

**Conventions, Courts, and Communities:  
Gender Equity, CEDAW and Religious Personal Law in India**

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Abstract:

The Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) is central in outlining the gendered dimensions of human rights. India ratified this treaty with the reservation that it would be complied with only in accordance with the religious personal law. This article will examine the ways in which the convention interfaces with religious personal law, and the efficacy of the convention in both top-down and bottom-up reform of religious personal laws, as well as secular laws.

Keywords:

Human rights, women's rights, India, CEDAW, norms and practices

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In December 1979, the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). To date, 190 countries have ratified the convention, which has been hailed as the International Bill of Rights for Women. This landmark convention, with such widespread international support, aimed to promote equality for women across a variety of sectors including access to education, health and work, participation in politics, and freedom from violence. In joining the pantheon of central human rights documents, CEDAW added a mandate for gender-based equity to the guarantees of rights enshrined in other documents. India signed the convention shortly after its adoption in mid-1980, with ratification following in 1993. India ratified this treaty with the reservation that the sections of the convention dealing with socio-cultural practices, as well as family and marital law, would be complied with only in accordance with the “policy of non-interference in the personal affairs of any Community without its initiative and consent.” These reservations, which are in deference to India’s plural religious personal law codes, has meant that the overarching goals of the convention—eliminating discrimination based on gender—have come into conflict with the interpretation and implementation of personal law in India.

Yet, there is clearly a need to address the persistent, and in some cases intensifying, problem of gender inequity in India. The 2017 Global Gender Gap Index rates India 108<sup>th</sup> of 144 countries surveyed, down from 87<sup>th</sup> in 2016 (“The Global Gender Gap Report 2017” 2018). Although ranking well in terms of the dimension of Political Empowerment (15/144) because of the proportion of seats in local and national political bodies held by women, India fares poorly on the dimensions of Educational Attainment (112/144), Economic Participation and Opportunity (139/144) and Health and Survival (141/144). Driving low rankings in the educational and economic spheres are statistics collected by international organizations showing

that girls and women over the age of 15 have durably lower literacy rates (59.3% versus 79.9% for men), and are significantly less likely to work in the paid labor force than their male counterparts, with female labor force participation at about 27%, and on the decline overall (UNESCO Institute for Statistics 2011a, 2011b; Prabhu 2017). The Health and Survival ranking is driven by the much publicized Sex Ratio of 930 women and girls per 1000 men, according to the 2011 census (Census 2011 2015). This ratio, which in the absence of lethally discriminatory practices is approximately 1:1, indicates the lethal impact of sex-selecting discrimination on women and girls. This ratio has gotten worse over time. In India alone, it amounts to 38 million missing women because of a combination of selective abortions, disparate access to resources, and violence (Rao 2016, 51).

Given these indicators of such drastic levels of gendered inequity, and their persistence and intensification over time, what institutional interventions has India adopted since the ratification of CEDAW to promote gender equity? How has the convention itself facilitated legal-institutional change, and how have publics responded to these changes?

There are two legal-institutional vectors for the impact of CEDAW: top-down and bottom-up.<sup>1</sup> By examining the impact of an international human rights convention in these two arenas—the former dominated by state-led reforms through legislative and high court decisions, and the later in local communities with village councils—the central tension of human rights enforcement is brought to the fore. While conventions are drafted in the international arena, and

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<sup>1</sup> These two terms are certainly not exhaustive. Top-down institutions, in focusing on state-led government and legal action also contain inputs from activists speaking for embedded movements, while bottom-up institutions with their focus on local level political-legal institutions also contain horizontal and vertical linkages of resources, power and membership. Yet the juxtaposition of the national and the local serves as an interesting exercise in seeing how the dialectic nature of the relationship between the two produces consensus and dissonance on the issues of defining gender equity, and implementation of interventions aimed at producing it.

signed or adopted by central governments, the lived experience of claiming human rights is often adjudicated at the local level, and often by people who are shut out of traditional legal institutions. Human rights, then, are largely made real not in any one legal-institutional arena, but in their interaction with one another. This article will answer these questions through a legal-institutional analysis of the changes that have been pursued at both the central government and local government levels, and how these interventions interact with one another.

