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# Challenges in Localizing Global Human Rights

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## Challenges in Localizing Global Human Rights

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### Abstract

Drawing from ethnographic and historical data combined with document analysis, this article addresses two issues related to the mechanisms involved in localizing global human rights ideas: 1) the disharmony that may result when global ideas are concretized in the form of domestic laws and come in conflict with the ever shifting local rights consciousness and 2) the role of habitus in determining how human rights advocates respond to changing local rights consciousness. By examining the ways in which violence against women is addressed by a human rights commission in an Indian state, the disjuncture between local appropriations of global human rights ideas and the local rights consciousness is highlighted to reconceptualize the local-global continuum. By offering a socio-structural analysis of the localization process, we show how institutions that are set up to serve as channels that localize global human rights ideas can also act as impediments to the realization of human rights.

### Key Words

Human Rights, Violence Against Women, Local, Global.

Women's rights were recognized as human rights both in Vienna at the U.N. World Conference on Human Rights in 1993 and in Beijing at the U.N. World Conference on Women in 1995. This underpinning of women's rights as human rights resulted in major innovations of human rights policies within the framework of international laws (Coomaraswamy 2005). The Platform for Action produced at these conferences stated clearly that violence against women was a human rights violation: it 'both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The longstanding failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed' (Platform for Action, sec.D:112). However, such articulation of women's rights as an aspect of international human rights laws has been met with numerous challenges. Central to this is the universalism versus relativism debate. Many scholars argue that

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human rights discourse is a product of the Enlightenment and therefore not universal (Coomaraswamy 2002). Local appropriations of global ideas of human rights, where global human rights ideas are reframed to fit into existing justice/gender ideologies, mitigate this debate to a certain extent (e.g. An-Na'im 1987; Merry and Stern 2005). A plethora of scholarship has emerged on the processes through which global ideas are localized and appropriated by local communities.

While many scholars have argued that it is necessary to pay attention to local cultures and practices, analyzing the case of India, we extend that argument by pointing out that the local socio-historical trajectory of how rights are claimed and institutionalized—including rights of women to be free of violence—are germane to theoretical discussions of human rights practices and implementation. Contemporary India provides an ideal setting for studying the sociological processes involved in the localization of global human rights ideas. India represents about a sixth of the population of the world and is one of the fastest growing economies. Where human rights in India are protected by the constitution itself, in a report on the actions of the Asian Centre for Human Rights (ACHR) its director Suhas Chakma, observed that the degree of influence of UN mechanisms on India has been subject to limited investigation, in part because of poor monitoring, but equally because of its democratic status and, increasingly, because of its growing economic power.

#### LOCALIZING GLOBAL RIGHTS

Scholars from various disciplines including sociology have proceeded to delineate central features of human rights and provided frameworks for defining human rights (For e.g. Sjoberg, Gill, and Williams 2001; Pearce 2001). While understanding features and definitions is central to a sociological understanding of human rights issues, how global ideas of human rights get localized is equally significant and a high stake question in the universalism-versus-relativism debate (Hajjar 2001; Merry 2001,2003). Local rights consciousness is however, a fluid and shifting phenomenon (Chayes and Chayes 1998; Hathaway 2002; Rajagopal 2003). So what happens when global human rights ideas are localized and established in the form of laws? We show that once local channels of redressals such as

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human rights institutions are established to reflect local issues, the shifting local rights consciousness may come in conflict with established laws and, intermediaries may attempt to respond to changing issues by working towards broadening the scope of laws. Localization is therefore an ongoing process where, adopting global ideas into domestic laws is not the end. Local rights consciousness continues to shift and hence re-evaluation of local human rights laws and institutions is necessary.

