

# Contesting the universality of human rights for women: An examination of violence against women in the Global South and the Global North

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## Abstract

Despite the purported universality of human rights, the human rights of women are *not* universal. The human rights of women are systematically violated across both the Global North and Global South in the form of pervasive violence against women. Using postcolonial feminism and intersectionality and two case studies of honour killings in India and domestic violence against women in the United States, this paper makes two arguments. First, this paper argues that irrespective of whether you are ‘wealthy, white and from the west’ in the Global North or the converse in the Global South, the human rights of women are systematically violated. Second, this paper argues that human rights violations against women in the Global North are ignored by a focus on violence against ‘other’ women in the Global South and minority communities in the Global North. This paper advocates the adoption of an intersectional approach to recognise that human rights are not universal for all women who are vulnerable to violence because of their gender.<sup>1</sup>

## Introduction

Despite a concerted focus on incorporating women’s rights into international human rights law, human rights are anything but universal for women. While women may have human rights, these human rights are systemically violated, irrespective of whether the woman is ‘wealthy, white and western’ in the Global North or poor, not-white and from the Global South.<sup>2</sup> This paper focuses on violence against

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<sup>1</sup> This article was originally prepared by the author as an essay in response to the statement ‘Human rights are anything but universal. If you’re wealthy, white and from the west you have them. If you’re not, you don’t. Critically evaluate this statement, with reference to two human rights case studies’.

<sup>2</sup> Charlotte Bunch, ‘Women’s Rights as Human Rights: Toward a Re-vision of Human Rights,’ (1990) 12(4) *Human Rights Quarterly* 486.

women (VAW), a universal phenomenon that violates the human rights of women across all cultures.<sup>3</sup> The United Nations Secretary-General has described VAW as ‘one of the most heinous, systematic and prevalent human rights abuses in the world’.<sup>4</sup> I make two arguments by adopting a postcolonial feminist and intersectionality lens. First, I argue that, irrespective of whether you are ‘wealthy, white and from the west’ in the Global North or the converse in the Global South, the human rights of women are systemically violated. While women may *have* human rights, these human rights are far from guaranteed in reality. Second, I argue that not only are human rights not universal for women, the human rights violations of wealthy, white and Western women are ignored by a focus on violence against ‘other’ women in the Global South and minority communities in the Global North. A focus on VAW against women in the Global South and minority communities in the Global North fails to appreciate that VAW reflects patriarchal structural dynamics of power that subordinate women universally.

In my making my arguments, I analyse two manifestations of VAW: honour killings of women in India; and domestic violence perpetrated against women in the United States. These case studies enable a comparison of the international human rights treatment of VAW in the private sphere in the Global North and Global South. In both case studies, the human rights of women, whether ‘brown, poor and from the Global South’ or ‘white, wealthy, and western’, are violated. I draw attention to the human rights condemnation of honour killings as affecting ‘other’ women, while simultaneously rendering invisible domestic violence perpetrated against women in the US. I adopt an intersectional approach to examine the compounding nature of an individual’s axes of differences in determining their experiences of human rights abuses.<sup>5</sup>

## What is VAW?

Both domestic violence and honour killings are forms of VAW. I use the definition of VAW used in the Declaration on the Elimination of Violence against Women (DEVAW): ‘any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women’.<sup>6</sup> The definition of domestic violence is contested.<sup>7</sup> I define domestic violence broadly as ‘the combination of physical and/or sexual violence with a variety of control tactics such as economic,

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<sup>3</sup> Charlotte Watts and Cathy Zimmerman, ‘Violence Against Women: Global Scope and Magnitude’ (2002) 359(9313) *Lancet* 1232.

<sup>4</sup> United Nations Secretary-General, *Message on the International Day for the Elimination of Violence Against Women* (25 November 2007) <[www.un.org/events/women/violence/2007/sg.shtml](http://www.un.org/events/women/violence/2007/sg.shtml)> (site discontinued).

<sup>5</sup> Kimberle Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) 129 *University of Chicago Legal Forum* 139.

<sup>6</sup> *Declaration on the Elimination of Violence against Women*, GA Res 48/104, UN GAOR, 48th sess, 85th plen mtg, UN Doc A/RES/48/104 (20 December 1993) art 1.

