “ethnicization of tradition effect” to explain the practice of linking honour killings to an ethnic group, namely the Kurdish.
- <sup>20</sup> This point is also emphasised by Bingul Durbas in an interview entitled “Honor Killings: The Scourge of Turkey”. For the interview, see <http://www.aina.org/news/20110710160625.htm>.
- <sup>21</sup> Analysing newspaper articles written by two columnists, Yıldız-Tahincioğlu (2010b) shows how the mainstream media creates a distinction between “us” and “the others”, and therefore, reproduces discriminatory discourses, by the representing “custom killings” as a feature of Kurdish culture.
- <sup>22</sup> Bingul Durbas makes this point as well. For the interview, see <http://www.aina.org/news/20110710160625.htm>.
- <sup>23</sup> Belge (2006) shows the role of the Courts in perpetuation of honour killings through analysing the decisions of the Second Higher Criminal Court of Şanlıurfa between 1974-2002. She states that the Court concerned has started to consider and discuss “custom killings” (*töre cinayeti*) in 1990s. Although the Court had taken moderate approach towards “killings in the name of honour” at the time, they disapproved the murder of the women in the name of “custom”. Belge states that the related Court has recognised the validity of the “traditional” point of view (or validity of “tradition”), by referring to the notions of “tradition” or “custom” (“*örf ve adet*”). Therefore the Court’s act of recognising “tradition” is also an act of constituting it.

Patriarchy is persistent in old and new regime, even though in different forms (Berkday, 1998) and different gender regimes have articulated with one another at the present in Turkey (Sirman, 2006; Yıldız-Tahinciođlu, 2011). Modern state both shares and reproduces the concept of “honour” although new meanings and functions have been ascribed to it (Sirman, 2006; Yıldız-Tahinciođlu, 2011). Therefore, modern state should combat resilient concept of “honour” underlying “honour killings”- including killings framed as “custom killings”- prevailing all over the country *cross-cutting* majority and minority cultures -and different religions-, instead of blaming and targeting *only* the “cultural tradition” of a certain community.

No “culture” is immune to gender based violence, though violence against women may take many forms in different “cultures”. As cultural relativism might be a tool in the hands of racism; feminists should pursue a *culturally sensitive*, dignified, and truthful approach when discussing these violations (Pervizat, 2012, Personal Communication). They should ask who benefits from the recourse to the notions such as “tradition”, “custom” and “honour”. As Kogacioglu (2004) states, they should *identify and demystify the power relations* that underpins framing “honour killings” as matter of “custom” or “tradition” and they should formulate new agendas based on women’s experiences and concerns. The emancipation of women can be realized only if the unequal relations of power between men and women are transformed. Such a struggle for justice would certainly include but not limited to the feminist struggles.

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