In India, national and state human rights commissions act as intermediaries through which global ideas of human rights are appropriated to fit the local context (Merry 2006). These institutions are the location where global ideas merge with local movements and ideologies and, local definitions of human rights are institutionalized. Like a majority of human rights commissions in India, the commission we study<sup>1</sup>, defines human rights violations as cases of violations and negligence in prevention of violations caused by civil servants in the course of performing their duty. However, majority of complaints lodged at the state human rights commission are cases of domestic violence. Since the expansion of human rights access is predicated on the expansion of exactly this type of institution to monitor human rights and redress claims of victims, the inability of this commission to address victims of domestic violence encapsulates a practical and theoretical puzzle. Social movement groups have long been active in India on the issue of violence against women. For instance, reviewing the gains of activist organizations Mary Katzenstein concluded, in 1989, that Indian activists had managed to get far more legal and policy changes than their counterparts in the US (Katzenstein 1989). Furthermore, India is a democracy, with many organized groups pushing for human rights; it has also created institutions, such as this human rights commission, to ensure access to and implementation of human rights. So why would victims of domestic violence not be part of this human rights commission's purview?

An analysis of India's local socio-historical trajectory sheds light on how domestic violence became a 'private' issue and oppression by the state became a form of human rights violation. Although international human rights systems endeavor to prevent human rights violations through the creation and implementations of

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international laws, the practice of human rights is more complicated than previously thought. Human rights regimes that have emerged in the last fifteen years have coexisted with other competing frameworks. The illusive nature of transnational processes involved in the practice of human rights have strained the capacity of existing social theoretical framework that existed to explain different problems, one of which is the disjuncture between universalism which anchors the idea of human rights conceptually, and the more modest scale in which social actors across the world envision human rights as part of preexisting legal and ethical configurations. Actual practices of human rights occur transnationally through encounters in particular places and times (Goodale and Merry 2007).

Global ideas around women's human rights constitute ideas about gender equity and selfhood. It includes ideas such as women's rights to own property, right to divorce, inherit money and land, earn income and express their views. In other words, it stresses improving women's position by making them the same as men, at least in opportunity. This global women's rights package is expressed through a set of international laws and practices like the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). This package directly and indirectly informs the practice of women's rights on the ground by joining with existing social justice movements and national women's movements and are thus, localized through various channels (Levitt and Merry 2009). This process of framing global human rights claims in local terms and adapting them to existing ideas of justice may mean abandoning explicit references to human rights language altogether and, can mean high-jacking these concepts for quite different purposes. These ideas can be reframed drastically in order to fit local ideologies of gender and justice. Levitt and Merry (2009:448) conceptualize this process as vernacularization and vernacularizers convey ideas from one context to another, adapting and reframing them from the way they attach to a source context to one that resonates with the new location. Vernacularizers are people in between, conversant with both sides of the exchange but able to move across borders of ideas and approaches. Domestic human rights commissions are vernacularizers who come to play an important role in the collective endeavor to bring human rights to local contexts. In India, state human rights commissions are created to

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monitor and redress among other types of human rights violations, any form of violence against women. The commissions however, consider the state to be the main source of oppression.

Undoubtedly, human rights tradition constitutes a necessary and continuing struggle to repress state repression however, individuals' human rights are continuously violated by non-state actors (Brysk 2005) and, domestic violence against women in India is an example of the same. The state has indeed been a major tool of oppression but a narrow focus on government as a source of oppression overlooks non-governmental social abuses and private actors who may cause serious harms for self-seeking motives. Moreover, when violations are random by unorganized individuals they are best recognized as crimes but when private abuses are systematic and institutional, like in the case of domestic violence against women, they must be seen as part of a social order (Brysk 2005). The high rate of domestic violence in India and high rate of domestic violence complaints lodged at the local human rights commissions, calls for an understanding of the processes through which Indian human rights commissions came to leave out domestic violence from its purview.

This article combines ethnographic data<sup>2</sup> collected at a state human rights commission with document analysis and, historical data pertaining to women's movements and the genesis of the state human rights commission to demonstrate how particular forms of violence against women that were at the forefront of women's movement at the time of the state commission's establishment came to be conceptualized as human rights violation by the commission. Further, this was also a result of the fact that the commission was built to complement other machineries of social justice such as the judiciary. However, our data reveals that practical current concerns are different. Ways in which individuals view themselves in terms of human rights is shifting constantly as human rights discourse enters day-to-day lives of local actors. Thus, in the present day, majority of cases of human rights violations brought to the commission are not cases related to violation of human rights by civil servants. This reveals a disjuncture between the functioning of the commission and the expectations of the public. In light of this, it is significant to analyze the socio-historical context that provided the backdrop of the

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human rights commission's establishment to highlight how it affects the commission's operation in contemporary times. This essay shows how the commission continues to function fifteen years after its establishment and how commission members work within given definitions of human rights while trying to expand the field of commission's operation to fit changing social contexts and individual definitions of human rights.

