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Bodily rights and collective claims: the work of legal activists in interpreting reproductive and maternal rights in India

CAROLYN HEITMEYER & MAYA UNNITHAN *University of Sussex*

This article engages with anthropological approaches to the study of global human rights discourses around reproductive and maternal health in India. Whether couched in the language of human rights or of other social justice frameworks, different forms of claims-making in India exist in tandem and correspond to particular traditions of activism and struggle. Universal reproductive rights language remains a discourse aimed at the state in India, where the primary purpose is to demand greater accountability in the domain of policy and governance. Outside of these spheres, other languages are strategically chosen by activists for their greater resonance in addressing individual cases of women claiming reproductive violence within the context of the family as well as localized histories of feminist struggle and social justice. In focusing on the work of legal activists and the discourses which inform their interventions, this article seeks to understand how the language of reproductive rights is used in the context of India, not as a 'Western import' which is adapted to local contexts, but rather as one of multiple frameworks of claims-making drawn upon by legal activists emerging from distinct histories of struggle for gender equality and social justice.

The universality of human rights has been challenged in anthropology through a focus on the social and political contexts which inevitably shape the ways in which rights are interpreted, which issues are prioritized over others, and the particular ways in which international human rights law is drawn upon by both state and non-state actors (Englund 2006; Unnithan & Heitmeyer 2014; Wilson 2001). Within the context of reproductive rights in particular, Petchesky (1998: 3) has suggested that while the term itself actually originated in North America and Europe, it later became appropriated by 'similar yet distinct movements' focused on women's sexual and reproductive health in Africa, Latin America, and Asia in the early and mid-1980s. While the language of reproductive rights has traditionally been equated within debates around women's right to abortion (and the right of women to control their fertility), it is increasingly drawn upon in reference to new claims around citizens' *rights to childbearing*. This can be seen in various campaigns, ranging from the right to safe motherhood and the prevention of maternal mortality and morbidity in many regions of the Global South to the rise of

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assisted reproductive technologies to enable previously infertile couples or individuals to have children (Luna & Luker 2013).

This article seeks to chart current understandings around legal uses and interpretations of reproductive rights in India, with a specific emphasis on the ways in which legal activists deploy this particular language and discourse in their work. In this context, we argue that in India the language of reproductive rights (*prajanani adhikar*) has been adopted by activist groups largely in relation to entitlements to maternal health *vis-à-vis* the state. In contrast, the ability of women to control their own fertility within the context of non-state collectives, such as the family and caste community, is rarely framed in the language of reproductive rights but rather is spoken of as a question of needs (*jarurat*) and one which falls within the larger legal remit of domestic violence legislation.

Based on multi-sited fieldwork carried out over a year (2009–10) in legal, judicial, and civil society institutions in Delhi and Rajasthan, India, the research seeks to elucidate the ways in which the language of reproductive rights is interpreted in the Indian context.¹ Specifically, we sought to chart the modalities in which activists working at different levels articulate claims around issues relating to reproductive well-being, and the contexts and epistemologies informing these different interpretations. As such, the community which formed the focus of our study constitutes what Merry has referred to as the ‘intermediaries . . . such as community leaders, nongovernmental organization participants, and social movement activists’ (2006a: 38) who play an important mediating role in how claims are framed.

In our analysis, we focus on two legal advocacy networks, each of which is representative of a distinct approach to working for reproductive justice,² and social justice more broadly, through recourse to legal means. The first, KANUN,³ is a national organization with strong links to international funding agencies and global human rights networks which draws on legal intervention (especially Public Interest Litigation⁴) as a means of influencing state-led policy and effecting legal reform on a national level. Its Reproductive Rights Unit draws explicitly on international human rights law and focuses much of its work on the definition of reproductive rights set out by the 1994 International Conference on Population and Development Programme of Action. The second organization, SEVA, works on a more local basis within the Indian state of Rajasthan and draws its approach from an ethos of social justice language, which is firmly rooted in Gandhian activist traditions of ‘*seva*’, or public service which is undertaken by the individual in order to benefit the public good.⁵ Through its embeddedness in local activist networks, SEVA seeks to fulfil its wider mission of social service by providing legal representation and other forms of support to individuals from marginal backgrounds.

Through a description of the work of these two networked organizations, this article contributes to existing anthropological studies (Englund 2006; Goodale 2007; Merry 2006b; Speed 2008) on how human rights exist alongside other languages of claims-making. In particular, we suggest that despite assertions that human rights are becoming ‘transnational and increasingly hegemonic’ (Goodale 2009: 11), other idioms of social justice have neither been displaced nor been made irrelevant in the context of India. Rather, strong civil society networks and long-standing traditions of social activism remain firmly entrenched in the way in which claims-making takes place and the terms through which struggles for justice and women’s rights are enacted. At the level of national policy and legislation, the language of rights has been effectively used to

pressure the state to guarantee basic reproductive entitlements and services. Yet, within the context of other social institutions such as the family, caste *panchayat* (council), and religious community, other languages of claims-making are able to capture more effectively the tension between individual rights and collective claims integral to the reproductive lives of most lower- and middle-class women in Rajasthan. Through a focus on the work of legal activists and the discourses which inform their interventions, this article seeks to understand how the language of reproductive rights is used in the context of India, not as a 'Western import' which is adapted to local contexts, but rather as one of multiple frameworks of claims-making drawn upon by legal activists emerging from distinct histories of struggle for gender equality and social justice.