<sup>7</sup> Nicky Ali Jackson (ed), *Encyclopedia of Domestic Violence* (Taylor & Francis, 2007) 255.

emotional, social and spiritual abuse, the use of children and pets, and threats and intimidation'.<sup>8</sup> This definition reflects the complexity and multiplicity of forms of domestic violence.<sup>9</sup> I define honour killings as 'extreme acts of domestic violence culminating in the murder of a woman by her family or community'.<sup>10</sup> I appreciate that victims of violence may prefer the term 'survivor'. I use the term 'victim' to highlight the contrasting characterisation of some women as 'victims' in the Global South, while ignoring women who are subject to violence in the Global North. I also acknowledge that men are victims of domestic violence and honour killings.<sup>11</sup> However, I will focus exclusively on women due to limitations in the scope of this paper.

## VAW is a violation of international human rights law

VAW has only recently been recognised as a violation of international human rights law. Despite the purported universality of international human rights law,<sup>12</sup> women have been historically neglected in international human rights law. Edwards notes that despite 'equality before the law and equal protection of the law being recognised as a right in all the major human rights treaties since 1945', VAW only gained prominence in the international community in the 1990s.<sup>13</sup> International human rights law has historically reflected the dichotomy between the public and private spheres by focusing on harms perpetrated in the public sphere.<sup>14</sup> Conversely, state interference is viewed as inappropriate in the private sphere, despite this being where the majority of human rights abuses against women, including VAW occur.<sup>15</sup>

The invisibility of women's issues in international human rights law prompted a movement to recognise 'women's rights as human rights', evidenced by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>16</sup> This movement led to significant advancements in the

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<sup>8</sup> Sarah Wendt and Lana Zannettino, *Domestic Violence in Diverse Contexts* (Routledge, 2015) 2.

<sup>9</sup> Briana Barocas, Danielle Emery, Linda G. Mills, 'Changing the Domestic Violence Narrative: Aligning Definitions and Standards' (2016) 31(8) *Journal of Family Violence* 941, 941.

<sup>10</sup> Veena Meetoo and Heidi Safia Mirza, "'There is Nothing 'Honourable' about Honour Killings": Gender, Violence and the Limits of Multiculturalism' (2007) 30 *Women's Studies International Forum* 187, 187.

<sup>11</sup> See Babette C Drijber, Udo JL Reijnders and Manon Ceelen, 'Male Victims of Domestic Violence' (2013) 28(2) *Journal of Family Violence* 173; Phyllis Chesler, 'Worldwide Trends in Honor Killings' (2010) 17(2) *Middle East Quarterly Spring* 3, 5.

<sup>12</sup> Jack Donnelly, 'The Relative Universality of Human Rights' (2007) 29(2) *Human Rights Quarterly* 281.

<sup>13</sup> Alice Edwards, *Violence Against Women under International Human Rights Law* (Cambridge University Press, 2010) 7.

<sup>14</sup> Hilary Charlesworth, 'Are Women's Rights Human Rights?: International Law of Human Rights' (Speech delivered at the Alicia Johnson memorial lecture, Darwin, 3 September 1993).

<sup>15</sup> Hilary Charlesworth, 'Human Rights as Men's Rights' in Julie Peters and Andrea Wolper (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge, 1995) 103, 103.

<sup>16</sup> Bunch, above n 1.

inclusion of women's rights in international human rights. CEDAW is the only Convention specifically addressed to women,<sup>17</sup> and has been described as 'universal in reach, comprehensive in scope and legally binding in character'.<sup>18</sup>

Notably, despite its alleged comprehensiveness, CEDAW notably does not explicitly prohibit VAW.<sup>19</sup> Charlesworth and Chinkin have criticised the failure of human rights instruments to specify VAW as a violation of human rights, as this failure reflects an implicit 'gendered hierarchy of rights' that continues to neglect the needs of women.<sup>20</sup> This has been remedied to some extent by DEVAW and CEDAW's General Recommendation 19.<sup>21</sup> General Recommendation 19 declares VAW as a form of sex discrimination under Article 1 of CEDAW.<sup>22</sup> General Recommendation 19 also specifies eight additional rights and freedoms impaired by VAW including, 'the right to life; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment [and] the right to liberty and security of person'.<sup>23</sup>

## Challenges to the universality of human rights

The violation, not protection, of the human rights of women is universal. Despite the dramatic increase in the recognition of women and VAW in international human rights law, VAW remains a widespread human rights violation. The widespread and global nature of VAW challenges the purported universality of human rights. One in three girls and women will experience gender-related violence because they are a woman throughout their lifetime.<sup>24</sup> VAW is universal in nature because it is the product of the universal subordination of women.<sup>25</sup> Bunch attributes VAW to 'the structural relationships of power, domination and privilege between men and women in society. VAW is central

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<sup>17</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) ('CEDAW'); Marsha A Freeman, Christine Chinkin and Beate Rudolf, 'Introduction' in Marsha A Freeman, Christine Chinkin and Beate Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (Oxford University Press, 2012) 453.

