

# Dress and violence: women should avoid dressing like “sluts” to avoid being raped

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Dress is integral to visual culture. Judges, cultural vigilantes and in some cases, females themselves, have expressed or supported the notion that a woman deserves to be violated for her choice of dress. Such choice of dress need not necessarily be deemed risqué - violence towards women has been justified in incidents where women have worn short skirts, trousers, and even the traditional *kanga*. It emerges that such punitive practices take place predominantly in patriarchal, conservative communities, said to be influenced by cultural values. Various facets of South African law cause tension in executing the law to protect victims of, for example rape, as there are conflicting approaches to women's rights under customary law, the constitution and international human rights laws. This article aims to expand understanding of a complex and serious issue, namely, the perceived right to violate women due to their choice of dress – in this case the art – and the laws that are in place to protect victims.

**Key words:** dress choice, violation, culture.

## **Klerasie-keuse en geweld: vroue moet vermy om soos “slette” geklee te wees om sodoende verkragting te vermy**

Kleredrag is 'n integrale deel van visuele kultuur. Regters, kulturele buurtwagdele en soms selfs vroue ondersteun die gedagte dat 'n vrou verdien om geskend te word as gevolg van haar klerasie-keuse. Sulke keuses is soms nie eers gewaagd nie - geweld teenoor vroue is al geregtig in voorvalle waar vroue geklee was in kort rokkies, langbroeke, en selfs die tradisionele *kanga*. Dit wil voorkom asof sulke regstellende voorvalle veral in patriargale, konserwatiewe gemeenskappe voorkom, oënskynlik beïnvloed deur kulturele waardes. Etlike fasette van die Suid-Afrikaanse geregtelike verhoorverloop spanning in die uitvoering van die geregtelike beskerming van slagoffers van byvoorbeeld verkragting, aangesien daar teenstrydige benaderings bestaan teenoor vroue se regte onder die vaandel van die gewoonreg, die grondwet sowel as internasionale menseregte. Hierdie artikel poog om die begrip van 'n komplekse en ernstige vraagstuk, naamlik die veronderstelde reg om vroue te skend as gevolg van hulle klerasie-keuse – in hierdie geval die kuns – en die wet wat bestaan om die slagoffer te beskerm.

**Sleutelwoorde:** klerasie-keuse, skending, kultuur.

**D**ress is often used as a justification for violence against women. In January 2011 a Toronto police officer told a group of university students that “...women should avoid dressing like “sluts” to avoid being raped” (Sapa-AP, 2011). Even though the notion may be universal, violent behaviour towards women seems to take place in South Africa in mostly conservative (often rural) communities where women are harassed or even violated for their choice of dress. It may seem apparent that violent or sexual offences may be reduced through the creation and implementation of laws against such offenders. However the laws themselves may be ambiguous. Violence against a woman is socially constructed to reflect her role in an attack against her, hence she shares the responsibility for her violation with the perpetrator. As a result she is judged for having initiated the violence against her on the basis of, amongst other factors, her provocativeness. It is the opinion of the authors that perceptions towards women need to change for laws to be effective – perceptions that the common man possesses but more importantly perceptions that men in the judiciary hold.

The perceived right to violate women is an issue that has plagued societies for millennia (D’Cruze & Rao 2005; Johnson 2004; Green 1999). Women, as well as children and the elderly, constitute the vulnerable of society, which is one reason why the violation of women persists. Violence against women is a multifaceted issue, the use of dress as the justification for violence against women merely one aspect thereof. In South Africa in some conservative communities women find themselves being oppressed through their simplest form of expression, which is the way they choose to dress. D’Cruze and Roa (2005:1) suggest that violence against women remains covert because women are muted by their vulnerability in being women in a male-dominated society. Women are vulnerable to men because women are generally less physically strong than men are. This “weakness” is emphasised when women are subjected to violence. This notion is reiterated by Green (1999: 2) who argues that gender violence is intended to perpetuate and promote hierarchical gender relations especially aimed at subjugating women.

### **Dress as justification for violence**

According to Rasool (2002: 27), in South Africa, violence against women is perpetuated because women do not seem to acknowledge violence perpetrated against them and are unlikely to seek help when it occurs. Furthermore, it was discovered that abuse was being normalised in South African society (Rasool, 2002: 29). In other words abuse has become part of everyday life in South African society. Johnson (2004: 28) avers that violence against women is not considered as seriously by police as crimes against men or property, coupled by the so-called insensitivity in post-reporting ‘handling’ of a complainant and/or of her complaint by law-enforcement officers, medical officers and judicial personnel. The implication is thus that victims of violence remain silent about their plight and society thus allows such forms of violence to continue.