Background and context: legislation and case law on reproductive health and rights in India

While the human rights movement more broadly has a long and diverse history in India (Gudavarthy 2008; Patel 2010), the language of reproductive rights more specifically has not become more widely adopted within public and media discourses. Many activists, particularly those at the grassroots level, have likewise preferred to frame reproductive and maternal health either within the wider remit of domestic violence or as a public health problem (Madhok, Unnithan & Heitmeyer 2014). This said, with the introduction of the UN Millennium Development Goals in 2000, particularly number 5a and 5b on maternal and reproductive health, Indian activists and feminists have begun to focus on the language of international reproductive rights documents such as the International Consensus on Population and Development (1994) to put pressure on the Indian state to take active measures to improve access to maternal and reproductive health, particularly by women from poor and marginalized groups (Das 2011). Given the high mortality rates in many of the less economically developed states of India, human rights and feminist organizations have in particular seized upon this new momentum as an opportunity to recast reproductive and maternal health as distinctly *rights-based* issues which the state as the primary duty-bearer is obliged to guarantee to women. The language of reproductive rights in India is thus increasingly associated with the issue of maternal health; in contrast, the right to reproductive 'autonomy' (through access to abortion and contraception) prevalent in Euro-American contexts retains less currency.

The focus on 'health' permeates most national legislation which seeks to secure women's reproductive well-being. The earliest major national legislation focusing on reproductive and maternal health is the Maternity Benefit Act and Rules (1961),⁶ which aimed to protect the 'dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working', guaranteeing paid maternity leave for female employees. The Medical Termination of Pregnancy (MTP) Act was passed ten years later in 1971 and aimed to legalize medical abortion in contexts of contraceptive failure, danger to the mental or physical health of the mother, rape, and a series of other situations. Additionally, the law also sought to restrict those legally authorized to perform abortions to only state-certified medical practitioners. According to Ramachandar and Pelto (2010: 146), the main objective of the MTP Act was to liberalize the strict regulations on abortion previously introduced in India in the 1860s under the British regime as well as act as a means to reduce the significant level of maternal morbidity and mortality caused by illegal abortions conducted by untrained (or unqualified) medical staff.

As several scholars have charted (e.g. Gwatkin 1979; Tarlo 2003), efforts at population control reached an extreme point during the years of Emergency imposed by Indira Gandhi in the late 1970s, when large numbers of the poor (especially men) were forced to undergo sterilization procedures. The subsequent backlash against family planning led state agencies to take drastic moves to change the public image of such programmes: for example, with the new administrations renaming the 'family planning programme' as the 'family welfare programme', placing emphasis on education and motivation initiatives and the *voluntary* nature of sterilization programmes (Maharatna 2002: 972).

More recently, the global rise of human rights language and discourse has led to a further shift away from top-down policies constructed around family planning as necessary for the *nation's* development, to a new emphasis on the rights and choices of individual women (Unnithan-Kumar 2003). This is particularly visible in recent legislation such as the Prevention of Domestic Violence Act (2005), which, in addressing the violence directed against women in the home, also draws on international human rights law.⁷ In addition, court judgments such as those issued by the Supreme Court (*Vishakha v. State of Rajasthan* [1997]) on the issue of sexual harassment in the workplace and, more recently, of a hospital's violation of a woman's right to their birthing facilities (*Laxmi Mandal v. Deen Dayal Hari Nager Hospital & Ors* W.P. 8853/2008; hereafter referred to as the 'Laxmi Mandal case'), described in greater detail later in this article, explicitly draw on international human rights law in the decisions. Other significant national policy initiatives, such as the National Rural Health Mission (NRHM), also outline the importance of choice in contraceptive options as part of their objective to ensure the right to health to all Indian citizens.

In recent decades, several legal cases have addressed reproductive and maternal justice issues (see Desai & Mahabal 2007: 127–38). Yet, despite the increasing uptake of rights language around issues of reproductive and maternal health in national policy, only one legal judgment (the 'Laxmi Mandal case', discussed below) has explicitly invoked the language of reproductive rights. Moreover, as noted by Ram (2001), the state continues to carry out an implicit family planning programme, seeking to control fertility while simultaneously striving to facilitate reproductive 'choice' and 'participation'. This tension inherent in reproductive decision-making wherein individual rights must be balanced against the collective welfare is one that exists at multiple levels: at the state level through policies around national development, and within non-state institutions such as the family and community, as we explore in greater depth in the next section.

Rights, duties, and needs: reproductive claims as individual rights and collective decisions

As Ginsburg and Rapp (1995) have argued, the politics of reproduction are inherently tied to wider structures of power, kinship, and economic relations. In India, decisions around childbearing are seen as intimately tied to the welfare and fate of the collective kin group as well as individual women. In general, a woman's fertility and reproductive role are paramount in relation to her status in the family and the level of claims and entitlements she is able to claim both amongst kin and in society more widely. Childbearing constitutes status but is also intrinsically connected with a sense of achievement and worth (Unnithan-Kumar 2003: 190).

In addition to the importance attached to childbearing in ensuring the future of successive generations, women's bodies are intrinsically linked with wider notions of family, community, and national identity and honour (Fruzzetti 1982; Papanek 1973;

Ram 2001). It is in this sense that a universal rights language, which focuses on the individual as an atomized unit rather than a social subject enmeshed in complex webs of collective bodies such as kin, caste, and religious groups, becomes particularly problematic. This is evident in the language and modality through which particular grievances are expressed: many advocates and activists with whom we worked stated that particularly women from poorer backgrounds rarely drew explicitly upon the language of rights in representing their grievances. Jaya, an activist working on promoting reproductive rights with the national legal network KANUN, noted whilst talking about the challenges of working in the field of human rights in India that ‘human rights . . . no one really ever says it because everyone thinks that if you’re poor, this is your lot. No one even knows how to articulate it – and even when they do, people don’t listen.’ Rather, most of the petitioners who seek assistance from legal activist groups such as the ones that we describe in this article do so through talking about their ‘needs’ (*jarurat*), arguing that they are being deprived of something that is necessary for their survival and dignity. As another legal advocate working in Jaipur, the capital city of Rajasthan, noted: ‘They talk . . . in the context of needs – that we want something so please provide it to us (*hame jarurat hai, dilwado*) . . . They don’t demand it in the context of rights that these are our rights and we demand that they be met’ (interview, 25 May 2010).