#### VIOLENCE AGAINST WOMEN AS HUMAN RIGHTS VIOLATIONS

Domestic violence is common in India as in many other parts of the world. Academicians, policy makers and activists, all over the world have long struggled with the issue of domestic violence. In India, scholars have attempted to understand the causes and consequences of domestic violence (E.g. Simister and Makowiec 2008). Perpetrators of domestic violence can be prosecuted under Section 498a of the India Penal Code, but violence is defined narrowly and conviction rates are low (Burton, Duvvury, Rajan, and Varia 1999). Overwhelming majority of cases received by the state human rights commission we study, are cases of domestic violence. How and why did the commission come to understand and define custodial rape/non-domestic rape as human rights violations and leave out domestic violence from its purview? How did global ideas of women's human rights merge with local women's movements in India? How did this affect domestic human rights commission's definition of human rights violation?

The late 1980s witnessed a new transnational strategy for women's empowerment, which linked women's rights agendas to the increasingly noticeable international human rights campaigns. Articles by Bunch (1990) and others challenged the international human rights movement to address and incorporate women's rights, thus giving rise to extensive debate over and, ultimate reformation of human rights agendas. This enabled activists to adopt new strategies to reframe enduring debates over women's empowerment. In response, a global movement has emerged in the past decade to challenge such narrow, androcentric definitions of human rights by demonstrating 'both how traditionally accepted human rights abuses are specifically affected by gender, and how many other violations against women have remained

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invisible within prevailing approaches to human rights'.<sup>3</sup> The movement has been characterized by an interaction between global and local initiatives that seek to promote women's human rights as a universal principle while recognizing national and local differences in agendas, priorities, practices and political/economic/social frameworks (Hodgson 2002:6).

In India, the state is regarded as the major perpetrator of human rights violations. States can play an important role in transforming legislative, administrative and judicial practices, but states are also perpetrators of violence against women whether in prisons, jails or during armed conflict and when turning a blind eye to violence against women that takes place in their society (Coomaraswamy 2005). However, Violence against women also takes place in the most intimate of places, the family. Though the family is often a site of nurture and care, it can also be a place where male power is brutally expressed. Recommendation 19 of Convention on the Elimination of Violence Against Women (CEDAW) and the United Nations Declaration on Violence Against Women calls on states to take immediate steps with regard to ending gender-based violence in the family, in the community and by the state. They call on the states to enact national plans of action, to train and sensitize their criminal justice system, to provide social support to the victim/survivors and to collect data and information of violence against women in their societies (Hodgson 2002).

However, human rights discourse is not the single standard discourse of resistance. Local social movements pose a fundamental challenge to international law, which needs to take the resistance of social movements seriously (Rajagopal 2003). Localization of global ideas of human rights can be understood if we take into account not only the local culture but also local history and social structure. A look at the trajectory of contemporary women's movement in India can help us understand how and why state human rights commission came to define human rights violations as oppression of women by the state.

While genesis of women's movements in India can be traced back to the pre-independence era, contemporary women's movement was organized beginning in the 1970s. Both domestic violence and rape were central to women's movements in India. Violence within