Dress has been used as a justification for violence against women. Violent behaviour towards women seems to take place mostly in conservative rural communities in South Africa. However, such conservative behavior also seems to spill over into urban areas. Mphahlele (2009) summarises an incident as follows:

On the 22<sup>nd</sup> July 2007, a 25 year old Zandile Mpanza was attacked by four men in Durban as a result of her non-compliance with a ban which stipulated that women are not allowed to wear trousers in the Umlazi T section. She was stripped naked and forced to walk through the streets. Her assailants destroyed her home and belongings and she was forced to move out of the township.

Mfusi and Mboti (2007) reported that the Commission [on Gender Equality] contended that women wearing pants was not a violation of customary practice and dismissed the mob action as a reflection of conservative opinion. Yet another incident occurred on February 17, 2008 in which a 25 year old Nwabisa Ngcukana was sexually assaulted by taxi drivers at the Noord Street Taxi rank in Johannesburg Central Business District for wearing a miniskirt. During the disturbing events that ensued, the taxi drivers sang a song which referred to a rape trial between the then deputy president of the African National Congress, Jacob Zuma, whom they supported, and the complainant, Khwezi, whom they demeaned for having worn the traditional *kanga* when the alleged rape took place. This action “...demonstrates a widespread belief in men’s entitlement to women’s bodies, and a sense of their impunity from the law” (Mphahlele, 2009). Professor Singh, a social anthropologist, explains this behaviour: “... [I]f one looks at South African societies, they are all patriarchal and it is difficult for people who assume authoritative roles in homes to adjust to women assuming their own roles and status within society” (BBC News, 2007).

Arguably the most demeaning form of violation is sexual abuse and sexual assault which falls under sexual offences in South African Criminal Law. A 2010 study led by the South African Medical Research Council states that more than 37 percent of men in Gauteng province said they had raped a woman (Rape Statistics, 2010).<sup>1</sup> The number of rapes reported in 2008/9 were 71 500 in the month of April to March of that year (South African Police Service, 2009: 1). Most rapists in SA go unpunished as rape is one of the most underreported crimes and it has the lowest conviction rates (Richards, 2001:1).

The prevalence of the commission of sexual offences in our society is primarily a social phenomenon which is reflective of deep systemic dysfunctionality in our society and [indicates] that legal mechanisms to address this social phenomenon are...necessary (Sexual Offences and Related Matters Amendment Act, 2007:4).

It may seem apparent that the issue of sexual offences may be reduced through the creation and implementation of laws against such offenders. However the laws themselves may be ambiguous.

Although most people agree that rape is bad, legislation and government action on sexual crimes are not always that clear. Indeed, rape seems to be graded on a scale from 'unconscionable' through 'bad luck' to 'much deserved' (Mollmann, 2008: 1).

According to Artz (2009:174) violence against women is socially constructed to reflect her role in an attack against her, hence she shares the responsibility for her violation with the perpetrator. Victims of sexual offences may encounter further abuse from judges if it is believed that women encourage sexual abuse or harassment towards themselves because of their dress choice or demeanour (Johnson 2004:28). A defence attorney in a sexual offence court case argued that the victim was "advertising her desire to be raped" by her dress choice (BBC News, 2009). This feeds into the perception that women are responsible for violence towards themselves because of the way they are dressed.

### **Dress as non verbal communication**

Fashion and clothing are forms of non verbal communication; this is because fashion and clothing do not use the written or spoken word to relay messages (Barnard 1996: 26). This is reiterated by Eicher (1999:1) who states that "...dress is a coded sensory system of non verbal communication that aids human interaction in space and time". In many cases this non verbal communication provides information about the individual (Arthur, 1999: 3). Calefato's view (2004: 5) that dress uses a sort of syntax according to a set of rules to give garments the ability to attain metaphoric meaning, has been taken further by Lurie (in Barnard, 1996:27) in both a literal and a literary sense. Lurie believes that clothing is comparable to language, which consists of words, grammar and syntax. Individual garments have pre-existing meanings and when these garments are combined together by the wearer to form an outfit, a 'sentence' or collective meaning is established. Thus it is deduced that garments are a medium used by individuals to relay messages to others (Barnard, 1996: 28). The problem with this concept of dress is that it suggests that dress choice is always premeditated, which may not be true. People dress their bodies in ways that align with a certain standard of appropriate behaviour or according to their own sense of aesthetics and beauty (Cunningham & Voso Lab, 1991: 1). Furthermore people habitually expect others to be able to understand what is essentially being communicated through these sartorial devices.