Within the context of reproductive rights, this is likewise the case among many members of the legal and judicial system, who often interpret cases around, for example, access to reproductive health as related to problems of population control which impinge on national development and the collective welfare. As suggested to us by a former judge in the Rajasthan High Court who describes himself as rooted in both Gandhian activism and human rights, the collective interests must come before the rights of the individual. The nation or collective should be prioritized over the individual. Drawing a comparison with China’s population policies, he suggested that ‘if the individual has to sacrifice [him-/herself] for the needs of the nation, that is okay’ (interview, 1 June 2010).

As suggested here, while many of the advocates and judges whom we interviewed for the research identified human rights with the broader social justice goal of helping poor and marginalized people, they did not necessarily see them as impinging on cultural values, holding that the collective welfare (be it in terms of kin, caste, or the nation) should take precedence over the rights of the individual. This is also evident from case law in the area of reproductive justice: as noted by Kaur (cited in Unnithan, Heitmeyer & Kachhawa 2010: 60), often even those decisions whose ultimate effect is to support the reproductive rights of individual women are still couched within the language of population control. For example, in *State of Haryana v. Smt Santra* (2000), the Supreme Court found in favour of the petitioner, Mrs Santra, who had filed a case against the government for medical negligence in her sterilization procedure in a public hospital after she conceived following the operation. The final judgment in favour of Mrs Santra, however, cited its reasoning as based in the need for population control: ‘[I]n order that [the Indian nation may enter] into an era of prosperity, progress and complete self dependence, it is necessary that population is arrested’.

Notions of the importance of promoting the ‘collective good’ are also evident in the rhetoric of some advocates, family counsellors, and Rajasthani activists more generally, which emphasizes that rights alone are not sufficient; rather, they must exist alongside duties (*dharma, farz*).⁸ In the words of an advocate working for a women’s organization in Jaipur, ‘Often we talk about rights but forget about our duties. Rights cannot be

achieved if we make demands (and do nothing in return)' (interview, 29 April 2010). In this sense, the language of rights is often criticized as placing the needs of the individual, or a minority group, over the welfare of the wider collective and seen as needing to be tempered by an equal emphasis on duties.

At the same time, this defence of 'duties' towards the collective is not held across the board by the activists with whom we spoke: others, in contrast, remained defiant that the rights of women should be prioritized over those of the wider collective. As noted by a long-standing members of the Rajasthani women's movement who remains active with a group working on behalf of victims of domestic violence, it is solely the right of individual women to make the decision to pursue legal action:

[In our organization] we were saying that it is the right of that woman who has met with the atrocity to decide the action she would like to take. It is her right to decide because she is being victimized. We can only tell her various procedures, various implications of decisions that she might take. But ultimately she has to decide because it is *her* right to decide. She has been given certain rights by the Constitution and she should be able to actualize these rights (interview, 16 June 2010).

The promotion of rights of individual women cited above, in defiance of what may be construed as the best interests of the collective (be it family, caste, or nation), remains a radical position given the wider cultural importance of promoting the interests of the group over the individual, yet one which many activists in the Indian women's movement voiced to us.

In the next sections we focus on the work of two legal organizations working in the area of reproductive rights: the Reproductive Rights Unit of 'KANUN' and a legal activist organization in Jaipur, Rajasthan, 'SEVA'. Through a focus on the work of these two groups, we highlight the way in which rights language is (and is not) being taken up to promote reproductive well-being and justice. More specifically, we argue that rights language is used primarily by those advocates seeking to enact change at a national policy level with reference to the state's obligation to provide access to maternal health to all women, particularly those from poor and marginalized backgrounds. In contrast, networks of legal advocates addressing reproductive violations on a more localized level in the context of the family rarely draw upon international human rights law, preferring to base the claims of their petitioners in the language of justice and needs rooted in regional activist traditions and epistemologies.

KANUN: Addressing reproductive rights and maternal mortality through the law

KANUN is one of the largest legal activist organizations in India and defines itself as 'a collective of lawyers and social activists dedicated to the use of the legal system to advance human rights'. In this sense, the organization explicitly draws upon the language of human rights in the cases it argues, and explicitly identifies itself as a *human rights* legal organization. Established in 1989 in Mumbai, KANUN now boasts thirty branches in twenty-six states with over two hundred lawyers and paralegals. It is organized into fifteen different thematic 'units', among which are a Reproductive Rights Unit and a Women's Rights Unit. In its mission to promote the rights of the poor, it draws upon multiple legal strategies to bring about social change. including Public Interest Litigation, domestic and international advocacy, legal training, awareness-raising and documentation, fact-finding missions, and campaigns. These activities are funded through a combination of donations along with grants from bilateral,

multi-lateral, and private foundations. Additionally, many of the advocates at KANUN work on a voluntary basis, earning their livelihood from paying clients and dedicating their remaining time to working on cases for the organization.