<sup>18</sup> Rebecca J Cook, 'Reservations to the Convention on the Elimination of All Forms of Discrimination against Women' (1990) 30 *Virginia Journal of International Law* 643, 643.

<sup>19</sup> Bonita Meyersfeld, *Domestic Violence and International Law* (Bloomsbury Publishing, 2010), 3.

<sup>20</sup> Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000) 218.

<sup>21</sup> UN Committee on the Elimination of Discrimination Against Women, *CEDAW General Recommendations Nos. 19 and 20*, 11th sess, UN Doc A/47/38 (24 June 1992).

<sup>22</sup> *Ibid* [6].

<sup>23</sup> *Ibid* [7].

<sup>24</sup> United Nations Population Fund, *Gender-Based Violence* (2018) <[www.unfpa.org/gender-based-violence](http://www.unfpa.org/gender-based-violence)>.

<sup>25</sup> Charlesworth, 'Are Women's Rights Human Rights?', above n 13.

to maintaining those political relations at home, at work and in all public spheres'.<sup>26</sup> As a result of the origins of VAW in patriarchal power structures, it is unsurprising that VAW is a human rights abuse that occurs in all countries in the world.<sup>27</sup>

Despite VAW occurring throughout the world, it is paradoxically characterised as a human rights abuse perpetrated against 'other' women in the Global South and minority communities in the Global North. The dichotomy between the Global North and Global South is used to differentiate the liberated 'white, wealthy and Western woman' in the Global North from the oppressed, agentless and vulnerable women in the Global South.<sup>28</sup> Mutua pithily states the 'face of the prototypical victim is non-white' and located in the Global South.<sup>29</sup> Conversely, the Global North is homogenously constructed as 'being friendly to human rights'.<sup>30</sup> Accordingly, advocates in the Global North portray themselves as 'rescuer for those in the South who are victims of human rights violations'.<sup>31</sup> This 'othering' of victims of VAW is exemplified in Spivak's renowned conception of postcolonial human rights interventions as 'white men saving brown women from brown men'.<sup>32</sup> This trope reflects the attitude that human rights abuses are perpetrated against 'other' women in the Global South, while ignoring the reality that all women may need saving from violence, including 'white women' from 'white men'.

## Honour killings in India: A human rights violation of 'other' women

The international community and human rights organisations widely condemn honour killings in India.<sup>33</sup> Grewal, a scholar on media depictions of honour killings in India and the US states that 'honour killings' have a 'strong connotation – whether it is in the media, by NGOs or by governments; an "honour killing" is something that is understood to be a terrible injustice, a human rights violation and

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<sup>26</sup> Charlotte Bunch, *Passionate Politics Essays 1968–1986: Feminist Theory in Action* (St Martin's Press, 1987) 491.

<sup>27</sup> Jennifer L Ulrich, 'Confronting Gender-Based Violence with International Instruments: Is a Solution to the Pandemic Within Reach?' (2000) 7(2) *Indiana Journal of Global Legal Studies* 629, 631.

<sup>28</sup> Karen Morgaine, 'Domestic Violence and Human Rights: Local Challenges to a Universal Framework' (2007) 34 *Journal of Sociology & Social Welfare* 109, 110; Raka Ray, 'Postcoloniality and the Sociology of Gender' in James W Messerschmidt et al (eds), *Gender Reckonings: New Social Theory and Research* (New York University Press, 2018) 73, 80.

<sup>29</sup> Makau Mutua, 'Savages, Victims, and Saviours: The Metaphor of Human Rights' (2001) 42(1) *Harvard International Law Journal* 201, 230.

<sup>30</sup> Inderpal Grewal, "'Women's Rights as Human Rights': Feminist Practices, Global Feminism, and Human Rights Regimes in Transnationality' (1999) 3(3) *Citizenship Studies* 337, 340.