In the case of top-down reforms, women's activists, the courts, and lawmakers have used the language of the convention as a way to garner legitimacy for national-level reforms to contentious aspects of religious personal law, as well as to guide reforms of religiously neutral gendered laws around issues like workplace sexual harassment. Grassroots reforms, by contrast, in seeking to promote the "vernacularization" of human rights discourse, have largely come through legal pluralistic institutions, like women's courts, which provide alternative mechanisms for women's grievances to be heard and addressed. Both top-down and bottom-up approaches have significant shortcomings in terms of delivering on the promises of *eliminating* gendered discrimination, but in concert with one another, promote both the legal reform and the norms that are necessary to actualize the ambitions of the convention. This mutually-constitutive relationship, which scholars of globalized networks around human rights have termed "the boomerang pattern," (see, e.g. Keck and Sikkink 1998, 1999) means that the iterative process of national-level, local and international actors are together constituting what gender equity means in context, and how legal institutions can and should be deployed in the service of that goal. While CEDAW has not been unreservedly successful at delivering on rights to gender equity, it has helped activists at all levels by providing networks, language and legitimacy to the cause of gender equity.

This article will begin by addressing the mandate and ambitions of CEDAW, followed by a discussion of the reservations and declarations made concerning key parts of the convention internationally. It will then move on to a discussion of the plural civil law codes in India, their history and enforcement. The subsequent section will discuss how CEDAW has been brought to bear in top-down reforms to a number of both religiously charged and religiously neutral reforms in Indian law through the courts and the legislature, as well as the shortcomings of these reforms in producing a more gender equitable environment. Mirroring this section, the penultimate discussion will address the bottom-up reforms aimed at producing norms consonant with gender equity and the shortcomings of such an approach. By way of conclusion, the last section will engage with the most recent report of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW committee) and their evaluation of both the top-down and grassroots attempt to produce greater levels of equity in India.

### *CEDAW: Ratification, Declarations and Reservations*

Adopted by the UN General Assembly in 1989, CEDAW is a wide-ranging convention aimed at producing more gender-equitable outcomes through removing barriers to equality in politics, health, education, work, and home life. The convention bridges both civil/political and economic rights, as well as *de jure* and *de facto* rights. By focusing on “both legal and development policy to guarantee the rights of women...it emphasizes that there must be the practical realisation of rights” which is a broadly different approach than prior international human rights initiatives (Saksena 2007, 483). The rights-in-practice approach of CEDAW is also demonstrated in its explicit support for state-level interventions, including redress policies to

achieve *de facto* equality. As with other human rights documents, there is a limited enforcement power on states that have ratified CEDAW, and “compliance depends on the will and commitment of national political actors and pressures from other countries and nongovernmental organizations” (Merry 2003, 942).

What is remarkable about CEDAW in the international arena, however, is the consistency with which national courts have interpreted the mandate of the convention. Despite little inter-court dialogue about the treaty, domestic courts have used the convention in adjudicating gendered development and equity policies since its passage (McCrudden 2015). The Indian Supreme Court has relied on CEDAW directly in making decisions about inheritance and custody in a 1999 decision in *Hariharan v. Reserve Bank of India* as a way to situate gendered claims to equity within a framework of international human rights. The court situated the decision in terms of both CEDAW and the Universal Declaration of Human Rights saying, “the cry for equality and equal status...is not restrictive to any particular country but world over with variation in degree only” (*Hariharan v. Reserve Bank of India* (2000) 2 S.C.C. 228). In emphasizing the international weight of human rights, the court drew on the “clear, external and authoritative” stance of CEDAW in making a decision regarding the application of personal law. CEDAW has been referenced to date in 21 Supreme Court of India decisions since its ratification, with issues ranging from workplace sexual harassment to inheritance, divorce, employment and violence.

When India ratified CEDAW, it did so with declarations to two articles and a reservation to an additional article. Such reservations and declarations are not uncommon, especially in the case of CEDAW. Currently, 61 countries that have ratified the convention have qualified their accession through such measures.

The two articles to which India has entered declarations are Article 5, which aims to eliminate discriminatory cultural and social practices, and Article 16, concerning equality in marriage and family life. Both declarations are framed in terms of religious personal law, and the desire for the ambitions of the convention to be in accordance with the strictures of different faiths' laws. Five countries have entered declarations on Article 5<sup>2</sup> for reasons of succession in traditional leadership, inheritance, and education. India put a declaration on Article 16 along with 27 other countries: 16 put provisos on this article for objections based in religious personal law, in addition to 11 for unspecified or other reasons.<sup>3</sup> The reservation entered by India to Article 29—in which signatories agree to an arbitration process if conflict arises between states as a result of convention—is echoed by 38 other states' reservations, and it is the single most reserved section of the convention.