While at the time of research KANUN was one of only a few activist organizations to organize explicitly around reproductive rights language, the association of reproductive rights specifically with the state's obligation to take measures to prevent maternal mortality was increasingly key to much of the activism around reproductive and maternal health issues in India. In 2008, the organization set up a specific unit which focuses entirely on promoting and protecting reproductive rights. The Reproductive Rights Unit centres much of its legal work and advocacy on the definition of reproductive rights as outlined in the Cairo Consensus from the 1994 International Conference on Population and Development (ICPD) in its work to promote awareness and advance the reproductive rights agenda through legal work in India. While there already was a section of the organization focusing specifically on women's rights, according to a Programme Manager working in the Reproductive Rights Unit during the period of the research, a separate unit was seen as necessary to address maternal mortality specifically as a human rights issue:

Because the remit of the Women's Rights Unit was so big, it only really touched the surface [of issues around reproductive rights] and the power dynamics hadn't been addressed, although there had been some casework done and legal advocacy around the PCPNDT [Pre-Conception and Pre-Natal Diagnostic Techniques] Act . . . There wasn't any clear reproductive rights language that was being used and even though we were looking at maternal mortality the language wasn't being used [even within the organization] (interview, 14 October 2010).

As suggested here, a key idea underlying the Reproductive Rights Unit was that without the specific language and focus on reproductive rights, issues such as maternal mortality will not receive their due attention, especially given the competition with a host of other human rights problems affecting women.

As one of the emerging voices in India on the issues of human rights and maternal mortality, KANUN is well linked with both other global groups focusing on these issues and other nationally constituted groups working on health issues from a rights-based perspective, such as the Jan Swasthya Abhiyan (People's Health Movement). In contrast, connections with more grassroots organizations are largely mediated and facilitated by state-level KANUN offices on which it depends for local contacts as well as information regarding potential cases relevant to the reproductive rights agenda. One of the disadvantages of this disembeddedness from the local-level political and social fabric was alluded to us by a KANUN staff member who commented that the organization lacks the necessary links with other local groups to provide for the extra-legal needs of the petitioners whose cases it represents. Given that very often the petitioners are 'the poorest of the poor', basic needs such as counselling, housing, or even access to a mobile phone are crucial both to the welfare of individual petitioners and to the ultimate success of the cases filed by KANUN. Yet, as an organization focused primarily on effecting change at the national policy level, KANUN often lacks the local contacts with groups in Delhi which are equipped to provide such social services (interview, 14 October 2010). Its lack of grassroots connections also means that the majority of cases handled by the Reproductive Rights Unit at KANUN are ones which staff themselves track down through the local media or fact-finding missions (rather than petitioners approaching them for legal assistance).

The cases KANUN chooses are largely ones in which the state and agencies have abnegated their responsibilities to uphold the rights of citizens. The rights-based approach, in this context, can be interpreted as simultaneously holding the state to be both the primary guarantor of rights and, when it fails in its obligations, the primary violator. The legal system, then, becomes an important means through which civil society (and the citizens it represents) holds the state accountable. In explaining the importance of using a rights-based approach in addressing issues around maternal and reproductive health, Jaya stated:

Because when you use the language of rights, you make [the state] accountable. If you talk about it in terms of targets or commitments it becomes an airy-fairy promise that governments can take up or opt out of when it's convenient to them and it's not urgent. When you talk about rights there's a sense of immediacy and they're legally binding . . . So you're coming from a stronger or, at least, an equal position of power – I am a rights-holder and the government has to provide because they are responsible and because they have been elected (interview, 14 October 2010).

As suggested here, rights discourse (with respect both to reproductive justice and to social justice more generally) is based on a particular ideology of state-citizen relations: namely one in which the state is seen as the fundamental 'duty-bearer' of rights which is held accountable to this role by the rights-bearing citizen. Other institutions such as the family, caste *panchayat*, or religious community, which arguably have as much impact on women's reproductive health, are omitted from this legalistic conceptualization of state-citizen relations.

Given this focus on the state as the primary duty-bearer of rights, the cases filed by KANUN around reproductive rights predominantly address the refusal of public hospitals to provide poor women with adequate reproductive healthcare as specified under Indian law according to a number of state-sponsored schemes.⁹ Instances in which a woman has died or suffered severe mental and physical trauma as a result of the denial of healthcare are interpreted as a failure on the part of the state in its role as *duty-bearer of rights* and, as such, a violation of reproductive rights of the affected women.¹⁰

One of the most important recent cases around reproductive rights argued by KANUN was first taken on after a staff member tracked down a woman whose case she had read about in the local newspaper. This Public Interest Litigation (PIL) case was filed on behalf of two women, Fatima (*Jatun v. Maternity Home, MCD, Jangpura & Ors* W.P. No. 10700/2009) and Shanti Devi ('Laxmi Mandal case'), who had been repeatedly denied access to emergency obstetric care entitled to them as women living below the poverty line (referred to as 'BPL').

The Supreme Court judgment for this case ultimately ruled in favour of the petitioners and the case drew global and national attention to the issue of reproductive rights in India. Notably, while many other cases of reproductive rights have been filed in the past (see Desai & Mahabal 2007 for a comprehensive overview), this was the first instance in which the judgment explicitly used the language of reproductive rights in a court decision. 'Reproductive rights' are cited as 'the right to reproductive health of the mother and the right to health of the infant child' ('Laxmi Mandal case': 12) and rights guaranteed by the Indian Constitution (specifically Article 21 on the right to life) *as well as* international human rights covenants ratified by India ('Laxmi Mandal case': 12-19).¹¹

In its explicit use of rights language in addressing reproductive justice issues, as well as its focus on the state as both the primary purveyor and violator of reproductive rights, KANUN draws upon specific cases of maternal mortality to address what it perceives to be in the interest of the larger collective. In this respect, it combines the individualistic language of rights with a legal mechanism (PIL) which seeks to address wider social injustices in India. This strategy presents a significant contrast to other legal activist organizations, which address reproductive justice issues through a framework based primarily on the language of 'needs' and 'justice' rather than 'rights' and focus on the family, rather than the state, as the primary institution impacting women's reproductive well-being, as we describe in the next section.