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the family became a central issue of feminist movements all over the country in the early 1980s. The first protest against dowry in the contemporary feminist movement was made by the Progressive Organization of Women, in Hyderabad, in 1975. After two years of silence the next protest and sustained agitation against dowry started in Delhi. A college-based women's committee formed in 1978 motivated a women's movement organization called Stri Sangharsh (Wife's struggle) to demonstrate and protest the death of a young woman who lived in Delhi. The demonstration was widely reported by the national press and this campaign made dowry murder a household term leading to a spate of demonstrations against dowry deaths. Suspected dowry deaths began to be reported to feminist organizations and lent momentum to various campaigns. One year after the agitation began, governments started to legislate against dowry murders. Standing committee was formed to deal with cases of dowry harassment. It took many years for the anti dowry cells to start functioning and the law dealt with dowry demands/harassment and not with dowry murders. Two incidents of dowry deaths in the June and July of 1982 showed new developments in the movement against dowry murders. Feminists demanded that, proof that a woman killed herself, should be considered adequate evidence for a charge of abetment. Legal attitude to dowry deaths have been changing ever since. In December 1983 the criminal law Act was passed. Section 498 -A of the Indian Penal Code made cruelty to wife a cognizable, non-bailable offense, punishable up to three years imprisonment and a fine. Secondly, section 113-A of the Evidence Act was amended so that the court could draw an inference of abetment to suicide. The Act amended section 174 of Criminal Procedure Code, which made post mortem examination compulsory on the body of a woman who died within seven years of marriage. The latest act, The Protection Of Women From Domestic Violence Act, 2005 criminalizes domestic violence as 'Harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.'

On the other hand rape is one of the most common and frequent crimes against women in India, as can be seen by the enormous number and forms of rape. There is for example, the

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category of landlord rape, rape by those in authority, caste rape, class rape, police rape and army rape. In pre-independence India, the nationalist feminist movement raised the issue largely to point to 'excesses' committed by the British state as foreigner colonizer. In post – independence India the issue was raised by both the left and far left to point to the 'excesses' committed by the Indian state and the ruling class. One of the two major categories of rape which were singled out was those of police rape, army rape and rape by security forces, the other being landlord rape. Theoretically this was because both could be treated holistically as part and parcel of the exploitation of the weaker section of society and thus, consciousness of women's oppression could be created amongst the men and a consciousness of class oppression, could be stimulated among women. In effect, agitation began largely with campaigns against police rape. The case and frequency of police rape are startling in India, police record themselves show that the number of rapes by 'government servants' in rural and tribal areas exceeds one a day. When new feminists groups were formed in 1970s they were familiar with the categories of police rape and had been protested against by Maoists movements. Moreover, the issue of police rape achieved new significance in 1978, just as feminists groups were in the process of formation, through an incident in Hyderabad where a woman was gang raped by several policeman and her husband murdered because he protested and resulted in mass agitation. To many feminists this was a sign that police rape could become a mass issue. In 1979 there were demonstrations by feminists groups against the two categories of rape but campaigns remained isolated from one another until 1980, when an open letter by four lawyers against a judgment in a case of police rape in Maharashtra sparked off a campaign by feminist groups. Known as the Mathura rape case, the incident had occurred several years earlier where, a seventeen or eighteen years old girl was raped by policemen at a local police station. The policemen were acquitted at the sessions' court, convicted at the High Court and acquitted at the Supreme Court. The defense argument for the policemen was that Mathura had a boyfriend and was a loose woman who by definition could not be raped. Feminists groups all over the country came together on International Women's Day to demonstrate and demand a retrial. The 1980 campaign did a few things in terms of rape laws.

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First, it was the first attempt at formal joint actions and set the path for various other campaigns. Second, It demonstrated the extent and nature of the issue of rape in India. Last but not least, it added the category of custodial rape to the existing categories thus, recognizing it as a distinct and special category of rape (Kumar 1993:118,128). Section 375 of the Indian Penal code was amended in 1983 to prescribe a minimum sentence of seven years of imprisonment for rape. Further, an important provision- 376(2) was added that introduced the concept of custodial rape and prescribed a minimum of ten years of imprisonment for these cases.