### *Personal Laws: Different Communities, Different Codes*

The reservations and declarations entered by the Indian delegation to CEDAW are meant to protect the ways in which various religious communities oversee and conduct personal law. These provisos on the application of CEDAW drew criticism from various international corners, including from the Government of the Netherlands, who declared that they are “incompatible with the object and purpose of the Convention”(United Nations 2018; Schabas 1997). Indeed, the plural civil code system itself has been the object of significant criticism, precisely because it is seen as discriminatory toward women and minority communities (see, e.g. Vatuk 2013).

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<sup>2</sup> France, New Zealand, Niger, Qatar, and Micronesia.

<sup>3</sup> *Algeria, Bahrain, Bangladesh, Egypt, India, Iraq, Ireland (partial), Israel, Jordan (partial), Kuwait, Lebanon, Libya, Malaysia, Maldives, Malta, Mauritania, Micronesia, Monaco, Niger, Oman, Qatar, Republic of Korea, Singapore, Switzerland, Syria, UAE, United Kingdom* (Italics for specifically religious personal law-based objections).

Religious personal law codes themselves, although justified through the language of religious tolerance and freedom, and spoken of in terms of ancient texts and traditions, are “[a] curious amalgam of religious rules and English legal concepts” (Parashar 1992, 307). First established under the British Colonial administration, religious personal law—laws regarding marriage, divorce, inheritance, succession, and guardianship/custody—were devolved to religious communities and their parallel legal systems. While there are specific personal laws for Christians and Parsis, the most thoroughly elaborated sets of personal laws apply to the Hindu majority and the largest religious minority, the Muslim community. These personal laws, like the Hindu Marriage Act of 1955 or the Dissolution of Muslim Marriages Act of 1939, are ostensibly rooted in sacred texts, however, they have been “reduced to texts severed from the living systems of administration and interpretation in which they were earlier embodied. Refracted through the common law lenses of judges and lawyers, and rigidified by the common law principle of precedent, there evolved distinctive bodies of Anglo-Hindu and Anglo-Muslim caselaw” (Galanter and Krishnan 2000, 107).

Reforms in Hindu personal law in the decades immediately following independence accelerated between the 1970’s and 1990’s, with major changes to Muslim personal law coming into force through judicial and legislative action in the last 30 years (Subramanian 2008). The pace and tenor of these reforms belies the central contradiction in religious personal law, however, since the initial reticence of the legislature and courts to reforming personal law was often explained in terms of protections on minority rights. This stance, according to Parashar, has a central implication: “that the relevant difference is that of majority or minority status rather than that of religious inviolability of any of the rules. Even though never articulated so, if it is the majority status of Hindus that allows the state to modify its PRLs, the sanctity of RPLs surely



becomes disassociated from the religious aspect of Hindu law” (Parashar 2013, 10). Indeed, even the CEDAW committee, when giving comments on India’s reports on their progress on gender equity and compliance with the convention, saw religious personal law not as “the barrier of a “tenacious ancient culture” but the colonial ossification of marriage laws and the very contemporary politicization of culture” (Merry 2003, 965–66).

It is important to note, however, that there are constitutional laws in place that guarantee “equality before the law or the equal protection of the laws” (Article 14) and prohibit discrimination “on grounds only of religion, race, caste, sex, place of birth or any of them” (Article 15). Additionally, there are sections in Article 15 which allow for interventions to achieve “substantive equality” through affirmative action programs for women and lower castes (Nussbaum 2002, 98). The entire body of Fundamental Rights enumerated and implied in the Indian Constitution are modeled after the UN’s Universal Declaration of Human rights (Nussbaum 2002). Personal laws must conform to the fundamental rights and the Constitution generally, and the Supreme Court of India has asserted the primacy of the constitution over religious personal laws on several occasions (Parashar 2013). The penal code and criminal law are not enforced based on religion, so there is the possibility of recourse through secular courts in criminal cases (Rao 2016, 57).