<sup>31</sup> Morgaine, above n 27, 123.

<sup>32</sup> Gayatri Chakravorty Spivak, 'Can the Subaltern Speak?' in C Nelson and L Grossberg (eds), *Marxism and the Interpretation of Culture* (University of Illinois Press, 1988) 271, 297.

<sup>33</sup> Inderpal Grewal, 'Outsourcing Patriarchy' (2013) 15(1) *International Feminist Journal of Politics* 1, 2.

gender subordination'.<sup>34</sup> It is difficult to accurately document honour killings due to chronic under-reporting by families and weaknesses in data collection.<sup>35</sup> However, the India Democratic Women's Association estimates that 1,400 honour killings occur annually.<sup>36</sup>

Honour killings are perpetrated despite India's ratification of CEDAW and implementation of domestic legislation criminalising VAW.<sup>37</sup> The concluding observations of the combined fourth and fifth periodic reports of India by the Committee on the Elimination of Discrimination expressed concern about the 'persistence of so-called "honour crimes" perpetrated by family members against women and girls'.<sup>38</sup> This indicates that although Indian women may have both international and domestic rights to be free from violence, this does not guarantee the protection of their rights against violence in reality.

Condemnation of honour killings emphasises the cultural roots of this form of VAW.<sup>39</sup> Meeto and Mirza note that reports of honour killings in Western media are 'often sensationalist, and engage in cultural stereotyping which puts the gaze on the "other"'.<sup>40</sup> This is apparent in the three resolutions adopted by the United Nations General Assembly that exclusively target 'crimes against women committed in the name of honour', rather than opposing VAW more generally.<sup>41</sup> The term 'honour' conjures preconceived notions of cultural difference of the Global North to 'other' societies with traditional honour codes.<sup>42</sup> Furthermore, the term 'honour' unnecessarily distinguishes this 'killing' from other types of VAW that also occasion death.<sup>43</sup> This is not to suggest that there are not cultural elements to the specific manifestation of forms of VAW.<sup>44</sup> I recognise that there is a diversity of women's experiences of violence both within and across cultures. I suggest, however, that it is a mistake to focus exclusively on cultural motivations of honour killings.

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<sup>34</sup> Ibid.

<sup>35</sup> Holly Johnson, Natalia Ollus and Sami Nevala, *Violence Against Women: An International Perspective* (Springer, 2007) 10.

<sup>36</sup> Rao Arif Ali Khan, *Honour Killing: Roots and Remedies* (Mittal Publications, 2012) 114.

<sup>37</sup> Ibid.

<sup>38</sup> UN Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of India*, UN Doc CEDAW/C/IND/CO/4-5 (24 July 2014) [10].

<sup>39</sup> Rupa Reddy, 'Domestic Violence or Cultural Tradition? Approaches to "Honour Killing" as Species and Subspecies in English Legal Practice' in Aisha K Gill, Carolyn Strange and Karl Roberts (eds), *'Honour' Killing and Violence: Theory, Policy and Practice* (Palgrave Macmillan, 2014) 27.

<sup>40</sup> Meeto and Mirza, above n 9, 194.

<sup>41</sup> Aisha K Gill, 'Introduction: "Honour" and "Honour"-Based Violence: Challenging Common Assumptions' in Aisha K Gill, Carolyn Strange and Karl Roberts (eds), *'Honour' Killing and Violence: Theory, Policy and Practice* (Palgrave Macmillan, 2014) 1, 12.

<sup>42</sup> Grewal, above n 29.

<sup>43</sup> Ibid.

<sup>44</sup> Gill, above n 40, 9.

The first reason is that a focus on cultural explanations of honour killings ignores how honour killings are a manifestation of the universal phenomenon of VAW. The characterisation of honour killings in terms of the ‘other’ ignores that honour killings, like all forms of VAW, reflect patriarchal systems of power that subordinate women. This view problematises Indian culture as the cause of honour killings, rather than recognising the origins of honour killings in the subordination of women. Furthermore, this view renders invisible the reality that VAW that occasions death is not restricted to cultures with honour codes in the Global South.

The failure to recognise the origins of honour killings in the structural subordination of women is apparent in the Special Rapporteur on Violence against Women’s statement that ‘manifestations of violence against women are a reflection of the structural and institutional inequality that is a reality for most women in India’.<sup>45</sup> Notably, the Special Rapporteur does not rely on cultural explanations for VAW in India. However, the Special Rapporteur fails to appreciate the universality of the ‘structural and institutional inequality that is reality for most women’ in the world, rather than exclusively women in India.