SEVA: reproductive justice within the context of domestic violence

While international human rights discourse is becoming increasingly drawn upon by a host of different pressure groups around the world to further diverse, and oftentimes conflicting, agendas (Speed 2008), amongst legal activists working at a more grassroots level in Rajasthan 'rights' are predominantly associated with the Indian Constitution, as noted earlier. Moreover, 'reproductive rights', as interpreted by local-level advocates, civil society organization (CSO) workers, and members of the judicial system, signified the right to become pregnant (*prajanani adhikar*), in contrast to its association in much of Euro-America as the right to contraception and access to abortion (and, following upon this, the *negative* right of the state to interfere in women's control over their bodies and fertility). In particular, issues of reproductive justice were viewed primarily as the remit and responsibility of the family, rather than the state as discussed above with relation to the work of KANUN. The state was relevant insofar as advocates drew on the Indian Constitution and national legislation targeting domestic violence in addressing this set of violations. However, as we will discuss in this section, justice was not necessarily construed as something which only formal legislative or judicial interventions could deliver.

The second organization which we focus on in this article is SEVA, a group led by the well-known advocate and social activist Pavanji. The offices of SEVA are based in a single room in Pavanji's residence, off one of the main roads of old Jaipur, which, owing to its close proximity to the main bus station of the city, is constantly bustling with travellers, hawkers, and a wide assortment of townspeople. SEVA was established in 1995 by a group of advocates with the stated aim to 'empower grassroots social activists with legal knowledge and raise the level of their social commitments so that they can become a part of the movement for social change' (SEVA website). The group of SEVA lawyers provide *pro bono* legal counselling and services to those in need as well as contributing to workshops of legal awareness and training for social and community activists.

In both its work and ethos, SEVA does not view itself as a conventional NGO and contrasts itself with what it sees as more 'professionalized' organizations. When we asked Pavanji how he would classify the SEVA as an organization, he was firm in stating that SEVA constituted a 'voluntary organization' rather than an NGO: he differentiated the two by saying that while the latter relies on outside funders, to whom it is ultimately responsible, advocates at SEVA are volunteers and are first and foremost responsible to the social values of the organization. He illustrated this last point by saying that SEVA would not, out of principle, take on cases which opposed its core values, such as defending a husband who is accused of beating his wife, taking the side of high-caste people who have filed a legal case against a lower-caste defendant, or providing

assistance to 'capitalist corporates'. In both its ethos and engagement with the law, SEVA reflects local traditions of social activism in Rajasthan, which are firmly entrenched in the politics of the region, as well as older Gandhian ethics around social work and public service.

The emphasis on the importance of voluntary work (*seva*) for the communal good and as a wider spiritual endeavour is engrained into the way that SEVA functions on an everyday level. As one of the family advocates working with an affiliated organization stated, 'People daily go to the temple for two to four hours to worship God and they think that they have done a good work. I feel this work better than worshipping in a temple. This work has the feeling of social service' (interview, 29 April 2010). Many of the older members of SEVA, as well as its affiliated organizations such as SALAH and SHAKTI, with which it works closely in the area of women's justice, cite the involvement of family members in the Indian nationalist struggle for independence from Britain as a profound influence in their choice to take up a role in promoting social justice. A leading figure in the women's group SALAH, Pratiksha, cited her father's voluntary work as a freedom fighter in rural villages as a motivation for her to become involved in voluntary work (interview, 23 March 2010). Similarly, national and regional frameworks play a far more substantial role in the operations and orientation of these networks. Activists such as Pratiksha interpret human rights more as defined by national, than international, law (e.g. she defines 'human rights [as] defined through the Constitution: the right to life with dignity, women having decision-making power': interview, 23 March 2010).

Pavanji's own professional history and continued involvement in social and legal activism in Rajasthan has revolved around struggles that took shape within the state itself, many of which went on later to become national social movements, such as the Right to Information (RTI), and campaigns for women's rights such as those challenging the practice of *sati*, confronting sexual harassment in the workplace (Vishakha Guidelines), and legislating against domestic violence. Over the years, Pavanji has played a central role in such struggles, often acting as the primary legal counsel. While many of these campaigns later resulted in national legislation, the work and ethos of SEVA have not wavered from its roots in local languages and networks which remain deeply entrenched in local politics and struggles. The local embeddedness of SEVA is further reflected in the language used in the organization. Apart from Pavanji himself, who is fluent in English, the majority of work in the organization is conducted in Hindi, although staff will communicate in English when needed in their legal work. (The Rajasthan High Court is held in English, while the lower courts [Sessions and District] are largely conducted in Hindi.) Secondly, all the cases which SEVA handles are ones in which it is approached personally by individuals or families who have been referred to it by other women's groups (such as SALAH and SHAKTI) working in Jaipur or local police *thanas* (stations). As such, SEVA maintains strong links with other voluntary and civil society organizations active in Rajasthan and, moreover, maintains a collaborative relationship with local state functionaries. The local *mahila thana*, in particular, remains one of the first points of contact for many women who approach SEVA for legal assistance. According to Deepti, one of the advocates in the group handling many of the cases around domestic violence:

Every police station has a list of our contact details and those of SALAH and they will mention [to women] that if you are in such problems and need legal counselling and support then they can contact us. I receive calls of people referred by a particular police station by saying that '*madam hame us thane*

se apka number mila tha' (madam, we got your number from that police station) (interview, 25 May 2010).