While feminist activists in India, since at least the 1970’s, were pushing for a Uniform Civil Code to ameliorate the rigidity of religious personal law and its calcified gender inequity to bring civil code in line with constitutional guarantees and international conventions, this push has been mitigated by the rise of Hindu Nationalism (Subramanian 2008, 659). While Hindu Nationalist parties and leaders particularly criticized gender-unequal practices among Muslims and some gender-unequal features of Muslim law, “[they] did not mention the prevalence of

similar practices among Hindus and the recognition of some of these practices in Hindu law” (Subramanian 2008, 655). The implied and explicit religious chauvinism of the Hindu Nationalist movement pushed gender-equality activists to accept the plural civil code under the moniker of Legal Pluralism, and instead “prefer small-scale reforms from within the religious communities over large-scale state-led reforms” (Herklotz 2017, 262). While some academics and activists support this idea that a plural religiously-informed civil code can support equity, (see, e.g. Solanki 2011; Tschalaer 2017), others question the efficacy of such an approach, suggesting that reforming religious law to support gender equity is an insurmountable obstacle (see, e.g. Basu 2015; Vatuk 2013). The reality on the ground, however, is that the very notion of what is considered gender equitable, and what role religious communities, the state and civil society play in articulating the vision of gender-equitable society, is being contested through the medium of religious personal law, and the legal institutions that interpret and implement it (Herklotz 2017, 253).

### *CEDAW and Top-Down Reform*

Compliance with CEDAW is largely voluntary. Yet, since ratification in 1993, the Lok Sabha and the Indian court system have made major changes to both religiously-informed and religiously-neutral laws in terms of promoting gender equity at the state level. While CEDAW was referenced by activists pushing for reforms as well as the lawyers arguing before courts in family law matters, such references often did not appear in the judgments or eventual laws that came out of such cases (Subramanian 2008, 638). This is not to say, however, that the convention is inessential to the fight for gender equity in India.

Two landmark Supreme Court Cases dealing with workplace sexual harassment, *Vishakha and Others v. State of Rajasthan* (1997) and *Apparel Export Promotion Council v. A.K. Chopra* (1999), the decision of the court referenced CEDAW as “binding on the nation through its ratification of that treaty” to uphold the principle of women’s equity in the workplace (Nussbaum 2002, 103). A 1997 case dealing with the rights of sex workers and their children, *Gaurav Jain v. Union Of India and Others*, similarly references CEDAW by saying that India’s ratification of the convention compels them to act because “All forms of discrimination on ground of gender is violative of fundamental freedoms and human rights.”

However, perhaps the most efficacious part of the convention itself is in its power, through regular reporting and comment, to publically compel compliance. The committee established by the convention is a forum in which signatories to the convention come and give regular reports on their progress toward the goal of gender equity. This committee “does important cultural work by articulating principles in a formal and public setting and demonstrating how they apply to the countries under scrutiny” (Merry 2003, 943). Both implicitly and explicitly the convention and the committee have shaped the notion of gender equity in policy- and law-making, as well as court decisions in India. The CEDAW committee has weighed in on issues like child marriage, dowry violence, and the Armed Forces Special Powers Act (“Concluding Comments of the Committee on the Elimination of Discrimination against Women : India” 2000; 2007; 2014).

An interesting recent example of the power of such comments arises with the debate over abortion access in India, and the reform of the Medical Termination of Pregnancy Act of 1971. The CEDAW committee has regularly commented on the effect of unsafe abortion and inaccessible maternal health on the prospects for gender equity in India (“Concluding Comments

of the Committee on the Elimination of Discrimination against Women : India” 2000; 2007; 2014), and activists—both international and domestic—used the committee’s reports as justification for their push for reforms to the Medical Termination of Pregnancy Act of 1971 (See, e.g. Center for Reproductive Rights 2018). A similar controversy over the Armed Forces Special Powers Act, especially in the wake of the 2004 death of Thangjam Manorama at the hands of the 17<sup>th</sup> Assam Rifles. When a report of the incident was made public nearly a decade later, activists and the CEDAW committee used the convention as a way to call for reform or overturning of the controversial act (see, e.g. Wilpf India 2013).

More controversial than these reforms, however, is when the push for gender equity comes into direct conflict with religious personal law, in matters of marriage, divorce, domestic violence, and child custody. In such cases, references to human rights documents, and to CEDAW more specifically, are somewhat more common. For example, the Law Commission of India directly referenced CEDAW (both the convention and the commission) in the push for amendments to the Prohibition of Child Marriages Act (Law Commission of India 2008). When prohibitions against child marriage were challenged in the Supreme Court, the Court upheld the right of the state to make such prohibitions, even when such laws contradicted religious personal law in *Court On Its Own Motion (Lajja Devi) vs State, 2012*. Reforms to specifically Hindu personal law, in terms of inheritance (through the 2005 Amendments to the Hindu Succession Act of 1956) and child custody (through the Personal Laws Amendment Act, 2010 which reformed the Guardians and Wards Act, 1890 and the Hindu Adoptions and Maintenance Act, 1956) have been praised by the CEDAW committee (Committee on the Elimination of Discrimination against Women 2012).