Even though women's movements in India is inherently diverse and organized around a plethora of issues (Katzenstein 1989) as we can see, organizing against rape by authority figures gained momentum more quickly and effectively than domestic violence it resulted in the first joint action. Moreover, it could be framed as a holistic issue addressing among other things, both gender and class. Scholars also point out that women's movements that are affiliated with political parties are often more successful in generating mass consciousness about issues of gender violence (Katzenstein 1989). Since majority of women's movements in the 70s and 80s that gained momentum were affiliated with the left and far left parties (Kumar 1993) they focused more on issues of violence perpetuated by authority figures like police, military, landlords etc. Further, although both rape and domestic violence is criminalized and is under the jurisdiction of the Indian judiciary, it becomes more complicated when the judiciary deals with rape and torture by the police and other authority figures because of the close alignment between the judiciary and other government sectors. It can be derived that for these reasons when it came to violence against women, the state and national human rights commissions in India were set up to deal with violence perpetuated by authority figures. In the next section, we will show that even though central to the commission's functioning are human rights violations and negligence of prevention of violations by civil servants, this does not mirror the current local rights consciousness.

#### INDIAN HUMAN RIGHTS COMMISSIONS

While international institutions are commonly perceived as promoters of human rights, it is national institutions and local context

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that determine whether and to what extent international standards of human rights are implemented. Domestic action is largely responsible for achievement of human rights, however even when equipped to ensure the protection of human rights, national institutions are constrained by the political, economic, and cultural context in which they function (Mertus 2009).

National human rights commissions (NHRCs) are government agencies that have multiplied around the world in the last decade. These commissions generally have a dual agenda of promoting and protecting human rights domestically. While Cardenas argues that the rise of these institutions cannot be understood without considering the international context (Cardenas 2005), we argue that local history and social structure are equally significant. Cardenas recognizes that, while state promotion of human rights education and protection can be a worthwhile endeavor we still need to be cautious. Situated between the state and society, human rights commissions, for example, are well placed to help socialize both state officials and the public. Both formal and informal strategies can produce changes in discourse and lead to growing public awareness of human rights. Nevertheless, a state's promotion of human rights should not always be taken at face value as indication of a commitment to human rights norms. After all, state officials exposed to human rights training may learn the wrong lessons, even the limits of what they can get away with. Cardenas argues that any human rights initiative that is underfunded and inaccessible to a segment of society, especially its most vulnerable and marginalized members, should be confronted critically. Otherwise, promoters of human rights may unintentionally help reproduce the patterns of abuse they claim to battle while failing to empower human rights victims (Cardenas 2005:375).

Together with a national human rights commission, state human rights commissions in India were set up under the Protection of Human Rights Act 1993. The State Commission consists of a chairperson who has been a chief justice of a high court; one member who is, or has been, a judge of a high court; one member who is, or has been, a district judge in that state; two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. There is a Secretary who is the chief executive officer of the state commission and exercises powers

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and discharges functions of the state commission as is delegate to him. Other than that, the commission has a body of investigators that are constituted of police officers on deputation, who will go back to their normal duties once their deputation period is over. Therefore, majority of the members are current or retired judicial officers who receive no special training prior to their appointment as members of the human rights commission. The non-judicial members are usually academicians who are trained in either political science or law. However, as we will discuss later, this difference in training results in significant differences in their understanding and redressal of human rights violations. The commission we study has about ten staff members and a librarian. The chairperson and the secretary of the commission are scheduled to meet once a week to discuss their course of action with regard to filed cases. The commission also reserves two days of the week to meet with plaintiffs. During the first author's month long fieldwork, only six weekly hearings were held at the commission.

Laws governing the commission state that the commission may inquire, suo motu or on a petition presented to it by a victim or any person on his/her behalf, into complaint of violation of human rights or negligence in the prevention of such violation, by a public servant. It can also intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court. It can also visit any jail or any other institution under the control of the state government, where persons are detained or lodged in order to study the living conditions of the inmates and make recommendations. It can review the safeguards provided by the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation; review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures; study treaties and other international instruments on human rights and make recommendations for their effective implementation; undertake and promote research in the field of human rights; spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means; encourage the efforts of non-governmental

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organizations and institutions working in the field of human rights; and any other such functions as it may consider necessary for the protection of human rights. After an inquiry the commission may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons. The commission however, cannot take any direct action.