The second reason that cultural explanations of honour killings is inadequate is that it essentialises Indian women by portraying them as inherently vulnerable. Mohanty, a postcolonial feminist, has criticised Western feminist engagement with women in the Global South as producing a ‘composite, singular “third world woman”’,<sup>46</sup> characterised by ““third world difference” – that stable, ahistorical something that apparently oppresses most if not all the women in these countries’.<sup>47</sup> This construction of the oppressed ‘third world woman’ is exemplified in the characterisation of honour killings as perpetrated against the monolithic and agentless ‘other’ women. This essentialist view denies the agency of all Indian women by casting them as vulnerable, oppressed and in need of saving from their dangerous culture. This characterisation of Indian women as in need of saving is starkly contrasted with the portrayal of female victims of VAW in the US.

## Domestic violence in the US: A human rights violation of ‘white, wealthy and western’ women

Despite the US’ portrayal of itself as a leader in human rights, human rights abuses are routinely, yet invisibly, perpetrated against its female citizens. Like the female victims of honour killings in India, the human rights of ‘white, wealthy and western’ women in the US are also violated by domestic violence.

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<sup>45</sup> Rashida Manjoo, *Report of the Special Rapporteur on Violence against Women, its causes and consequences*, UN Doc A/HRC/26/38/Add.1 (1 April 2014) [7].

<sup>46</sup> Chandra Talpade Mohanty, ‘Under Western Eyes: Feminist Scholarship and Colonial Discourses’ in Chandra Talpade Mohanty, Ann Russo and Lourdes Torres (eds), *Third World Women and the Politics of Feminism* (Indiana University Press, 1991) 51, 53.

<sup>47</sup> *Ibid.*, 54.

As with honour killings, the prevalence of domestic violence is difficult to document. Nearly 20 people per minute experience domestic violence in the United States, equating to over 10 million victims annually.<sup>48</sup> Four out of five victims of domestic violence are women.<sup>49</sup> It is estimated that 23 per cent of women in the US are the victim of severe physical violence by an intimate partner.<sup>50</sup> I note that these statistics do not discern what percentage of victims were ‘white, wealthy and western’, and that domestic violence is more prevalent in immigrant communities in the US.<sup>51</sup> However, this paper contends that domestic violence in the US, like VAW more generally, does not discriminate between women. Being ‘white, wealthy and western’ does not prevent a woman from being a victim of domestic violence.

The limited visibility of domestic violence in the US reflects the characterisation of the US as a champion of human rights. Critics may argue that domestic violence in the US is not subject to the same hypervisibility as honour killings in India because domestic violence is a less ‘egregious’ human rights abuse than honour killings. However, this view fails to recognise that women die from domestic violence. The United Nations Secretary-General’s first comprehensive report on VAW identified that 40 to 70 per cent of female murder victims in the US were killed by their husbands or male partners.<sup>52</sup> Further, the history, identity and values of the US are grounded in its characterisation as a ‘site of freedom and human rights’.<sup>53</sup> However, this unequivocal characterisation of the US as a protector of human rights both ignores and renders invisible ongoing human rights violations perpetrated against women in the US. This ensures that human rights advocacy in the US typically focuses on human rights abuses in other countries rather than domestically. Soohoo, Albisa and Davis aptly note that, ‘claims of human rights violations were levelled *by*, not *at*, the U.S. government’.<sup>54</sup>

The continuing association of VAW with ‘other’ women perpetuates the tendency to attribute cultural reasons as the cause of domestic violence, rather than questioning the structures of power which subordinate women globally. When domestic violence is acknowledged in the US, it is typically viewed as perpetrated exclusively or near-exclusively against women in minority non-white communities.<sup>55</sup> I

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<sup>48</sup> National Coalition against Domestic Violence, *Statistics* (2015) <[ncadv.org/statistics](http://ncadv.org/statistics)>.

<sup>49</sup> National Domestic Violence Hotline, *Get the Facts & Figures* (2018) <[www.thehotline.org/resources/statistics/](http://www.thehotline.org/resources/statistics/)>.

<sup>50</sup> Ibid.

