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**Article (Accepted version)  
(Refereed)**

**Original citation:**

Madhok, Sumi, Unnithan, Maya and Heitmeyer, Carolyn (2014) On reproductive justice: 'domestic violence', rights and the law in India. *Culture, Health & Sexuality*, 16 (10). pp. 1231-1244. ISSN 1369-1058

DOI: [10.1080/13691058.2014.918281](https://doi.org/10.1080/13691058.2014.918281)

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Available in LSE Research Online: March 2016

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# On Reproductive Justice: 'Domestic Violence', Rights and the Law in India

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**Citation:** 2014. Madhok, Sumi and Unnithan, Maya and Heitmeyer, Carolyn (2014) **On Reproductive Justice: 'Domestic violence', rights and the law in India** *Culture, Health & Sexuality*,16(10).1231-1244.ISSN1369-1058.

## Introduction

In this paper we examine the difficulty of accessing legal interventions against reproductive violations in India and argue that if reproductive rights are to be meaningful interventions on the ground, they must be reframed in terms of reproductive justice. Reproductive justice encompasses both reproductive health and rights but includes these as part of a commitment to transform oppressive gender relations and inequality. Drawing on multi-sited ethnographic fieldwork in Rajasthan, Northwest India,<sup>1</sup> we track two recent creative and dynamic interventions on reproductive rights in India to suggest ways in which these very different approaches are nevertheless constrained in their translation of rights and justice in practice. At the same time we acknowledge the effectiveness of the activism and lobbying by sections of the women's and feminist movement in India, as a result of which there is now a significant body of law that concerns itself with the question of violence against women. In addressing issues such as forced sterilisation and gender selected abortions, these legislative victories have significantly contributed to drawing legal, if not public attention to questions of bodily integrity and reproductive rights. The recent historic Delhi High Court ruling, which upheld reproductive rights as a fundamental citizenship right and placed

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

constitutional obligations on the state to protect reproductive rights, is the outcome of this dynamic civil society mobilisation. The recent legal progressivism, however, has not been accompanied by legislative action on reproductive rights. In the absence of specific legislation safeguarding reproductive rights, progressive legal advocacy and feminist groups are turning to specific clauses within existing laws to safeguard reproductive rights. However, we argue in this paper that such a strategy, although creative and radical, falls short of addressing structural injustices which underpin women's reproductive rights. Stand-alone strategies aimed at utilising existing laws, we suggest, could result in overlooking the ways in which these strategic investments may end up reinforcing, reifying and reproducing certain unequal forms of domestic, sexual and gender arrangements and related subjectivities incompatible with reproductive justice or rights. Drawing on ethnographic observation and analyses of how legal aid groups on-the-ground invoke existing legislation on domestic violence for claiming reproductive rights, we suggest that though such legal intervention is significant it remains a stand-alone legal route for reproductive rights which does not address gender inequalities at the heart of reproductive violations more generally. In the first sections of the paper, we examine the two legal routes for claiming reproductive rights: i) the existing law aimed at preventing and addressing domestic violence (Protection of Women from Domestic Violence Act [PWDVA], 2005) and its 'creative' interpretation by legal advocacy groups and, ii) the appeal to constitutional

law by a national legal aid group for safeguarding reproductive rights in cases of maternal mortality. In the final section, we propose an alternative strategy rooted in a reproductive justice framework for securing reproductive rights and health.

### **Legal Strategies to Uphold Reproductive Rights**

At the Jaipur Office of the People's Union for Civil Liberties (PUCL), its general secretary (GSec) was in the midst of explaining the ins and outs of the Prevention of Domestic Violence Against Women Act of 2005 to me [CH] when a journalist from a local newspaper arrived. The journalist, VS,<sup>2</sup> had stopped by the office to speak to the GSec about a case of a 20 year old woman in the adjoining state of Haryana who, after being married for eight months and becoming pregnant, had allegedly been hanged by her in-laws after a dispute over dowry. According to the journalist, the woman's father has been paying substantial sums to his daughter's in-laws and, after ongoing demands for further gifts, had refused to make any further financial contributions. As a result of his refusal to comply with these demands, his daughter was promptly thrown out of her affinal home but was taken back after her father pleaded with her husband's family. Several days later, her father received a call from his daughter's in-laws saying that she was in the hospital and that there was 'happy news' (i.e. she had given birth). When they arrived in the hospital with gifts for the new baby, however, they found her in the Intensive Care Unit where she had been kept for the past four days. According to VS, her in-laws and husband had beaten her up, drugged her and hung her from the ceiling. Only once the family discovered that the baby she was carrying was male that they had decided to keep her alive.