Perhaps the most high-profile reforms of religious personal law to support gender equity, however, have been in the realm of Muslim personal law, through two key legal battles: Over alimony in the case of *Mohd. Ahmed Khan vs Shah Bano Begum And Others, 1985* (Shah Bano Case) and over divorce in the case of *Shayara Bano vs Union Of India And Others, 2017* (Sharaya Bano Case). In the case of Shah Bano, concerning rights of divorced women, the Supreme Court of India upheld the right of the aggrieved woman to seek alimony payments under secular law, in contravention of what many Muslim activists believed to be the dictates of Quranic law. Although Shah Bano was decided in favor of women's rights, the court did not ground its verdict in the principle of sex equality, possibly because of the argument that the ideas are too western (MacKinnon 2006). The court, instead, based its decision on the desire to retain the sanctity of the family and therefore, the courts "turned out to instead preserve the institution of marriage at the expense of women {rather} than to provide for gender equality" (Herklotz 2017, 258). Because of this grounding, and because of pressure from Muslim activists, the Lok Sabha passed the Muslim Women's Protection of Rights Upon Divorce Act of 1986, which largely overturned the judgment of the Shah Bano case, allowing for religious personal law to dictate the terms of alimony, rather than secular law.<sup>4</sup> However, the court upheld its own

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<sup>4</sup> Interactions between the court, the public, and the legislature in this period were complex. Public pressure from Muslim groups and the electoral pressures facing Rajiv Gandhi combined to create an environment in which the passage of the law—which restricted the 'liability' of ex-husbands to pay alimony to the traditional *iddat* period of three months—was tactical (Thakur 1993). While the passage of the law was contentious, and overrode the objections of Liberal Muslims, like INC cabinet minister Arif Mohammad Khan, it was seen as politically expedient, though it ultimately drew sharp condemnation because parliament had violated key constitutional articles (Harel-Shalev 2009). Paradoxically, the passage of this law also consolidated the constituency of the Hindu-Nationalist BJP, who saw the law as appeasing conservative Muslim communities (Hasan 2010).

precedent in *Danial Latifi v. Union of India, 2001* and *Shamima Farooqui vs Shahid Khan, 2015*, judicially nullifying the act.

The other major case, that of Shayara Bano, concerns the practice of the triple talaq or *talaq-e-biddat*, wherein a Muslim man may divorce his wife by speaking or writing the word *talaq* three times. The case, brought by a woman who had been divorced by her husband in this manner, came before the Supreme Court of India in 2017. A panel of five judges ruled the practice unconstitutional, with a subset of three recommending that the practice be made illegal through legislative action. This seems to be a break from previous approaches, where the court is trying to actively change religious personal law. Indeed, CEDAW was brought up during the arguments on the case, and the judges were asked to rule regarding the applicability of the convention to the case. The council for the petitioner (Ms. Bano) cited CEDAW, along with other international and domestic statutes supporting human rights more generally, to claim that the practice of *talaq-e-biddat* constituted a violation of these pledges to human rights and gender equity. The opposing council “disputed the reliance on International Conventions by all those who had assisted this Court on behalf of the petitioner,” citing the reservations made by India at the time of ratification (*Shayara Bano vs Union Of India And Others 2017*). As before, the decision taken by the court was grounded in the concept of family unity, rather than women’s rights or equity. In the decision, “[the court] found fault on the basis that “the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it” (cited in Herklotz 2017, 267).

The inclusion of CEDAW in the debate over the issue of Muslim Women’s rights, and what the state is responsible for doing to accord equitable treatment, signals the importance of the convention in the conversation. Although neither the court nor the legislature grounded their

decisions in the concept of gender equity, CEDAW and other human rights conventions were brought to bear on the debate over the judgment and the law (see, e.g. Rajagopal 2017). Indeed, CEDAW is being referenced with more regularity in cases involving both secular and religious law in India. Councilors arguing before the Supreme Court referenced CEDAW in 8 cases in the 1990s, 4 cases in the decade 2000-2010, and in 10 cases in the last two years alone (“Indian Kanon” 2018).

