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IN THE SUPREME COURT  
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Clerk of Supreme Court  
*R/h*

In re the Marriage of

NEHA CHANDOLA NKA NEHA VYAS  
Respondent

and

MANJUL VARN CHANDOLA  
Appellant

ON REVIEW FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

*AMICI CURIAE* BRIEF OF SOUTH ASIAN DOMESTIC  
VIOLENCE ORGANIZATIONS AND LEADERS  
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 ORIGINAL

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## I. INTRODUCTION

The father and his amici assert that this case presents the question of whether Indian cultural practices -- specifically, the involvement of extended family in child rearing and the practice of co-sleeping -- will be respected under Washington law. He defends his parenting practices as representative of Indian cultural norms, suggesting that the Washington courts must take a “hands off” approach when those practices are in play, regardless of whether the norms themselves pose an inherent risk of harm to a child and despite whether the norms are invoked primarily to mask coercive, controlling, and harmful behavior. Mother’s amici take issue with the invocation of “culture” for these purposes, particularly where, as here, the trial court’s decision had nothing to do with the supposed cultural norms themselves, but everything to do with the specific harmful behaviors in the household.

The very idea of “cultural norms” that are stable and ubiquitous within a racial or ethnic group is itself highly suspect, to which the parents in this case themselves bear witness. Both of them are children of immigrants from India; yet their own experiences of Indian culture have been largely divergent (reflecting the complexity of India and of immigrant communities). Consequently, inquiring whether the trial judge

improperly discounted “Indian culture” in this case is to ask the wrong question entirely.

The better inquiry is whether a vague claim of “cultural” privilege or license must bar the court from exercising its authority -- its obligation -- to protect family members from harm. Here, the treatment of the mother by the father and his parents was driven by gendered dynamics of power and control -- a destructive family dynamic that the trial judge properly restricted, for the child’s sake.

## **II. STATEMENT OF INTEREST OF AMICI CURIAE**

Amici in this case include leading local and national nonprofit organizations providing culturally-relevant services to survivors of domestic violence, as well as individual community leaders and advocates. These organizations have an interest in the outcome of this case because the Court’s decision will have a direct impact on survivors of domestic violence in Washington State. For more detailed information about each of the amici organizations, please see Motion for Leave to Appear As Amici, filed herewith.

Several individuals are also participating as amici, including Dr. Cynthia Keppley Mahmood, who holds a Ph.D. in Anthropology and has been employed as a professor at institutions of higher education for the past 26 years. She currently holds the post of Associate Professor of Anthropology at the University of Notre Dame, where she is also Fellow

of the Joan B. Kroc Institute for International Peace Studies. Her specialty is religion and conflict in South Asia, particularly focusing on the violent struggles over Punjab and Kashmir. She has published four books and many academic articles on these and related subjects. She has served as an expert witness in legal settings in the U.S., Canada, and the U.K. (Her curriculum vitae is attached to the Motion for Leave to Appear As Amici.) Dr. Mahmood appears here because of her expertise in matters relating to women in Indian culture.

Amicus Dr. Sujata Warriar is the Director of the New York City Program for the New York State Office for the Prevention of Domestic Violence. She has worked on the issue of violence against women at the local, state, national and international levels. Dr. Warriar was the President of the Board of Directors of a South Asian women's organization – Manavi, the first such organization dedicated to working with women from South Asia. She was nominated and served on the National Advisory Committee on Violence against Women for the US Department of Justice – Office on Violence against Women. Additionally, she serves on numerous Boards and Steering committees nationally and internationally. Dr. Warriar has authored numerous scholarly articles on culture and violence against women and served as an expert on the issue on numerous cases. (Her curriculum vitae is attached to the Motion for Leave to Appear As Amici.) Dr. Warriar appears here because of her expertise on the

intersection of violence against women and the uses of culture to justify oppressive behavior.

### III. STATEMENT OF THE CASE

*Amici* adopt Respondent Neha Vyas's statement of the case.

### IV. ARGUMENT

#### A. TO SPEAK OF "INDIAN CULTURE" IS TO OVERSIMPLIFY BECAUSE CULTURE IS NEITHER UNIFORM NOR STATIC.

The father claims broadly that an "overuse of restrictions may infringe upon the parent's and child's rights to maintain their cultural identity." Petitioner's Supp. Br. at 10. He reiterates a concern that "minorities dealing with family courts are 'often vulnerable to judgments based on cultural or class bias.'" Petitioner's Supp. Br. at 10 (citing *Santosky v. Kramer*, 455 U.S. 745, 763 (1982)). As well-intentioned and important as these concerns may be as a general matter, they have no application in this case, where the parents who are adverse to one another *both* claim the same ethnic background, and where the father's claims of cultural privilege grossly overstate and simplify cultural norms.