There are several aspects which govern how these messages are sent and received.

According to Barnard (1996: 72) the meanings which garments possess are resolved in people's own thoughts and intentions. It is clear, whether to the detriment of either party or otherwise, that the perceivers' and wearers' intentions often differ concerning certain apparel choices (Barnard, 1996: 73). The interpretation of the language of dress is steeped in social, cultural and political implications (Keenan, 2001: 182). Keenan (2001: 180) further states that "...bodies are impressing themselves on society through dress". Each perceiver adds a unique perspective to a social situation and it is essential to be familiar with what the characteristics are that shape perceiver understanding, when considering communication in dress (Kaiser, 1997:272). Perceiver variables are any social contexts and characteristics that influence perceiver perceptions of the dressed body (Kaiser, 1997: 271). These variables influence the psyche and perceptions of individuals, and perceivers in particular. According to Kaiser (1997: 271) perceiver variables, amongst others, are: age, ethnicity, culture, gender, sexuality.

Sexual characteristics are affirmed by dress; it becomes the intention of the wearer to attract the attention of the opposite sex<sup>2</sup> by means of the superficial view of that person presented by dress choice (Crawley, 1965: 72).

Modern sexuality is rooted in our (sexed) body, making the things we use to decorate our bodies, potentially at least, sexually charged... However, it would be misleading to assume that bodily adornment such as clothes...reflect a pre-sexed and pre-sexual body... Materials [are] commonly used simultaneously to cover and reveal the body, adding sexual meanings to the body, that would otherwise not be there (Entwistle, 2000: 181).

This statement suggests that dress on its own, removed from the human, bears no sexually charged meaning. Only when it is used to reveal and cover certain parts of the body does the meaning become apparent to the perceiver. Furthermore the sexuality of those body parts is determined by cultural values. For example, some cultures believe that the breasts are highly sexual and thus a blouse with a plunging neckline revealing a woman's cleavage would be deemed highly provocative. Alternatively when a woman's legs and thighs are revealed some cultures deem this to be a sexually charged appearance. Entwistle (2000: 186) further states that Western culture places a great deal of sexual meaning onto the female body. Furthermore, this has little to do with a woman's 'natural' feminine identity but is rather a result of cultural associations which have a propensity to identify women more closely with sex and sexuality than men.

Girls are traditionally encouraged to place emphasis on their appearance as opposed to boys (Kaiser, 1997: 66). It is suggested that women primarily dress to please men (Craik, 1994: 56). Laver's Seduction Principle adds to this notion in that it suggests that women's clothes are intended to make the wearer more attractive to the opposite sex (Rouse 1989: 12). Furthermore, Rouse (1989: 12) argues that many women have garments that are meant to attract attention to their bodies. "... [W]omen are constantly linked to the idea of seduction through appearance" Entwistle, 2000: 186). Glad (2007:83) maintains that female clothing and support garments augment sexual allure and partially expose or emphasise sexually distinctive body parts. He further states that dress is "...intended to signal her intentions". If this is true then so is the notion that women encourage male sexual attention. A different argument suggests that women do not dress with the sole intention of appearing sexually attractive (Kaiser, 1997: 335). This argument suggests rather that males focus on sensuality in their perception of female dress.

Displays of sexuality and perceiver interpretation thereof differ within different cultures (Barnard, 1996: 56). There are extensive cultural sensibilities surrounding gender, sexuality, age and status, which converge on the dressed body, which is more heavily weighted on women's

bodies than on men (Hansen, 2004: 166). Furthermore, with cultures shifting their shame frontiers, the naked body has been redefined. In other words, cultures are continuously changing what they consider to be shameful when it comes to which parts of the body are exposed. This has led to the attachment of sexual charge onto certain body parts. Hansen (2004: 178) describes an incident which occurred in the National Assembly in Zambia to illustrate this point. Nkandu Luo, a professor of microbiology and pathology, in her forties, wore an outfit which consisted of a short skirt which was two inches above her knees with a slit at the back and a loose fitting floral print shirt. She was seated in the front row and her knees and legs were visible. Professor Luo was subsequently accused of provoking male members of parliament with her dress. The members of parliament asserted, that she was "... trying to change this chamber into a bedroom" (Hansen, 2004: 178).