CEDAW, and human rights documents more generally, then, have given the grounds for some state-level actors to pursue major changes in both religiously-neutral and religiously-informed personal law. This is true partially because of constitutional guarantees of equity, regardless of identity, but also because of the power of appeals to human rights and human dignity. These documents fall short of delivering significant change, however, in two ways. First, although the government has recently taken a more active stance in reforming religious personal law, and great strides have been made in both Hindu and Muslim personal law in terms of divorce and alimony, there is still significant inequality regarding inheritance and child custody (Parashar 2013).

Secondly, the laws as they stand are often minimally enforced, as with the unconstitutionality of the Triple Talaq, which was still being recognized by many authorities, regardless of the court’s judgment. After the Law and Justice Minister made a speech on the floor of the legislature stating that he had been made aware that more than 100 cases of triple talaq divorces had been recognized since the court decision in August, he called on the Lok Sabha to pass the Muslim Women (Protection of Rights on Marriage) Bill in December 2017 (*Times of India* 2017). There is contestation, however, over the definitions and prohibitions in the bill, and some women have come forward saying that they are still being subjected to such

practices, which are still being supported in some religious courts (TNN 2018). This lack of enforcement means that despite reforms at the state level, there are still significant hurdles to gender equity in practice. While state-level reforms are a necessary and enabling condition for gender equity, such reforms must be recognized by citizens and prioritized by authorities to be meaningful.

### *CEDAW and Grassroots Reform*

The multilevel nature of human rights governance is uniquely challenging, as it exists at a crossroad of international, national and local laws, as well as conventions and practices. This tension between local enforcement, state-level policy making and international human conventions presents a challenge: how to make such lofty and cross-national ambitions local realities. This central puzzle is intensified in the case of gendered human rights; a policy area which reaches into the personal lives and relationships of people, as well as their professional and material circumstances. Academics studying the impact of gendered human rights, therefore, have emphasized the importance of “vernacularizing human rights.” This approach to understanding human rights in practice emphasizes that human rights must be resonant, and therefore, must be understood in terms of local conceptions of justice and entitlements. However, these rights must also be in line with the international community’s understanding of the concept. In the words of Levitt and Merry, in order “to have impact, human rights ideas must be adopted locally, must transform the consciousness of those who claim them and have some institutional teeth so that people who demand rights are at least recognized if not satisfied. Rights ideas need to resonate with existing ideologies to be adopted, but to be legitimate as human rights they have to reflect universal principles or standards” (Levitt and Merry 2009, 457). By



shaping human rights discourse so that these legal constructs are “adapted to local institutions and meanings,” the rights themselves are legitimated, and officials at all levels are less likely to see the rights as an external imposition (Merry 2006, 39). The converse is also true: when rights have an international scope, the claims made on their behalf are resonant for claimants, and tap into international networks of resources and advocacy opportunities (MacKinnon 2006; Jaising 2010). The interaction between these various layers helps to constitute the idea of human rights in institutional contexts, and each pulls at the others in articulating equality in practice, or resistance to it. This “boomerang effect” helps to define the value-content of human rights, in cooperation and in resistance to one another (Keck and Sikkink 1998).

In India, reforms of state-level laws and jurisprudence have the potential to bring practices in line with international human rights conventions, but as is evidenced by the continuing practice of *talaq-e-biddat*, in order for such changes to be meaningful in practice, state-led change must be matched with grassroots efforts to legitimize the concepts and practices of gender equity. Even in the case of religiously-neutral laws, like prohibitions against acid attacks it is important to “vernacularize” human rights, because although laws exist they are minimally enforced (Taylor 2001). In part, loose enforcement becomes especially important because of lack of access to channels for redress, especially for poor women. So, even while the state-led reforms discussed above aim to protect women from forms of discrimination in terms of personal law, “...the vast majority of women victims of domestic abuse...do not turn – and never even consider turning – to the state for succor” (Vatuk 2013, 81).