According to Pavanji, SEVA advocates rarely draw on legislation specifically relating to reproductive health, such as the MTP Act and the PCPNDT Act, in the cases they argue because of the impracticalities of implementing these laws. The bulk of cases handled by SEVA in which reproductive justice issues are at stake are ones in which women approach the organization for legal assistance to address problems faced in the context of the family (denied access to health or food, infliction of mental or physical abuse from family members because they have not given birth to a child, or a male child, etc.). While in the past, the primary legal frameworks for addressing such cases consisted in sections 498A and 304B of the Indian Penal Code (IPC) for dowry-related violence, now advocates rely instead on legislation passed in 2005 addressing domestic violence (Protection of Women from Domestic Violence Act, hereafter 'PWDVA'). The new reliance on the PWDVA is no doubt heavily linked to the fact that Rajasthani activists (many of whom are core members of SEVA and its affiliated groups) played a key role in the drafting and passage of this legislation. Moreover, many of the activists we spoke to who formed part of these networks stated that the PWDVA was more responsive to the needs of women experiencing domestic violence than anti-dowry legislation, for two reasons. Firstly, unlike sections 498A and 304B of the IPC, the new legislation protects the 'right of residence' of women, meaning that women have the right to remain in the matrimonial home even after filing a legal case against family members under the PWDVA. Secondly, the PWDVA is a civil law rather than a criminal law (earlier anti-dowry legislation forms part of the Indian Penal Code): this is important because filing a criminal case against a spouse or family member might result in the imprisonment of the defendant, leaving a woman and her children without a source of income.

Deepti argued that the PWDVA also captured a number of interrelated problems encountered by the women who came to seek SEVA's legal counsel, including issues relating to reproductive rights:

Often, when a woman files a case under the Domestic Violence Act, she comes to us with a number of problems: for example, that they [her in-laws] are making dowry demands [from her or her family], that they are putting pressure on her for having a male child ('*tumne to sirf ladkiyon ko janm diya hai, tumhare to beta bhi nahi hua hai*'), that her husband uses bad language with her ('*mujhe galiyan deta hai*'), she is tortured by her in-laws through the withdrawal of food, they don't allow her to live in the marital house, and even cases in which a woman claims that her husband does not provide her with medicine when she is ill. [As such], many demands and complaints come together under domestic violence cases (interview, 25 May 2010).

Unlike KANUN, SEVA does not treat reproductive-related grievances as a separate domain of intervention from other areas but rather views them as an element within the wider remit of domestic violence. Moreover, SEVA advocates place an equal emphasis on informal negotiation, family counselling, and engagement with different networks such as kin, neighbours, and state functionaries in its attempts to secure the welfare of the women it seeks to support. Prior to filing a legal case on behalf of a woman, its staff spend considerable time contacting and negotiating with both kin (such as her husband, in-laws, and natal family) as well as other community members, including neighbours, the husband's employer, or the *panchayat*, in order to come to a mutually acceptable solution.

As SEVA advocates explained to us, when a woman initially approaches partner organizations such as SALAH or SHAKTI for help, she is required to write down a statement in the office which provides the details of her situation and her complaints. While this process may sometimes require several meetings and continue for several months, it is only when it has come to a standstill without any resolution that the case is referred to an advocate with SEVA to pursue a legal solution. According to SALAH's 2002 Annual Report, a majority of the cases are resolved through the process of family counselling, and it is estimated that only 21 per cent of the total number of cases handled by the centre were eventually referred to the police while the remaining 79 per cent were resolved through 'negotiations, emotional support, economic rehabilitation and legal aid'. Underpinning the emphasis placed on mediation rather than litigation are two important considerations: firstly, the fact that few women have the economic and social resources to live independently outside of marriage (whether single or divorced); and, secondly, the belief held by many advocates that the law (or the threat of legal action) constitutes an important way for the women petitioners whom they represent to negotiate greater power within family dynamics.

In these processes, the claims of petitioners are framed within the language of needs and justice, reflecting the way in which the women themselves express their grievances within the set of claims and entitlements entailed in kin and caste relations. Unlike KANUN and other 'rights-based' groups which frame women's reproductive grievances as rights violations on the part of the state, SEVA and the groups with which it collaborates engage the wider network of collective institutions, including the family, neighbourhood, the police, and caste or religious leaders, as integral to resolving particular cases.

At SEVA's core is a commitment to negotiation and mediation between different parties as the fundamental means of improving the lives of the women who seek its assistance. In this sense, this approach can be said to reflect the needs and exigencies of women themselves, the majority of whom may seek to change family dynamics but oftentimes are uncomfortable proceeding with formal legal interventions which might lead to severing marriages or kinship ties definitively. In these contexts, claims-making must take place in a way which acknowledges the importance of individual duties *as well as* rights in order to bolster women's negotiating power within the family around issues such as access to food, medical care, and decisions relating to control over fertility and childbearing.

Conclusion

Much attention has been placed on the discourse of human rights and its repercussions in different social justice struggles around the world. Scholars such as Merry have praised the 'radical possibilities' of human rights 'in breaking old modes of thought, for example, denaturalizing male privilege to use violence against women as a form of discipline' (2006b: 177-8). Others, such as Wilson (2001) and Englund (2006), have remained more critical of the language of human rights, claiming that, despite its assumed progressive politics, it has actually served to reproduce inequality and poverty in contexts such as post-apartheid South Africa and Malawi. Underpinning all of these, however, is the notion that the language of human rights remains an export from the West which often exists in tension with other languages and models of claims-making.