There are noticeable differences in female and male perceptions (Kaiser, 1997: 273), and it is these differences that also perpetuate situations like the one mentioned above. The question arises whether appearance accurately delineates a female wearer's sexuality. It can be assumed that there is a high degree of possibility that there will be miscommunication between the female wearer and male perceiver, which may lead to dire consequences (Kaiser 1997: 335). According to a study by Kanekar and Kolsawalla (Kaiser, 1997: 335), males attributed more responsibility to a female rape victim for the rape, if her dress choice was deemed provocative. It is apparent when interpreting these results that appearance perceptions can be linked to serious social ills and gender-based power relations (Kaiser, 1997: 335). The perpetuation of these social ills can be linked to the value systems entrenched in the cultures to which women belong or are subjected.

In investigating why men violate women the aim is to understand how certain men use female dress as a justification for their behaviour towards women. Messages transferred through dress are interpreted by the perceiver using his own embedded perceptions - it is established that perceptions are influenced by a number of factors. Perceivers then react, which may lead to violent consequences. It is deduced that female dress seems to influence violence against women. Dress is also used as a cue when a perceiver makes inferences about a woman. These dress cues may also influence perceivers to attribute blame to a woman for being violated.

### **Dress and social cognition**

The concept of social cognition provides insight into how female dress is used as a justification for male behaviour toward women and how people make sense of other people (Fiske & Taylor 2008: 1). Furthermore it is a phenomenon which is useful to the human condition and involves, among others, analyses of how people think. According to Wyer & Scrull (1994: 37) a social cognition perspective in research is rooted in cognitive representation and processes which are essential to comprehending all human responses to situations, objects and/or other humans. Dress is considered a cue which is interpreted in social interaction. In other words dress and appearance create a platform for messages about the wearer to be transmitted to the perceiver about the wearer's disposition. As the above description suggests, these messages are in turn interpreted by the perceiver and whatever message the perceiver interprets will influence the perceiver and the wearer's social interaction.

One major aspect of social cognition is social perception. Social perception is defined by Dijksterhuis & Bargh (2001: 3) as "...the activation of perceptual representation". In other words, social perception is how people perceive an object or person, and then rationalise what they see using their understanding of what the object or person represents in society. According to

Dijksterhuis & Bargh (2001: 3), social perception influences social behaviour. Social perception in turn leads to the perception of the individual – which is referred to as person perception - and this is highly influenced by pre-existing philosophies and stereotypes that the perceiver possesses.

A ubiquitous demonstration in person perception is that people's outputs (evaluations, impressions, memories) are shaped and guided by their knowledge and pre-existing beliefs about the social world. Rather than viewing individuals on the basis of their unique constellations of attributes and proclivities, perceivers prefer to instead furnish categorical (i.e. stereotype-based) conceptions of others...As such, rather than responding to the world as it really is, people's inferences and memories are embellished by schematic forces that guide information processing and its associated products in an expectancy-consistent manner (Macre & Bodenhausen, 2001: 240).

Thus when a person perceives others, his impressions, evaluations and memories of these people are guided by what he understands about the social environment. Hence a perceiver's first impression of another is not based on who that person really is, rather a perceiver makes use of categorical thinking. Categorical thinking is achieved by placing the perceived into categories also identified as stereotypes. This cushions the perceiver in that he has an expectation of how each stereotype will behave, which allows him to confidently prepare his approach or confrontation. To put it simply, perceivers perceive many people in a day and need a simple way to streamline the demands on their *person perception* (Macre & Bodenhausen, 2001: 242). Dress is one of the cues used by perceivers to establish stereotypes (Kaiser, 1997: 255). Dress becomes, in a manner of speaking, a 'social skin' which allows perceivers to scrutinize identities that the dressed body represents (Hansen, 2004: 372). For example, when a man perceives a woman in provocative dress, he may stereotype her as being promiscuous. This cue acts as a stimulus which suggests the appropriate behavioural response toward the perceived (Dijksterhuis & Bargh, 2001: 4). The question arises whether a man who sees a woman dressed in a certain way and stereotypes her as being promiscuous, will respond by violating this woman.