In the discussion of the case that ensued, the GSec pointed out that this was a clear example in which reproductive rights were at stake, given that the woman's pregnancy was a crucial factor which needed to be taken into account in considering the case. Pregnancy, she continued, should not be treated as an illness but rather as a type of vulnerability and the reproductive body, as was demonstrated in this case, as one of the foremost sites where familial violence against women is committed. When VS interjected to say that this appeared to be a clear case of dowry harassment, she persisted by pointing out that the violation was clearly related to reproductive rights given that the primary site of contestation had been the pregnant body of the woman, with the violence endangering both the rights of the woman as well as those of the unborn child. The GSec remarked that this case was not uncommon and she

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<sup>2</sup> To preserve the anonymity of our informants, all names of individuals and organisations (apart from HRLN and PUCL) have been changed.

had seen many instances in which women had been tortured, specifically with regard to their reproductive capabilities, either because they were infertile and not able to conceive or because they had only given birth to female babies.

As is evident from this fairly routine case from our fieldwork, reproductive rights violations involve intimate forms of violence; but in the absence of a precise language of harm, this violence often goes unarticulated. The peculiarity of reproductive rights is that while they require precise legal iteration, they can only ever be addressed through legal and policy frameworks that identify them as part of existing broader inequalities. To date, there is no specific law against reproductive rights violations in India, even though separate legislations address different aspects of reproductive rights violations. As Unnithan-Kumar (2010) has shown, these end up only partially addressing these not only because ideas of reproductive rights are diversely deployed by differently positioned actors (including those actively upholding patriarchal ideologies), but also, and as we argue here, because of a wider failure to link up reproductive rights with gender equality and justice.

As noted earlier, in recent years, legal activists and progressive human rights lawyer collectives have taken two distinct legal routes to seek redress of reproductive rights. The first is a formal legal intervention that relies on an

expansive legal interpretation of fundamental rights in order to build a case for the protection of reproductive rights; and the second, which is also the one deployed widely on the ground is pursued by legal advocacy groups invoking existing legislation on domestic violence)<sup>3</sup>. The legal constitutional efforts on reproductive rights witnessed a historic legal breakthrough on 4 June 2010 when Justice Muralidhar of the Delhi High Court passed a landmark judgement excoriating the dismal failure of the Indian State to uphold and guarantee the 'reproductive rights' of women and ruled that preventable maternal mortality fatalities constituted a human rights violation. In the cases of *Laxmi Mandal vs. the Deen Dayal Harinagar Hospital* (W.P.C.C 8853/2008) and *Jaitun vs. Maternity Home, MCD, Jangpura & Ors* W.P. No. 10700/2009,<sup>4</sup> Justice Muralidhar laid out the legal basis for the protection of reproductive rights. As far as we are aware, this judgment constitutes the first ever entry of the language of reproductive rights into Indian legal statutes. Ruling on a Public Interest Litigation (PIL) case filed by a progressive legal aid organisation, the Human Rights Law Network (HRLN),<sup>5</sup> on the death of two pregnant women Shanti Devi and Jaitun as a result of being denied emergency and systematic obstetric care, the Court decreed that that obstetric and ante-natal care of women and their newborn infants constituted a

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<sup>3</sup>Henceforth, we shall use the acronym PWDVA in order to refer to this act.

<sup>4</sup>The summaries and the complete legal judgments in both the cases can be found at the HRLN website at <http://www.hrln.org>

<sup>5</sup> The HRLN is a national human rights group of legal advocates which use the law to bring about social justice for poor and marginalised groups. Headquartered in Delhi, the organisation has smaller branches throughout India which enact legal interventions at the both the state and national level.

fundamental right and its provision was the responsibility of the State. In declaring reproductive rights as part of constitutionally guaranteed rights, the court did not feel constrained by the lack of explicit legislative recognition of reproductive rights within Indian statutes, choosing instead to not only anchor its legal defence of reproductive rights to a broad interpretation of the constitutionally guaranteed right to life enshrined in the Indian Constitution (Article 21) but also to various international covenants on reproductive rights<sup>6</sup> to pronounce that:

...these petitions focus on two inalienable survival rights that form part of the right to life. One is the right to health, which would include the right to access government (public) health facilities and receive a minimum standard of treatment and care. In particular this would include the enforcement of the *reproductive rights* [our italics] of the mother and the right to nutrition and medical care of the newly born child and continuously thereafter till the age of about six years...

(W.P.(C) Nos. 8853 of 2008 & 10700 of 2009 page 13 of 51)

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<sup>6</sup>Here the Court was in line with a series of recent Supreme Court judgments to invoke international covenants, the most famous among them being *Vishakha vs State of Rajasthan*, (1997) where CEDAW was used to lay down guidelines on sexual harassment at the workplace.