Part of this vernacularization of gendered human rights has come in the form of legal pluralist institutions, specifically women’s courts. Often divided by faith community, caste or language community, these courts, called Naari Adalat, Mahila Mandal, or women’s Jama’at

were first established in 1982, but have gained traction and activist support especially since the ratification of CEDAW in the early 1990s. While there may not be a direct causal relationship here, there is certainly a temporal correlation. The CEDAW committee noted in both 2000 and 2014 that these courts are a central part of the effort of the Indian state toward greater equity, in both cases because the official presenting India's progress report directly mentioned the issue ("Concluding Comments of the Committee on the Elimination of Discrimination against Women : India" 2000; "Concluding Comments of the Committee on the Elimination of Discrimination against Women : India" 2014).<sup>5</sup>

These courts were established partially to try and overcome the ways that traditional adjudication processes were dominated by men. Because they often deal with rights-based claims in domestic life, these courts are uniquely situated to propagate the ideas of human rights and to help women to claim their rights in a legal forum. Indeed, these courts have "settled" or "compromised" "many millions" of cases (Vatuk 2013, 79). As embedded institutions, these courts mirror the *panchayat* system (Merry 2006), and engage in community-based dispute resolution, through elected and appointed leaders airing grievances in a quasi-legal setting to achieve mutually agreed upon dispute resolution. Focused on the claims of women in matters of personal law, these courts deal with issues of inheritance, marriage and divorce, alimony, custody, and domestic violence. These courts have been "successful because [they] build on indigenous traditions and shame participants into solving disputes within the paradigm of the family" (Rajaram and Zararia 2009, 468).

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<sup>5</sup> While the Indian Constitution, effective since 1950, does outline a fundamental right to equality with regard to gender, it is important to note that the implementation of women's courts became a key state priority after the signing of CEDAW, and the Indian representative to the CEDAW committee has repeatedly referenced them as part of the state's CEDAW obligations.

Women's courts are often supported by human rights NGOs, whose "leaders use the human rights vocabulary when they address national and international audiences or funding agencies, and make few references to it with their clients... Instead, staff members frame problems in moral terms, reflecting the local cultural practices" (Rajaram and Zararia 2009, 470). While arising from human rights discourse, these institutions position themselves as what Merry (2006) has called "translators": institutions that help human rights as abstract concepts become practicable and legitimate on the ground. These local-level institutions garner support from both the Indian government and from outside NGOs, at least in part, because of the obligations the government has under CEDAW, as well as the ways that the community of activists has sought support specifically through CEDAW claims (Vanegas and Pruitt 2011; Ramachandran, Jhandhyala, and Govinda 2014). This multi-level negotiation over the meaning of gender equity, the "boomerang" of these concepts across levels, in ways that are mutually constitutive, but also challenging, is what shapes institutional practices aimed at amelioration of inequity at all levels (Keck and Sikkink 1998).

In an ethnography of several organizations in Baroda, Rajaram and Zararia describe this translation as between the words *Huq* and *Adhikar*. While both words mean "rights" in Hindi, they are subtly different in practice. While *Huq* refers to "entitlements that emerge from a community's cultural norms, practices and traditions," *Adhikar* refers to "entitlements defined in laws, acts and other statutory provisions of the Indian constitution" (Rajaram and Zararia 2009, 465). The central goal, then, of these women's courts, is to translate *Adhikar* into *Huq*, or as the authors say "If women's human rights are to become part of people's lives, they must cross the bridge from being 'rights' in law books to 'rights' guaranteed by the everyday practices of local communities" (Rajaram and Zararia 2009, 465-466). The conversation and process of constant

translation between these grounded norms and human rights doctrine is, according to the authors, the central tension which produces change in terms of substantive gender equity. It is the very fact that these institutions are grounded in their communities that gives them the legitimacy to push for broader legal remedies for gender-based inequity.

As with the state-led approaches discussed above, however, these courts can sometimes fall short of the total aspirations of gender equity doctrines, in part because they depend on patriarchal norms and structure in order to achieve legitimacy. As with the court decisions mentioned above, which have the effect of enhancing gender equity without relying on it as a motivating factor, these courts generally emphasize keeping family together, avoiding litigation and reconciling the couple (Vatuk 2013). Despite the aspirations of sponsoring organizations, these women's courts, in seeking legitimate ways to both promote gender equity and the courts as institutions as well as the women who participate in them "cannot escape being influenced by 'patriarchal' Indian cultural assumptions about what constitutes appropriate feminine behavior, roles and responsibilities within marriage and within society generally" (Vatuk 2013, 77). So, although these courts can give some women the option of pursuing redress, "whether many have adopted core human rights ideas such as equality, autonomy, and bodily integrity is questionable. The stories of women who participate in *panchayats* suggest that a few acquire strong rights subjectivity, but that many retreat in the face of violence, social pressure, and resistance from their own families and caste communities when they take leadership positions" (Merry 2006, 48). While the grounding of these institutions in their communities gives their decisions force, and allows them to push for rights-based remedies, their ability and desire to change is penned in by that same context.