Conversations with commission members revealed that while the commission receives numerous cases of human rights violations every day, only about ten percent of them actually fall under the jurisdiction of the commission. While the Protection of Human Rights Act 1993 states that the commissions are required to perform any function it may consider necessary for the protection of human rights, central to its operation is the redressal of human rights violations caused by civil servants. Complaining about the extraneous amount of 'wrong cases' that comes to them one of the members narrated during an interview:

Say a woman has been going to the police again and again complaining about some sort of domestic violence and the police are not taking action, her next course of action needs to be a complaint at the court but she might not have the money to hire a lawyer, what she probably does next is lodge a complaint with us. We are unable to do anything! What can we do? Maybe at most direct the cop to take an action. If say a cop tortured her then that is a violation of human rights.

He then took out the pile of cases that were filed the day before and started reading some of them out loud, of the three cases he read out loud to the first author, all three were cases of domestic violence and he wrote on all three of them 'this is a personal matter between husband and wife and therefore it should be under judicial deliberation'. The annual reports released by the state commission also reveal a similar story. The commission categorizes violence against women under three sections: domestic violence, rape and

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custodial rape. The figures from the last six years show that complaints regarding domestic violence outnumber cases of rape and custodial rape combined:

Year	2003-2004	2002-2003	2001-2002	2000-2001	1999-2000	1998-1999
Domestic Violence	332	246	204	310	304	299
Rape/Custodial Rape	62	40	31	64	122	95

As a result, a significant number of cases have to be regularly disposed by the commission without consideration. Officials and NGOs identified a general misconception in the public in terms of the powers and functions of the human rights commission. Stories of fraud where group of people have posed as human rights authorities and taken money from women in the promise of redressal are not uncommon. Further, the language of rights has been widely circulated by social service agencies but specific laws are not always clear. Explaining how the rights language is more widely circulated in present times that it was a decade back, the founder of an NGO that deals with domestic violence revealed:

You know when I first started this NGO women would come with cases of domestic violence after ten years of suffering and now majority of woman would come in six months into a violent marriage, that is a great success, NGOs working in this field have carried out the function of circulating the rights language. Using international standards as instruments we have been able to pass a domestic violence law and a sexual harassment in workplace law. But you know people are not always aware of where to go when you are facing violence. So maybe many go to the

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commission. I have taken cases to the commission where say a cop is involved you know, if they are not doing their job but they only consider violence by public servants. So, it really ignores domestic violence, which is our area of concern. So, we try to help people who come here to just come out of their misery and lead a good life and just resolve the situation. It's only when they have exhausted all opportunities of resolving issues by themselves that they go to the human rights or the court anyway.

However, it is not always misconception amongst public regarding existing laws that lead individuals to bring domestic violence cases to the commission. In many instances, the officials and NGOs stated that the regular way to go about it is rather expensive and time consuming. First, the police need to register the case with the court, which sometimes takes a long period of time. Next, one needs resources to hire lawyers and due to the overburdened judiciary, cases often take years to get heard. Where as, individuals can directly go to the human rights commission and lodge their complaint in a very informal manner with any official at the commission and speedy redressal can be expected. Another NGO member explained the importance of quick resolution in the following way:

You know when women come to us with cases of domestic violence what they want most is resolution. They just want to get on with their lives and get along and stop the violence. It is not always about going to the police or court. They want the matter resolved as quickly as possible. In the majority of cases women want to move on, they want to talk to family members and deal with the issue.

In this light it becomes clear that an informal complaint at the human rights commission would seem like a more efficient option for those facing domestic violence. Moreover, as human rights language

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enters the day-to-day lives of individuals through circulations by local NGOs and other social service agencies, individuals start to view their issues in terms of human rights. Moreover, given that many officials were not aware of international treaties like the CEDAW, there are not many ways in which these tailor made powers and functions of state human rights commission can be entirely comprehended by the general public.