In her analysis of how two communities in the southern state of Tamil Nadu draw upon differing frameworks for making claims from the state, Subramanian (2009)

critiques dominant assumptions in the anthropology of human rights which locate the origin of rights in Western modern liberalism. Rather than viewing human rights as a largely static Western discourse which is then 'vernacularized' and adopted into local contexts (Merry 2006*b*), Subramanian seeks to show 'how rights politics in any place, be it revolutionary France or contemporary India, is in continuity with previous histories of claim making', and can only be understood by attending 'to both regional histories of claim making and transnational histories of circulation' (2009: 3).¹² Such a point is vital if we are to understand human rights, and similar discourses such as reproductive rights, not as monolithic ideologies which are imported wholesale into non-Western contexts, but rather as a particular iteration of claims-making which exists alongside other languages of justice, entitlements, and citizenship.

In this article, we explore the diverse approaches and frameworks deployed by legal activists in India in promoting reproductive justice, thereby demonstrating the multiple levels and spheres in which claims-making takes place around women's ability to control and determine their fertility, body, and childbearing. The two organizations presented both emphasize the welfare and livelihoods of individual women seeking redress despite the ongoing resilience of discourses which hold population control policies as crucial measures for ensuring national development and economic prosperity. Moreover, both organizations draw on litigation, although for somewhat different purposes: where KANUN uses PIL as a tool to bring wider public visibility to and changes in government policy on reproductive rights issues such as maternal mortality on a national level, SEVA's priority is at the micro-level, namely to further the cases of individual petitioners (including but not limited to the sphere of reproductive justice) through a combination of family counselling and litigation in the courts.

By specifically focusing on the activists who draw upon the law as a means of protecting women's reproductive rights, we demonstrate two distinct ways in which the state and its machinery are invoked in bringing justice to women petitioners. In the case of KANUN, PIL and an explicit use of international human rights language are used as a means of enforcing the state's 'accountability' as duty-bearer of rights: here there is an explicit emphasis on state-citizen relations to the exclusion of other collective institutions such as the family, *panchayat*, or religious community which impact on a woman's ability to make decisions about her reproductive well-being. SEVA and its partner organizations, on the other hand, centre their work more heavily on family counselling rather than litigation as a means of resolving cases, and they appeal to a vast network of both state and non-state institutions, including the kin group, neighbours, and the wider community, as well as police *thanas* and members of the judiciary, as a means of building consensus. While formal litigation in court takes place in only a minority of cases, the threat of legal action in the eventuality that informal negotiations break down inevitably forms a backdrop to negotiations with family members within family counselling proceedings. Women do not necessarily seek to file a formal legal case; rather, counsellors reported that in many cases the main underlying motive in approaching the organization was to alter power dynamics within the family and assert greater status through invoking the state through legal action.

While Speed (2008) and Goodale (2007) have pointed to an increasing reliance by social justice movements around the world on framing claims through legal frameworks such as international human rights, this article describes instances in which alternative languages are intentionally chosen by activists as better suited in capturing

the interests and struggles of the people whom they represent. While formal legal action constitutes an important strategy through which such struggles are waged and enacted, it nevertheless constitutes but one of several means through which claims-making takes place. The emphasis inherent in reproductive rights language on state-citizen relations and female bodily autonomy detached from wider socialities and contexts sits uneasily with the lived experience of many women. The work of SEVA legal activists in this respect demonstrates a keen awareness of how women petitioners make claims to reproductive rights by employing the threat of state action as a catalyst for change outside of the courtrooms and without explicit reference to rights language. The frameworks of 'needs' and 'justice' relied upon by SEVA advocates also speak to the way in which these negotiations around claims and entitlements are firmly rooted in local traditions of activism in Rajasthan.

While anthropologists such as Merry (2006*b*) have focused on the processes of 'vernacularization' of human rights language into non-Western contexts, we suggest instead that, as argued by Subramanian (2009), it represents one form of claims-making which exists alongside other frameworks drawn upon by activists. While elsewhere the language of human rights has been criticized as bolstering neoliberal efforts ultimately aimed at the privatization of public services (Morgan and Roberts 2012; Žižek 2005), in India it has arguably been used for the opposite aim, namely as a moral discourse for the importance of a welfare state as the central institution responsible in guaranteeing that the basic needs of those living at the margins of society will be fulfilled. The rights-based approach used by KANUN draws upon formal legal processes as a means of 'holding the state accountable' to its obligations in guaranteeing basic standards of living to all citizens. The PIL case filed by KANUN on behalf of Shanti Devi and Fatima, which argued that the state is obliged to honour its commitment to providing emergency obstetric and basic maternal health to poor women free of cost, is illustrative of how many civil society organizations in India draw upon international human rights law in ways that seek to strengthen state capacity to provide public entitlements around health, education, and work.

Whether couched in the language of human rights or other social justice frameworks, different forms of claims-making in India exist in tandem and correspond to particular traditions of activism and struggle. Universal reproductive rights language remains a discourse aimed at the state in India, where the primary purpose is to demand greater accountability in the domain of policy and governance. Outside of these spheres, other languages are strategically chosen by activists for their greater resonance in addressing individual cases of women claiming reproductive violence within the context of the family as well as localized histories of feminist struggle and social justice. We argue that such choices are neither random nor unplanned; rather, they reflect the different ways in which activists navigate the sensitive terrains around individual decision-making and collective claims at the heart of reproductive personhood and women's rights within wider patriarchal structures.