Two cultural claims are the focus here: 1) that co-sleeping is standard "Indian" practice; and 2) that living and raising children within extended families is standard "Indian" practice. Implicitly, the argument goes, for a court to intervene in either of these practices would be to interfere with the transmission from generation to generation of important

values and ways of being. The father uses “culture” as a kind of shorthand for what he would characterize as identity-based rights that must not be abridged.

Yet there is no such static identity tied to “Indian culture.” Indeed, the father’s use of “culture” is naïve and misleading. The traditions, values, beliefs and practices of families in India vary tremendously, having been shaped not only by ethnic but also by historical and political processes; and they continue to shift. Indeed, it has become as true in India as in the United States, that it is “difficult to speak of an average ... family.” *Troxel v. Granville*, 530 U.S. 57, 64-65, 120 S. Ct. 2054, 2059, 147 L. Ed.2d 49 (2000).

Importantly for our analysis here, co-sleeping arrangements in India vary by region, family, class, age and gender of the child. Likewise, the idea that all Indian families live in extended family households cannot be squared with the more complex reality. Divergent attitudes about such practices arise in different regions and religions, and, increasingly, are altered by changing ideas about gender equality. As women grow more independent, the viability of extended family living arrangements depends increasingly on mutual desire and reciprocal benefits. Different families have embraced or resisted these changes differently, and so a “norm” no longer exists. Simply, on these topics, there is no standard practice within the country.

This variation is even greater for immigrant communities. In the United States, the history of immigration by Indians is a long and complicated one, beginning with upper caste and class immigration after 1960. This first cohort of immigrants was a largely materialistically successful group. Later waves of immigrants, however, were less so, and so their immigrant communities bore different characteristics of class. In time, other societal influences have weighed in to re-shape social practices.<sup>1</sup> In the United States, these different immigrant communities interrelate in ways they likely would not in India, becoming part of this “melting pot” culture. For all of these reasons, to speak with authority about an Indian cultural practice without acknowledging complexity and contingency is at best naïve and, potentially, nothing more than stereotyping.<sup>2</sup>

B. ESSENTIALIST AND REDUCTIONIST UNDERSTANDINGS OF CULTURE OFTEN MARGINALIZE VULNERABLE POPULATIONS.

One reason that stereotyping is problematic is that it makes discrimination easier. Those with power in communities can select “traditions” to uphold as a means to justify unequal and, even, repressive

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<sup>1</sup> See generally, U. Narayan, *Undoing the Package Picture of Culture*, *Signs* 25:4 (Summer 2000) 1083 (noting that the boundaries of of any culture constantly shift as people move through time and space).

<sup>2</sup> *Id.* at 1084.

treatment, including violence against women and children.<sup>3</sup> Numerous studies in various parts of the world reveal ways in which dominant groups undercut struggles for women's rights and against gendered violence and child abuse.<sup>4</sup> Not only is a more complex understanding of "culture" a more accurate one, it does not lend itself so easily to these abuses.

Here, the court is offered a simplified view of culture that purports to be based on race or ethnicity, while ignoring the facts specific to this family, which facts demonstrate *both* that cultural assumptions seem not to apply *and* they are being used to justify a repressive family system. In this family, both parents were born and grew up in the United States. The wife is the family's "breadwinner," but also the family's principal domestic laborer. RP 31, 35, 37-38. She is an attorney, but is viewed as inadequate intellectually by the father's parents, including with respect to her religious practices (which may also suggest other class-based prejudices and conflicts). RP 132-133, 385. The father seems completely dependent on his parents, including for financial support, yet also is determined to dominate his wife and child by enforcing "rules" of the household and by

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<sup>3</sup> Scholarly works that address culture in the discussion of women's issues and violence against women include Kum-Kum Bhavnani et.al., *Feminist Futures: Re-imagining Women, Culture and Development* (2003) and Chandra T. Mohanty, *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity* (2003).

<sup>4</sup> See, e.g., Susan Okin (ed.), *Is Multiculturalism Bad for Women?* (1999); Martha Nussbaum et.al. (eds.), *Women, Culture and Development: A Study of Human Capabilities* (1995)

tending to his own needs above his child's. RP 124, 133-135,140-141, 189-190, 411-415. Additional facets of the parties' identities were not fully explored at trial, but the ones revealed above alone suggest the complexity of advancing any particular practice as "cultural" in nature. Certainly, to excise one or more practices (or conflicts over practices) from this context and "explain" it as cultural without regard to the more complex dynamics of the family cannot be justified.