Additionally, the parallel legal status of these courts, whose decisions lack official legal standing, is contingent on voluntary compliance and enforced with shaming. So their efficacy is limited, especially when trying to redress grievances against elites, or in situations of large-scale inequality. The limited legal standing of the courts means that they are effective to the extent that they are accepted and supported. That local legitimacy means that the courts are constrained in their ability, or even their desire, to pursue radical reform, in terms of norms or individual judgments.

#### *Effects of CEDAW-Aligned Reforms – Local and National*

Both the national and local level institutional reforms that are aligned with the aspirations of CEDAW have potential shortcomings. While national-level intervention has the potential to lack force if not granted social legitimacy, the grounded legitimacy of women's courts limits their reach in terms of rights-consciousness. But both of these levels, despite their shortcomings, provide opportunities for furthering the goal of gender equity. Centralized legal reforms are also critical to the goal of furthering gender equity, in part because of the reach and power of the central government, but also because of its allocative and enforcement capacities (Wilpf India 2013). The parallel courts, do afford women access to systems of redress that, although not completely aligned with an internationally-standard sense of gender equity, can provide support and reparation of some grievances.

Both of these sets of institutional reforms, in concert with one another, potentially constitute an environment where human rights are more fully realized over time. This dialectical relationship has the potential to produce change. Such change may not happen immediately, but

through a process of ongoing synthesis between international norms, domestic NGOs and local practice, real change is possible (Rajaram and Zararia 2009).

### *Conclusion*

Gender-based human rights, as articulated through CEDAW and other conventions, need both institutional legal reform and grassroots acceptance to be effective at mitigating systematic gender inequality. This holds true regardless of the level of reform being pursued, because of the ways that human rights norms span the international, domestic, and local levels. The challenge in translating rights, like those guaranteed in CEDAW to gender equity is that “[t]o be accepted, they have to be tailored to the local context and resonant with the local cultural framework. However, to be part of the human rights system, they must emphasize individualism, autonomy, choice, bodily integrity, and equality—ideas embedded in the legal documents that constitute human rights law. Whether this is the most effective approach to diminishing violence against women is still an open question”(Merry 2006, 49). The process of vernacularizing human rights always involves some trade-offs. In order to pursue resonance, the women’s courts, like the national courts, ground their pushes for gender equity in terms of salient institutions, like the family.

This hope, that although imperfect, international human rights doctrines are slowly reshaping the grounded practices in India is reflected in the various rounds of CEDAW committee reports and discussions with the Indian delegation. The most recent CEDAW committee report mentions a number of different reforms at the national level which have substantially helped women and children’s welfare and development (“Concluding Comments of the Committee on the Elimination of Discrimination against Women : India” 2014). Previous

rounds of reports have also praised constitutional guarantees of human rights, affirmative action gender quotas, and progress toward the abolition of child marriage. Such strides have been made possible through the work of activists, many of whom use the rhetoric and tools provided by CEDAW to push for greater equity through both bottom-up and top-down reforms.

This is not to say, however, that the goals of gender equity have been achieved. The ratification of the CEDAW convention was the beginning, rather than the end of a push toward greater gender equity in India. The CEDAW committee still reserves criticism for lack of uniform civil code, and a lack of enforcement of laws, especially regarding gender-based violence. These areas of concern regarding gender equity are the crucial frontiers of both pursuing bottom-up and top-down reform in ways that produce an equitable synthesis.

The CEDAW committee, in cooperation with lawmakers, bureaucrats, and activists, continues to be at the center of defining both a broad conception of gendered human rights, as well as a vision of what such rights would look like in practice in India. The fight is not yet over. CEDAW-inspired pushes for gender equity have not always landed—as with the shortcomings of the women’s courts, or the Supreme Court’s continued disregard for gender equity as a deciding principle in key cases. Yet, in the fight for greater gender equity in religious personal law matters CEDAW has served as a recourse in court and a network-building opportunity for activists, where it has given an internationally recognized language in which to speak about gender equity and a locally vernacularized set of principles to articulate grievance. In this way, it has served as a tool in the arsenal of activists and elites who pursue both grassroots and top-down opportunities to expand and amend religious personal laws to create greater gender equity.

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