A person's 'lived experience' is rooted in culture – 'the structure of the wider context'. In other words the way we appear and the way we are viewed is influenced by culture. Culture influences *social perception*, in other words people's perceptions of others (Peng & Knowles, 2003: 1272; Chaiken & Trope, 1999: 17). The reason for this is that people's minds are predisposed to absorbing cultures as cultures socialise them (Fiske & Taylor, 2008: 16). In other words a person will automatically absorb a culture as he/she becomes a part of that cultural community.

## **Dress and culture**

The concept of culture has evolved and continues to evolve through time. Hence the authors have assembled different definitions so as to capture the essence of culture in the most broad context and, more especially, aspects of culture that are central to this article. "Culture includes all the characteristics, activities and interests of a people" (Eliot, 1975: 298). This has not always been the description of culture. 'Culture' is taken from the Latin word *colere* which translated means "...to inhabit, to cultivate, to protect and to honour with worship" (Barnard, 1996: 32). In an anthropological context culture is described as, "... the inherited, primarily non-modern and uncontested values, beliefs and practices that organise individuals' relations to, and participation in, communities" (During, 2005: 7). Violence against women is commonplace within some cultural communities. Violence seems to transcend communities evolving into a societal issue (Johnson 2004:22). Societal values encompass culture, as cultures are at the centre of shaping values and beliefs.

According to Kemp-Gatterson & Stewart (2009: 37, 38) there are seven attributes of culture, which include the cultural experience. Firstly culture is man-made. People within a society decide deliberately or unintentionally what a culture will be. Secondly, culture is learned. Culture is shared among people, either formally or informally. Thirdly, culture is prescriptive. This means that the culture will create standards or norms by which people belonging to that culture may act or do something. Fourthly, culture is a group phenomenon. Culture is shared by the populace of a society and is emphasized by group pressure. These include shared apparel norms. Fifthly, cultures are similar but different. Similarities and differences within societies develop similarities and differences in cultures. Sixthly, culture satisfies a need. Cultures achieve this through the establishment of norms and values, and these play an important role in societies, through identifying, simplifying and sustaining that society. Lastly, culture changes. This is because cultures adapt to the need of those who have created them. Furthermore cultural changes happen as a result of communities and households responding to social and economic diversions that are linked to globalisation, new technologies, environmental pressures, armed conflict and development projects (Schalkwyk, 2000:1). Clearly, culture is not cast in stone and outdated and inappropriate cultural leanings should be questioned, challenged and changed.

Culture influences action not by only providing the ultimate values towards which action is orientated, but by shaping a repertoire or 'tool kit' of habits, skills, and styles from which people construct 'strategies of action' (Swidler, 1986: 273).

This relates to how compelling social perceptions are; in as much as culture plays an integral role in people's everyday lives, their social perceptions influence their behaviour. Culture is considered a major causal variable by Swidler (1986: 273). His theory suggests that people have separate identities which are activated by situational cues, driven by culture, thus becoming influential on behaviour (Burgess, 2002: 7). In other words culture is a catalyst for behaviour and 'invests behaviour with meaning'.

"Expectations about attributes and behaviours appropriate to women or men and about the relations between women and men – in other words, gender – are shaped by culture" (Schalkwyk, 2000:1). Thus the concept of culture is most certainly a gendered one, which emerges through the general social representation of women (Hallam & Street, 2000:3), especially so in patriarchal societies. Women's experiences within patriarchal structures, within a cultural concept, thus enforce the idea that men are superior to women. This plays itself out in facets of everyday life - at places of work, in politics and in the home. Societies naturally differentiate between men and women (Mihindou, 2006:4). Kaiser (1997:420) poses the question, "how do cultural messages about the meaning of gendered appearances assume relevance in our everyday lives?" Whether it is done consciously or unintentionally perceivers respond differently towards men and women and this is due to cultural messages about the value of men and women and how they are meant to appear (Kaiser, 1997: 423).

Dress may serve as a symbolic metaphor of the relationship of the individual to the cultural system. As such, dress can be an extremely powerful symbolic way of expressing and reinforcing subtle values, relationships and meaning in human culture (Hamilton, 1989: 16).