This Court should maintain a critical attitude toward authoritative assertions of cultural "truths." While it may be true that invoking "culture" as shorthand in some contexts may be useful (as where it may help make immediate sense of behaviors that seem strange to an outsider),<sup>5</sup> such an idea of "culture" in a situation like this is decidedly misplaced, even dangerous. Where thinking about "culture" leads us to make generalizations based only upon ethnic or racial identification, we may overlook the influences of other axes of discrimination such as gender and class. We may not understand ways in which forces bearing upon multiple "identity" characteristics of a person intersect and shift with the context, whether social or political or temporal.<sup>6</sup> And, most disturbingly, we may

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<sup>5</sup> See, e.g., Sujata Warriar, Marissa Dagdagan and Leni Marin, eds, *Family Violence Prevention Fund Culture Handbook* (2005) (explaining that the idea of culture may shed light on practices of minority or immigrant populations).

<sup>6</sup> See, Sujata Warriar, "It's in their Culture:" *Fairness and Cultural Considerations in Domestic Violence*. 46 *Family Court Review* 537 (July 2008).

not see ways in which “culture” is being invoked, as it is here, simply to justify bad behavior.<sup>7</sup>

Were this Court to enshrine “Indian cultural practices” above other values (whether it be something general like gender equality or something specific like the well-being of *this* child) and make them a barrier to trial judges’ discerning and responding to harms, then it would err in a way that has worried scholars for decades -- that is, by failing to see how the “intersectionalities” of race, class and gender complicate too-facile analyses and too-quick remedies for difficult social (and familial) problems.<sup>8</sup>

C. THE FATHER’S CULTURAL DEFENSE OBSCURES THE GENDERED POWER DYNAMICS THAT UNDERLIE THE FATHER’S HARMFUL CONDUCT.

While this case does not fit into a domestic violence paradigm constructed largely from statutory definitions, it maps perfectly onto a related problem – that of the coercive and controlling intimate partner.

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<sup>7</sup> See, Leti Volpp, *(Mis)identifying Culture: Asian Women and the “Cultural Defense*, 17 Harv. Women’s L.J. 57 (1994).

<sup>8</sup> See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Legal Forum 139 (identifying discriminatory “intersectionalities” of race and class) and Lila Abu-Lughod, *Writing Against Culture* (in Richard G. Fox, *Recapturing Anthropology* (1981)) 137-154 (explaining dynamics of gender and power, and turning away from essentialism and stereotyping and towards a multiplex analysis).

“Coercive control” has been defined as disempowerment of the victim through intimidation, degradation and other coercive tactics.<sup>9</sup>

It is the father’s behavior in this regard that should be the focus here, not the “cultural norms” he seeks to hide behind. The father -- with the help of his parents -- sought to control the mother through humiliation, threats, and micro-management of her daily activities.<sup>10</sup> For example, in the presence of the daughter, the father demeaned her verbally (calling her “psycho,” “crazy” and “sexually abnormal” (RP 414)). The father threatened to bankrupt and ruin the mother if she ever divorced him, emptied their bank account upon their separation, and said he would spend \$100,000 battling her if she ever sought custody of their child. RP 381-382, 414, 416-418. He promised to reveal the conflict to the child and indicated that he would have “karmic justice.” RP 41, 381-382. Referring to his own parents, the father warned the mother that their daughter would have “real parents” very soon. RP 415.

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<sup>9</sup> See, e.g., Evan Stark, *Coercive Control: How Men Entrap Women* (2009) (defining coercive control as conduct designed to retain privilege; establish fear, domination, dependence, and deprivation of liberties); Jeffrey R. Baker, *Enjoining Coercion: Squaring Civil Protection Orders with the Reality of Domestic Abuse*, 11 J. L. Fam. Stud. 35, 47-48 (2008) (explaining that coercive control is done through microregulation of everyday behaviors associated with stereotypic female roles, such as how women dress, cook, clean, socialize, care for their children, or perform sexually). See also Connie J. A. Beck and Chitra Raghavan, *Intimate Partner Abuse Screening in Custody Mediation: The Importance of Assessing Coercive Control*, 48 Fam. Ct. Rev. 555, 556 (2010).

<sup>10</sup> The potential involvement of extended family in coercive control is noted in Chic Dabby, *Ask the Experts: Ten tips for Professionals on Domestic Violence and Cultural Contexts in Asian Communities*, eNewsletter of the Association of Family and Conciliation Courts (December 2013).