In South Asia, ANNI (Asian NGOs Network on National Human Rights Institutions) was formed to monitor domestic human rights institutions. To follow this process, AINNI (All India Network of NGOs & Individuals working with National and State Human Rights Institutions) was also formed. Interviews with members of an NGO that deals with domestic violence against women show the absence of any expectations from the state human rights commission. Where survivors of domestic violence want fast resolution and desire quick redressal, the legal system is inefficient. NGO members revealed that they work towards providing survivors with temporary accommodations, jobs, group therapy etc. and redressal through the law becomes secondary. This is primarily due to the fact that the path to legal redressal is time consuming as well as expensive. The human rights commission on the other hand, is capable of providing speedy recovery. No lawyers or other formal and lengthy procedures are required to file a complaint. A mere hand written letter to a member of the commission is sufficient. The commission can then proceed to recommend that the judiciary take immediate action with regard to that particular complaint. However, since domestic violence against women does not fall under its jurisdiction, women who come in the hope for such speedy redressal are turned away. Local NGOs continuously demand that state human rights institutions work more actively and significantly in the field of protection of human rights and claim that they have failed to show responsibilities. A special report was released at a press meet in the state towards the beginning of 2011. It released information, data and evidence of non-fulfilling the duties of the state human rights commission and other human rights institutions in India.

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*Role of Individual Discretion*

However, a significant phenomenon regarding the functioning of the state human rights commission was the noticeable difference with which individual members of the commission referred to and dealt with cases. Legal practitioners and academics perceive the duties of the commission and its efficacy differently. This can be partially attributed to the difference in training. While judges are trained in the law of the land, academicians studying law, reserve a much more critical stance. When the first author asked one member who is a retired judge, to define human rights he immediately took out the Protection of Human Rights Act, 1993 from his drawer and started reading out the definition of human rights, as if the law is the be all and end all. A conversation with another member, who is also a judge, went in a similar direction:

Scope as in it's the law! That is our jurisdiction we cannot do anything. People don't know, they get misled and come to us with private complaints that don't involve any public servant, only ten percent of cases involve public servants, mostly cops and maybe some medical practitioners. Someone tells them that we will provide quick remedy and they come here!

Some other members often recognized the problematic nature of the law and individual discretion played an important part in how they responded to cases of violence against women. It is common for an individual member of the commission to advise victims to take alternative paths in order to seek redressal. Where some officials would merely inform them that they ought to go to the court in order to lodge their complaint or just reject the case outright, others broadened the scope of the law. For e.g. since the commission is equipped to deal with any acts of omission or commission by a public servant, sometimes victims would be advised to go to local police and demonstrate the threat of their situation and ask for immediate intervention. If the police failed to respond in a timely manner, individuals can technically lodge a complaint against the police with the human rights commission. In this case the commission

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can then advise the judiciary to take immediate action.

We found Bourdieu's (1990) concept of habitus particularly helpful in understanding how individual officials often utilized their discretion in determining the 'seriousness' of the case and thus took very different courses to deal with it. Habitus illustrates social practice as the product of a dialectic of integration and objectification: individuals internalize structural cleavages during their formative years within a given social formation; while their everyday practical activities will, without any overall coordination or plan, tend to reproduce those formations (Sallaz 2010:296; see also Emirbayer and Mische 1998; Wacquant 2005). Our data reveal that, depending on the type of academic training and general attitude, individual officials addressed cases differently. For instance, as opposed to the reaction of judges or retired judges as stated above, conversation with an academician, who had served as a member of the commission for seven years, illustrates a different trend. Identifying some of the problematic aspect of the commission's functioning this particular member stated:

We have in fact, very limited scope and there is no scope for violation of human rights of over all, we can only deal when human rights violations by a public servant, that too only if it is committed while he is discharging his duties...There have been times when we have recognized the severity of the case and provided the victim with other options like maybe involving the police for delayed response, so that we can actually deal with the case and advise the judiciary to take speedy action.....This is not the only problem though, it has limited jurisdiction in terms of area too. For instance if a public servant employed by the center commits a violation we cannot deal with it! Even though the officer might be employed in an office located out of state, we can do absolutely nothing! There are a lot of central government employees in the state, and on top of that we can probably investigate the case in a more efficient way than say someone who comes from Delhi to investigate

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and knows nothing about our state! There is also a problem with the investigating wing of the commission. These are police who are on deputation and who have you to report to us regarding their colleagues who they may have to work with in the future once their deputation period is over. There are times when the police don't want to be transferred to a station if they have reported about someone who works there.