## **Culture in context**

Africa has had a volatile history which includes the convergence of many cultures, especially European and African. Social perceptions held by indigenous people of Africa, especially those concerning appearance, were changed by the arrival of European settlers and later Christian missionaries to Africa. Christendom was imposed on these African cultures, leaving the recipients

in a crisis of confusion. This was further aggravated by the tendency of western Christianity to eliminate 'heathen objects', alter behaviour and replace African cultures with a new cultural order based on Christian principles. This includes changes in traditional African dress. "The struggle for souls entailed dressing African bodies in European clothes to cover their nudity and manage these bodies" (Hansen, 2004: 375).

The nudity of the female body troubled the settlers and missionaries (Doy, 1996: 17) and this attitude to the exposure of the female body seems to be perpetuated in contemporary Africa (Frenkel, 2008: 3). African women were especially viewed as hypersexual, which led to the surveillance and repression of their sexuality (McFadden, 2003). This suggests that African female sexuality was constantly monitored.

New scripts, reflecting these moralistic and anti-sexual edicts, were inscribed and continue to be inscribed on the bodies of African women, along with elaborate systems of control [...] sexuality is a key site through which women's subordination is maintained and enforced in postcolonial Africa" (Tamale, 2005: 11).

The argument is thus that female sexuality is controlled so as to keep women subordinate to men, especially in patriarchal societies (McFadden, 2005). The suppression of female sexuality in Africa is reinforced by patriarchy where it is essential for the domestication of African women, where gender roles are delineated and women are restrained from gaining control of resources (Tamale 2005: 11). As women's mode of dress has changed there has been the development of such styles as the hot pants, mini-skirt, skinny jeans, cleavage tops, etc. These fashions have filtered into Africa from the Western world and have caused conflict in many African societies. For example, "[t]ensions over 'proper dress' arising from the popularity of the miniskirt continue..." in African societies (Hansen, 2004: 376). Africa has seen a barrage of revolutions against the mini skirt, since its onset into female African dress codes (Allman, 2004). This is baffling because most African cultures, before the advent of colonisation, proudly displayed the female body (Hughes & Hughes, 1997: 114; Pilgrim, 2002). What is more disconcerting is that in these revolutions against certain kinds of female dress, women have been violated as a form of punishment for going against the established status quo of conservative dress (Allman, 2004). Popular dress such as the mini-skirt has been labeled as provocative dress. Furthermore, in Africa there is still an attitude that a woman who dresses provocatively deserves to be raped (Boima, 2010).

The issue lies in the perceived eroticism of the African female body (Frenkel, 2008). The portrayal of black women as lascivious by nature is an enduring stereotype (Pilgrim, 2002). This is best exemplified by the 'Black Venus' stereotype, which was infamously embodied by Saartjie Bartman, named the 'Hottentot Venus', that cast a specific image of racialised sexual 'otherness' (Frenkel, 2008:2). This is reiterated by Pattman and Bhana (2009:22) that black women's femininity is characterised as 'other'. This 'otherness' denies black women their femininity but rather creates a perception that these women are sexual objects. In South Africa, through the cultural history of the country, the black female body has been seen as 'consumerable' (ripe for consumption), an image of rapture (Frenkel, 2008: 3). In contemporary culture African women are portrayed 'thrusting their hips', scantily clad, in music videos (Pilgrim 2002). Lyrics such as, "hos, skeezers and bitches", are used to describe these women (Pilgrim 2002). In South Africa, young black women want to emulate these images which in their perceptions are images of success (Posel, 2004). Yet the social perception of a scantily clad woman is that she is sexually charged or sending the message that she desires sexual interaction (Pilgrim, 2002). This perception in itself is not a problem but it becomes dangerous if it solicits female violation.



South Africa has of the highest percentage of women who are violated in the world (Smith 2009). According to Nationmaster.com (2010) in South Africa 1.19538 per 1,000 people is raped. What is alarming about the South African statistics is that there are many women who have not been counted (Buhlungu, 2007:429). The law of a country is one method of effecting change in the lives of those who are vulnerable. Law is steeped in culture, especially in South Africa (Frenkel, 2008). According to Steyn & Van Zyl (2009: 12), in South Africa, “Social institutions, the women themselves, families, as well as the justice system, which is supposed to protect women, are used as tools to control women’s sexuality.” What essentially occurs is a concept constructed by Artz (2009: 174) known as ‘subordination boundaries’, aimed at keeping women in positions of tempered influence. As women protest against abuse they break these ‘subordination boundaries’ to the dislike of those in power, thus perpetuating a cycle of violation. The question thus arises whether the criminal justice system is able to shelter women as it is steeped in gendered social institutions.