NOTES

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Oxford, Brunel University, and the European Association for Social Anthropology (EASA) in Nanterre by the first author, and the comments and feedback that we received were very useful in refining the argument.

¹ The research on which this article is based was conducted by the authors and Pradeep Kachhawa between July 2009 and June 2010. The legal focus on reproductive rights detailed here is based on structured and semi-structured interviews; focus group discussions; attending workshops and other events; and participant observation with a diverse group of actors working in this area in Jaipur and Delhi, including advocates, judges, women's organizations and activists, family counsellors, and representatives from the Rajasthan and national Human Rights Commissions.

² Following the framework set out by Asian Communities for Reproductive Justice (2005), we use the term 'reproductive justice' in this article to designate a more holistic conception of women's control over their bodies and fertility beyond their individual legal rights to reproductive autonomy (which we associate with the term 'reproductive rights'). We are indebted to Sumi Madhok for bringing our attention to this framework in relation to our joint research (see also Madhok, Unnithan & Heitmeyer 2014).

³ All names of organizations and people featured in the research have been changed to maintain anonymity.

⁴ Public Interest Litigation (PIL) first emerged in India during the National Emergency of the 1970s and enables petitioners to bring suits on behalf of others against the national or state governments of India (see Khanna 2009: 42–3 and Sood 2006 for more extensive discussions on the use of PILs in the context of reproductive and sexual rights in India).

⁵ The political philosophy of nationalist leader Mohandas Gandhi, premised on the core values of non-violent resistance, self-sufficiency, and *sathyagraha* (translated in English as 'truth' or 'truth force'), remains a powerful influence on many of today's activists in India, especially those from older generations. Closely linked with the practical philosophy of Gandhi, '*seva*' is performed as a selfless act and seen as a form of religious worship 'involving a sacrifice of time, effort and non-attachment' (Mayer 1981: 162).

⁶ Although, under colonial government, as Sharma notes, 'the first Maternity Benefit Act was passed in 1929 by the Bombay Government and as a result of the recommendations of the Royal Commission on Labour in India (1931), the Maternity Benefits Acts were passed in other States too, like Madras (1934), U.P. (1938), West Bengal (1939), Assam (1944)' (2006: 285).

⁷ The international human rights law cited by the Prevention of Domestic Violence Act includes the Convention on the Elimination of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPS), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

⁸ The emphasis on rights as well as duties is also reflected in the inclusion in the Indian Constitution of both the fundamental rights guaranteed to citizens but also 'fundamental duties' which were added several decades after the original draft was completed through the 42nd Amendment (1976).

⁹ At the time of the research, such schemes included the Janani Suraksha Yojana (JSY), a programme under the National Rural Health Mission (NRHM), which provided women with a cash incentive to give birth in a clinic or hospital, and the National Maternity Benefit Scheme (NMBS), which gives a set amount of financial assistance to pregnant women. Other programmes under the NRHM provide women living in rural areas with both pre- and post-natal services and healthcare.

¹⁰ While the majority of cases handled by the Reproductive Rights Unit focus on maternal mortality, cases have also been filed around discrimination against people living with HIV who have sought to give birth in a private hospital.

¹¹ Specifically, the judgment cites the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and General Comment No. 14 of 2000 by the Committee on Economic Social and Cultural Rights on the right to health under the ICESCR.

¹² A similar point has been made by Ram (2014) and Unnithan & Pigg (2014).

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Droits du corps et revendications collectives : le travail des activistes juridiques dans l'interprétation des droits de la reproduction et des mères en Inde

Résumé

Le présent article est consacré aux approches anthropologiques de l'étude des discours sur les droits humains dans le monde en relation avec la santé reproductive et maternelle en Inde. Différentes formes de revendications, qu'elles soient couchées dans le langage des droits humains ou d'autres cadres de la justice sociale, coexistent en Inde et s'inscrivent dans des traditions d'activisme et de lutte particulières. Le langage universel des droits de la reproduction s'adresse à l'État, dans le but principal de demander une plus grande responsabilité en matière de politique et de gouvernance. En dehors de ce contexte, les activistes choisissent d'autres langages en fonction de leur efficacité pour aborder tel ou tel récit de violences reproductives contre certaines femmes au sein de leur famille ou de luttes féministes et de justice sociale à l'échelle locale. En se concentrant sur le travail des activistes juridiques et sur les discours qui alimentent leurs interventions, les auteures tentent de comprendre comment le langage des droits de la reproduction est utilisé dans le contexte indien, non pas comme une « importation de l'Occident » adaptée aux contextes locaux mais comme l'un des nombreux cadres de revendication utilisés par les activistes, qui s'enracinent dans des histoires différentes de luttes pour l'égalité des sexes et la justice sociale.

Carolyn Heitmeyer is a Postdoctoral Fellow in the Department of Anthropology at the University of Sussex. She has conducted extensive research around health citizenship in India and is currently examining the emergence of Indian patient organizations and their engagement with emerging medical technologies such as stem cell research and therapy.

*Department of Anthropology, University of Sussex, Sussex House, Falmer, Brighton BN1 9RH, UK.
C.Heitmeyer@sussex.ac.uk*

Maya Unnithan is Professor of Anthropology at the University of Sussex. She has carried out long-term field research in Northwest India on kinship, gender and body politics, childbearing and infertility, sex selection, reproductive technologies, and health rights. Her current research is on civil society understandings of human rights as applied to sexual, maternal, and reproductive health in India.

*Department of Anthropology, University of Sussex, Sussex House, Falmer, Brighton BN1 9RH, UK.
M.Unnithan@sussex.ac.uk*