The type of training therefore plays a significant role in how officials defined human right and in turn, affected how they dealt with victims of human rights violations. While those with a legal training looked at the Protection of Human Rights Act 1993 as the be all and end all, there were others who recognized structural factors that influence the definition and redressal process.

#### CONCLUSION

It is important to consider 'culture', but it is important to look at the structural circumstances in which 'culture' unfolds, and, more importantly, the institutions, which are created within streams of history in particular places. Few places are tabula rasas on which human rights institutions appear as completely independent phenomenon; these are more likely to be grafted onto the institutional network that exists within each state. This understanding of institutions as embedded in socio-political-historical contexts, offer us a better model for understanding the probabilities of success or failure of human rights enterprises. Ironically, in India's case the timing and direction of the women's movement's claims--on the legislature and the judiciary to address violence against women--left the overall work of addressing women's human right to be free from violence in private and public spheres, and specifically, which institutions were made responsible for addressing which types of violence, fragmented and consequently less effective. If state human rights commissions were to address the continuum of private and public violence (Erturk 2008; Purkayastha 2008), then both domestic violence and public (employee) violence have to be brought within its purview formally. India is not unique in such institutional fragmentation; US's

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mechanisms for addressing violence against women also differ in which sets of institutions address intimate partner violence of different types, so that, cases of physical and sexual violence are dealt with by the police and courts in ways that are sometimes different from deaths through gun violence. Such expansion would require new claims by groups interested in minimizing violence against women, including women's groups, low caste rights groups, labor rights groups, and all other supportive political affiliates.

Ethnographic data is analyzed and combined with historical data and document analysis to understand the role of socio-structural elements in localizing global ideas. A significant issue that comes to the forefront is the need for continued evaluation of human rights commissions and other channels of localizing human rights. While ideas need to be translated in terms of social, political and religious issues facing the local community we cannot overlook the fact that not only contexts but also individual rights consciousness are subject to change.

This article identifies how local channels of human rights redressal can act as impediments to the realization of human rights. While it is clear that particular struggles that were at the forefront during the establishment of the commission influenced its definition of human rights violations as violations caused by civil servants, contemporary women's movements have taken distinct and different turns in India. Criminalization of domestic violence in India through the use of CEDAW as an instrument, demonstrates that domestic violence is no longer just a 'private' matter between two individuals or family but it is indeed perceived as a gross violation of human rights. Never the less, it is unforgettable that the very creation of the United Nations, human rights instruments and international laws were reactions to the many great atrocities committed by states (Armaline and Glasberg 2009). We do not deny the significance of protecting the individual from the state; instead, we stress the need to constantly evaluate domestic channels of human rights redressal in order to ensure harmony between local rights consciousness and local human rights laws.

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### Endnotes

1. The name of the state will not be mentioned in order to preserve anonymity of officials and staff of the human rights commission.

2. The first author visited India for the purpose of ethnographic data collection between December 2009 and January 2010. First Author conducted a month long ethnography of the state human rights commission. She went to the institution to conduct participant observation from Monday through Friday and stayed there from 10 am until they closed at 5 pm. Everyday, during the course of her fieldwork, she also engaged in numerous informal conversations with various staff members and officials and wrote down her field notes at the end of the day. The first author also attended 6 of their weekly hearings where victims are summoned in order to talk to the officials. In addition, we conducted 5 semi-structured in-depth interviews with the officials at the Human Rights Commission including the

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chairperson and other members of the commission. We also conducted 2 semi-structured in-depth interviews with heads of an NGO that focuses on human rights and domestic violence against women. Interviews with NGO members helped us understand the perspective of the victims. In addition to this, we conducted document analyses of the annual reports of the state human rights commission. We referred to various Indian journals and books to study records of women's movements in India. Combining ethnography with historical data and document analysis was necessary .

3. Bunch, Frost, and Reilly 1998 quoted in Hodgson 2002.

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