### **Gendered social institutions**

South Africa is a Constitutional Democracy which means that the Constitution of that country is the Supreme Law; above all laws (Constitution 1996: 1243). The constitution of South Africa is applied *vertically*, thus regulating the interaction of government in relation to individuals and *horizontally*, thus regulating interactions between or among individuals (Barratt & Snyman, 2010). The Constitution contains the Bill of Rights which “enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom” (Constitution, 1996: 1245). The Bill of Rights applies to all law (Constitutional Court of South Africa 2005; Barratt & Snyman, 2010). South Africa is a multicultural society, consisting of Hindu, Muslim, indigenous African and broadly speaking, Western or European communities. Law is part of a community’s culture and therefore various systems of law are applied in South Africa (Van Niekerk & Wildenboer, 2009: 27).

The South African legal system is made up of Indigenous African Law, also known as Customary Law, Western components namely Roman-Dutch Law and English Common Law, and a universal component which is namely Human Rights Law (Van Niekerk & Wildenboer, 2009: 150). These numerous facets of South African law cause tension executing the law as there are conflicting approaches to women’s rights under customary law, the constitution and international human rights laws (Farrar, 2009). For South Africa to transform into an African country after its Eurocentric suppression required an “Africanness” to be reflected in the legal system, which meant incorporating certain aspects of customary law (Andrews, 1999: 436). This is where women find themselves at a point of contention, as customary laws are still steeped in patriarchal principles. For example in customary law women are excluded from receiving inheritance. This is in clear contradiction to section 9 (3) of the constitution (Ozoemena, 2006: 2). Furthermore the notion of *primogeniture* also violates the right of women to human dignity as stipulated in section 10 of the constitution, as this effectively excludes women from inheriting property. “Some customary practices place women in a position of dependency in relation to their male counterparts and as such are subjected to a place of subordination to men” (Ozoemena, 2006: 2-3).

Farrar (2009) states that under customary law women have a limited voice and have no participation in decision making within traditional institutions. Some customary laws support violence towards women, as a part of cultural norms (Farrar, 2009). Such violence still persists unabated due to deeply rooted societal norms which condone such violence, perpetrators having

widespread impunity, lack of resources which hinder efforts of redress, and the attitudes that doctors, the police and judges have toward victims (POWA, 2010:5). The ‘feminist jurisprudence’ model offers an analysis of the law as society implementing its power to nullify women and their experiences of violence (Artz, 2009: 171). Consequently violence against women infringes on several rights that are guaranteed by the constitution (POWA, 2010: 5).

A large percentage of black women, in particular, are marginalised amongst the poor of South African society, which causes them to remain vulnerable to all forms of violence (POWA, 2010: 7). Furthermore these women do not have access to legal redress when rights violations occur. Discrimination, hostile legal, political and socio-cultural environments impede efforts to deal with the violation of the rights of vulnerable and marginalised communities of women (POWA, 2010: 9). This is further compounded by the fact that black women have an obligation to comply with customary law which is steeped in patriarchal tradition (Bennett, 2004: 248). The state invokes African custom and traditions to justify and continue the violation of women’s rights (POWA, 2010: 20). Another issue hindering women in using legislative provisions is that court procedures are drawn out before the victim has an assurance that the perpetrator/s will be sentenced or that she has any protection from them if they are released. For example a woman named Buyisiwe was gang raped in October 2005. She reported the incident the following day and it took the police and court systems four years before the perpetrators were sentenced. According to Artz (2009: 12) violence and coercion are significant in the shaping, maintaining and restricting of women’s sexuality. Furthermore, social institutions and the justice system are used to control women’s sexuality rather than protect women. The female body becomes the site of violation unless a woman can prove that the sexual violence against her was unwarranted (Artz, 2009: 174). This is where dress plays a crucial role.

Assigning attribution in cases of sexual assault becomes complex, because perception toward victims of sexual assault are influenced by rape and sexual assault myths (Donecker, 2006). These myths suggest that a woman is responsible for being sexually assaulted if her dress choice suggests that she was ‘looking for sex’. In a study conducted by Donecker (2006) it was discovered that women were more harshly judged if they were perceived by participants of the study to have been wearing revealing dress when they were assaulted than women who had been dressed in clothes that were not revealing. Furthermore, more male than female participants sympathised with the perpetrator and attributed blame to the victim if they perceived her to be wearing provocative dress. This difference in perception was also noted by Workman and Freeburg (1999: 261) whose research revealed that male participants considered gender and dress when attributing blame to rape victims. These men considered aspects such as how provocative the victim’s dress was. However the female participants did not consider gender and dress of the victim in a rape situation and were more likely to attribute blame to the perpetrator.