<sup>51</sup> Gretchen E Ely, ‘Domestic Violence and Immigrant Communities in the United States: A Review of Women’s Unique Needs and Recommendations for Social Work Practice and Research’ (2004) 7(4) *Stress, Trauma, and Crisis* 223.

<sup>52</sup> United Nations Secretary-General, *In-Depth Study on All Forms of Violence against Women*, UN Doc A/61/122/Add.1 (6 July 2006) [115].

<sup>53</sup> Grewal, above n 29, 340.

<sup>54</sup> Cynthia Soohoo, Catherine Albisa and Martha F Davis (eds), *Bringing Human Rights Home: A History of Human Rights in the United States* (University of Pennsylvania Press, 2008) vii (emphasis in original).

<sup>55</sup> Leti Volpp, ‘On Culture, Difference and Domestic Violence’ (2002) 2 (11) *Journal of Gender, Social Policy & the Law* 393, 394.



appreciate that women in minority communities experience higher rates of domestic violence.<sup>56</sup> The association of domestic violence with non-white communities in the US is a subtle manifestation of the emphasis on cultural justifications for VAW perpetrated against ‘other’ women.<sup>57</sup> This perpetuates the narrative that domestic violence in the US is aberrant from, rather than reflective of, Western values. This juxtaposes the characterisation of honour killings as reflecting a dangerous Indian culture.

The US’ human rights engagement therefore mirrors Spivak’s colonial paradigm of ‘white men saving brown women from brown men’. The US recognises that human rights abuses are perpetrated against ‘brown women’ by ‘brown men’, either in the Global South or minority communities in the Global North. This ignores that the human rights of women across all cultures are violated by VAW. The notion of ‘white men saving *white* women from *white* men’ would undermine the depiction of the US as a champion of human rights by highlighting human rights abuses against ‘white, wealthy, western’ women.

The failure of the US to ratify CEDAW ironically exemplifies the strength of its perception of itself as a champion of human rights. Women in the US are perceived as not ‘needing’ international human rights protection under CEDAW. The US is one of only six United Nations member states that has not ratified or acceded to CEDAW.<sup>58</sup> This attitude is exemplified by Mandhane’s statement that although the ‘United States has not yet ratified CEDAW ... women in the U.S. enjoy substantial rights due to the non-discrimination provisions in the United States Constitution’.<sup>59</sup> This view fails to appreciate that these constitutional rights do not necessarily translate into the protection of those ‘substantial rights’ and ratification of CEDAW would further enshrine a culture of domestic human rights protections.

A focus on the professional successes of Western women ignores the reality that women are frequently subject to violence and sexual harassment in the workplace. Cohen notes that, ‘[i]n contrast with the dire condition of women in developing countries, the condition of women in Western countries is now outstanding’.<sup>60</sup> To support her argument, Cohen cites the rates of women at university and in managerial positions.<sup>61</sup> Cohen’s characterisation of the ‘condition of women in Western countries’ as ‘outstanding’

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<sup>56</sup> Mutua, above n 28, 231.

<sup>57</sup> Deborah M Weissman, ‘The Human Rights Dilemma: Rethinking the Humanitarian Project’ (2004) 35 *Columbia Human Rights Law Review* 259, 316.

<sup>58</sup> Office of the High Commissioner for Human Rights, *Ratification status for CEDAW* <[http://internet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en](http://internet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en)>.

<sup>59</sup> Renu Mandhane, ‘The Use of Human Rights Discourse to Secure Women’s Interests: Critical Analysis of the Implications’ (2004) 10 *Michigan Journal of Gender & Law* 275, 310.

<sup>60</sup> Michelle Fram Cohen, ‘The Condition of Women in Developing and Developed Countries’ (2006) 11(2) *Independent Review* 261, 266.

<sup>61</sup> *Ibid.*

is problematic, however, because it ignores the epidemic nature of domestic violence and other forms of VAW. This issue is exemplified in the case of *Jessica Gonzales v United States*.

The landmark case of *Jessica Gonzales v United States* challenged the perception that the human rights of women in the US were always protected.<sup>62</sup> Unlike the US ‘shining the spotlight’ on other countries’ human rights abuses, the case focused attention on the US’ own human rights standards.<sup>63</sup> Gonzales was a victim of domestic violence whose children were killed after police failed to enforce a restraining order against her estranged husband. The case was the first instance in which a domestic violence victim brought a human rights action against the US. Many found the characterisation of the US as a human rights abuser disturbing.<sup>64</sup> A congressman told Gonzales, ‘do you know how embarrassing it would be for an international body to call the US a violator of the rights of women and children?’<sup>65</sup> This statement illustrates the ongoing reluctance for the US to scrutinise the human rights of women in the US.