While labeling the mother's family "dysfunctional" and calling his wife a "bad mother," the father controlled (or allowed his parents to control) daily decisions regarding the child's care, regularly preventing the mother from exercising her own maternal authority. RP 103-107, 109, 129-130, 203-204. Over the mother's objection and sometimes in defiance of their pediatrician's recommendations, the father (and his parents) imposed upon the family their views regarding the use of baby monitors, car seats, sleeping, and night-time feeding -- views that were not cultural in any way, but idiosyncratic at best and harmful to the child at worst. RP 41, 61, 189-190, 339-341, 408, 411,408, 411-415, 644. The father and his parents demanded that the mother feed the daughter formula, and then demeaned her for subsequently not producing sufficient breast milk. RP 43, 39. The mother was required to hand off her child to her mother-in-law after all feedings and was prevented from having her own time with her child. RP 41. The mother was expected to assume sole responsibility of all household chores in addition to working full-time. RP 38. The mother-in-law followed the mother from room to room, monitoring her behavior "like under a microscope." RP 106.

The father's use of "cultural norms" to explain his parents' involvement in family life completely ignores the fact that their participation, even as it masked the father's inability to parent independently, also furthered the mother's mistreatment. RP 104-109,

134-135, 140-141, 339-341,376, 724-728. The family system that existed here was not benignly patriarchal; it was not a well-functioning support network; it was powerfully and intentionally marginalizing of the mother.<sup>11</sup>

The father’s use of “cultural norms” to deflect attention from his conduct reappears in his arguments with regard to co-sleeping. Co-sleeping may indeed be common in some households in some communities, Indian and otherwise. But in this case, “co-sleeping” became an excuse for the father’s persistent disturbance of the child’s sleep patterns, leading to sleep deprivation in the child and eventually to the trial court’s conclusion that the child needed to be provided her own room. Arguments, cultural or otherwise, about the benefits of co-sleeping in furthering attachment are irrelevant here. The question before the trial court was not whether co-sleeping is good or bad, but whether the child’s sleep was being harmfully disrupted as part of the same pattern of coercive control, in this instance of the child herself as well as the mother: prohibiting the child from sleeping on a bed, requiring her to sleep on the floor, prohibiting the use of baby monitors, requiring his parents to remain stationed in the bedroom at all times, and failing to follow a bed-time

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<sup>11</sup> For an analysis of how the Indian patriarchal family creates an unequal relationship between spouses allowing one to control another with or without violence, see Niveditha Menon, *Domestic Violence in India: Identifying Types of Control and Coping* (Ph.D. Thesis, Penn. State Univ., 2008) 92, 132.

routine. RP 53-54,104-107, 426, 640, 640-644. The parenting evaluator, Dr. Wheeler, described the father's rigid conduct as an obsessive level of control. RP 190-192.

When the behavior in question is harmful -- when, as here, it shows a pattern of coercive control of the mother and alienation of the mother from the child -- then no "cultural" defense should hold. When the behavior in question is, by no measure, serving the "best interests of the child," then an explanation that it is "normal" in a community (regardless of whether the claim to normativity is accurate) must not enable courts to turn away from their duty to exercise their discretion and authority on a child's behalf. This is what the court did in this case, and its decision should be upheld.

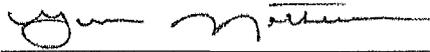
## V. CONCLUSION

The father's attempts to mask his problematic behaviors as cultural practices must fail. There is no Indian "cultural norm" in question here, as any effort to fix such a norm will not accurately account for variations in family life in immigrant Indian communities. More importantly, whether the "norms" are such or not, the father's abusive behavior cannot be excused, and the trial judge's restrictions upon his parenting were entirely justified given the specific facts of this family system. The father must not succeed, by means of accusing the judge of cultural insensitivity, in

undermining the court's well-placed efforts to protect the child from the father's harmful conduct.

Dated this 14th day of February 2014.

RESPECTFULLY SUBMITTED,



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## OFFICE RECEPTIONIST, CLERK

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Attached for filing in Marriage of Chandola, No. 89093-5, in pdf format are the following:

- Motion of South Asian Domestic Violence Organizations and Leaders for Leave to File Amicus Brief
- *Amici Curiae* Brief of South Asian Domestic Violence Organizations and Leaders Warriar, Mahmood et al.
- Declaration of Service

The person submitting these pleadings is Gwen Mathewson, WSBA #36104, whose email address is [gwen@mathewsonlaw.com](mailto:gwen@mathewsonlaw.com).

Thank you.

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