The accurate imputing of the sexual attraction motive has implication for issues such as rape, where one viewpoint holds that the female is “asking for it” by dressing attractively. What role does attractiveness play in the crime of rape, which is widely regarded as a violent crime rather than a crime of lust? (Kaiser, 1985: 48). The same author (1985) refers to studies conducted by Terry and Doerge (1979) and Kanekar and Kolsawalla (1980) where the following were discovered: firstly that dress can be used to transfer attribution for sexual assault to the victim for sexually attracting a male perpetrator. However it is important to take into account with these findings that rape is a crime of violence which affects women who are not dressed in provocative attire as well (Kaiser 1985:49). Secondly, men are more prone to assign attribution to women in a rape situation. Clearly appearance dependence favours those whose appearance

connotes statuses held in high regard; with regard to crime, it favors those taken stereotypically to be no easy victims or who can manipulate appearance to suggest strength or imperviousness to assault...a woman is more likely to invite attack on the street if she is wearing tight, 'sexy' clothes (Gardener, 1990: ). This statement asserts how important appearance is in creating perceptions and attribution for social issues, especially violence against women, especially sexual assault.

In general a person who dresses modestly will be perceived as someone who is self controlled and positively influences others. Yet, concepts of shame or modesty are different in different cultures (Barnard, 1996: 52). This is based on what certain societies deem to be acceptable or sexually disturbing (Ribeiro, 2003: 12). "There's no definition of modesty or shame that is natural or essential and therefore found in all cultures" (Barnard, 1996: 52). This suggests that the concept of modesty is not universal. On the contrary - some cultures do not even consider it to exist.

Sexual instincts of modesty and attraction feed into the concept of dress (Crawley, 1970: 47). This means that whether a person wants to be modest or attractive, dress will be used as the medium to achieve this goal. Clothing systems attempt to reconcile the spheres of modesty and exhibitionism which may also be linked to private and public erotic ideals (Entwistle, 2000: 187). Thus people will expose their bodies in certain ways and in certain environments because of their personal beliefs about what is appropriately sexy or 'erotic' for public viewing and what is suitably sexy for private purposes. The question arises whether choice of dress is inspired by sexual impulse or aesthetic quality of the attire (Perkins Gilman et al, 2002: 9). In other words a woman may make a particular dress choice not because she intends to sexually attract the perceiver but that she is merely drawn to this particular dress's aesthetic appeal. Modesty is particularly applied to women rather than men (Perkins Gilman et al, : 11). To add to this a man may appear in public scantily clothed but if a woman is seen in such a manner she is declared to be grossly immodest.

## **In conclusion**

In the rape trial case against Jacob Zuma referred to previously, he employed his culture as a defence. This promoted the perception that revealing attire by women attracts sexual communications. "This can conclusively be said to support the Umlazi, Durban and the Noord Street Taxi Rank incidents as it resorts to the ideology that short or revealing clothes attired by women communicates either loose sexual behaviour by women or an invitation to sexual assault (Mphahlele, 2009)". In neither of these incidents have the females involved, to date been vindicated.

The subjugation of women is put into stark perspective when one views the evolution of most societies and the status of women within these societies. In contemporary culture, female issues have been hidden behind the façade of human rights, progressive constitutions and the emancipation of women. Women grapple with several issues especially concerning female violation, but the alleviation of these issues is hindered by politics and the justice system. The authors have explored the link between female violation, female dress and gendered social institutions in an attempt to demystify the perceived right that male violators have towards women. Female dress has been, and continues to be, an excuse to violate women, making women scapegoats for violent male behaviour. Furthermore rules are used to influence female dress choice through dress codes, which ascribe what is 'correct' and 'incorrect' dress, so as to sustain control of women, perpetuating the cycle of violation.

## Notes

- 1 The same article refers to the Democratic Republic of the Congo as having the worst prevalence and intensity of rape in the world.
- 2 Opposite sex here refers to women and men. When concerning sexual attraction this is not always towards the opposite sex, however, same sex attraction dynamics will not be discussed in this article.

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