Significantly, the Inter-American Commission on Human Rights determined that the US had violated the rights of Gonzales.<sup>66</sup> The Inter-American Commission on Human Rights found that the US had failed to act with due diligence to protect Gonzales and her children from domestic violence, which violated the state’s obligation ‘not to discriminate and to provide for equal protection before the law’, and ‘their right to life under Article I of the American Declaration’.<sup>67</sup> It is therefore clear that the ongoing perception of the US as a leader of human rights ignores the reality that domestic violence remains a pervasive human rights abuse of women in the US.

## An intersectional approach to victims of VAW

I advocate that the international human rights community should rely on Crenshaw’s seminal theory of intersectionality to recognise that all women are vulnerable to violence because of their gender.<sup>68</sup> My case studies have challenged the current focus on human rights abuses perpetrated against ‘other’ women. Intersectionality challenges the crudeness of the classification that if ‘you’re wealthy, white and from the west you have [human rights]’, and if ‘you’re not, you don’t’. Instead, intersectionality recognises that individuals experience vulnerability on the basis of multiple compounding spheres of

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<sup>62</sup> *Lenahan (Gonzales) v United States of America* (Inter-American Commission on Human Rights, Case No 12.626, 2011).

<sup>63</sup> Caroline Bettinger-Lopez, ‘Jessica Gonzalez v United States: An Emerging Model for Domestic Violence and Human Rights Advocacy in the United States’ (2008) 21 *Harvard Human Rights Journal* 183, 193.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> *Lenahan (Gonzales) v United States of America* (Inter-American Commission on Human Rights, Case No 12.626, 2011).

<sup>67</sup> *Ibid.*, 5.

<sup>68</sup> Crenshaw, above n 4.

disadvantage, for example on the basis of gender, race, class and sexuality.<sup>69</sup> Intersectionality recognises that *all* women are vulnerable to violence because of their gender, as demonstrated in my two case studies. The human rights community can no longer continue to simply associate VAW with ‘other’ women while assuming that ‘wealthy, white and western’ women are invulnerable to human rights abuses.

Intersectionality also recognises that some women experience greater vulnerability to violence. For example, a non-white, poor woman in the Global South may be more vulnerable to violence because of the intersection of her gender in addition to the disadvantage afforded by her race, class and geographical location. Conversely, ‘white, wealthy, and western’ women may not experience spheres of disadvantage based on their race, class or geographical location. However, this does not mean that women who are ‘white, wealthy and western’ are never vulnerable to violence. All women are inherently vulnerable to violence because of their gender, in addition to potential other factors. For example, both the ‘white, wealthy and western’ woman and the ‘non-white, poor and Global South’ woman are more vulnerable to violence if they are LGBTIQ, rurally located, or disabled.<sup>70</sup> Therefore, an intersectional approach would foster a more nuanced understanding of the victims of domestic violence and disrupt the conceptions that only ‘other’ women in the Global South are vulnerable to VAW and that women in the West do not experience human rights violations.

## Conclusion

This paper has challenged the universality of human rights for women by arguing that the human rights of women are systematically violated across both the Global North and Global South in the form of pervasive VAW. While the human rights of women may now be protected under international human rights law, this has not translated into the protection of human rights for women. My case studies of honour killings in India and domestic violence in the US have illustrated that the human rights of women are systemically violated. This occurs irrespective of whether the woman is ‘wealthy, white and from the west’ or ‘poor, non-white and from the Global South’. Furthermore, I have established that the continuing focus on violence against ‘other’ women ignores the universal nature of VAW as an embodiment of patriarchal power structures that subordinate women. This denies the agency of women in the Global South while rendering human rights abuses perpetrated against ‘white, wealthy and western’ women invisible. It is imperative that an intersectional approach is adopted to recognise that human rights are not guaranteed for all women due to the interrelationship between the global patriarchy

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<sup>69</sup> Ibid.

<sup>70</sup> Wendt and Zannettino, above n 7, 15.

and VAW. An intersectional approach would recognise the vulnerability of all women across both the Global North and Global South and facilitate the increased protection of the human rights of all women.

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