In ruling thus, not only did the judgment creatively bring together different parts of the constitution, namely fundamental rights contained in Part III and those known in the Indian Constitution as 'directive principles of state policy'<sup>7</sup>, but also enlarged the scope of the 'right to life' to include reproductive rights, making the latter both appear on legal statute but also justiciable in a court of law.<sup>8</sup> In making the connection between the 'master right' to life and what was deemed as inalienable and accompanying survival rights, the Court produced a powerful case for upholding these rights. Notably, it argued for the interdependence of these same rights – the fact that constitutionally guaranteed fundamental rights were interconnected and intertwined and that the successful upholding of a given individual right could only be achieved in recognition of its indivisibility with other rights.

While the Delhi High Court judgement constitutes nothing short of a historic intervention, we suggest that its impact on promoting either legislative activity or policy making for the realisation of reproductive rights has so far been insignificant. Faced with this legislative deficit, some human rights and legal advocacy groups (such as the two groups we conducted fieldwork with, which we refer to as SEVA and SALAH) have drawn on existing legislation on domestic violence (PWDVA, 2005) in order to seek protection of reproductive rights, even though the law on domestic violence in itself has few explicit

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<sup>7</sup>The Directive Principle of State Policy as specified in Article 47 of Part IV of the Constitution are relatively less prominent than the rights set contained in Part III; they are non-justiciable rights and cannot be enforced through legal recourse.

safeguards for these rights. While there is nothing in the language of the PWDVA that explicitly mentions ‘reproductive rights’, activists have creatively interpreted the clause on prevention of sexual abuse<sup>9</sup> contained in the Act to include protection of reproductive rights. Although, the PWDVA marks an important step towards achieving gender justice, we argue that the recourse to reproductive rights via domestic violence legislation is limited on several fronts. While an important difficulty— and one that we shall go into detail later in the section— lies in the use of violence as a trope for addressing reproductive rights, another is to do with the lack of guaranteed citizenship provisioning directed at reducing structural gender inequality and precarity under the PWDVA.

In Rajasthan, the PWDVA has become one of the foremost legal mechanism deployed by local activist groups working on women’s rights. In this article we focus specifically on two such organisations, which we refer to as SALAH and SEVA that have been active in this area for over a decade. Both relatively small groups as compared to national networks such as the HRLN, SALAH and SEVA have been nodal points for local social activist campaigns in

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<sup>9</sup>The PWDVA clause on sexual abuse states that

“...any act, omission or commission, or conduct of the respondent shall constitute as domestic violence in case it:

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; or...”

Rajasthan and have played an important role in the drafting and passage of the PWDVA (while SALAH is primarily dedicated to empowering women who have experienced domestic violence through awareness building, family counselling and empowerment programmes, SEVA acts as the legal arm to the wider activist interventions in Rajasthan). Feminist activists and members of the women's movement in Rajasthan (such as those working in SALAH and SEVA) played a central role in the drafting and passage of the legislation<sup>10</sup> and, since its enactment in 2005, the PWDVA has become the primary law through which reproductive rights violations occurring within the household have been tried. One of the notable features of the activist engagement with the PWDVA is that they have been working alongside the government often on procedural matters and are the main force behind the setting up of counselling centres for victims of domestic violence and for the establishment of 'women only' police stations (*Mahila thana*).

The process enacted by on-the-ground legal associations such as SALAH and SEVA and even the PUCL for legal cases falling under the PWDVA begins once they are approached for legal assistance, either directly by the women affected or via relatives of the women depending on their own connections and who has referred them. Although, SEVA and SALAH both work with the *Mahila Thana*, SEVA focuses on providing legal assistance, while SALAH is

more engaged in providing family counseling and other forms of non-legal support. It is only following legal counselling when the woman still wants to proceed with bringing a legal case against her husband and his family, that SEVA lawyers get involved in pursuing the legal case in the law courts and in actively interpreting and translating the women's situation into the language of the law. Here is an excerpted interview with two SEVA lawyers which explains the process through which rights get translated or even 'vernacularised' (Merry 2009).

MU (author): How do women approach you...what do they ask for?

VS (lawyer): Generally women come to us and say *mein kya karun* (what should I do?), *inhe samjhado* (make him understand) and *nyay dilwa do* (give us justice)

MU: Does this mean there is an awareness of injustice.... what do they feel will be possible?

VS: No, not really. These women who come to us just want their minimum needs taken care of (*ki mera gujara chal jaye*) so that they can survive.

DS (lawyer): We say *gharelu hinsa kanun* (domestic violence law) has given you the right (*adhikar*) to reside in their own home - we tell them these things.<sup>11</sup>

The success of the PWDVA in the local and legal imagination lies in part on its ability to capture popular sentiment through a double manoeuvre: of decreeing as harmful certain domestic practices while simultaneously also upholding those very patriarchal domestic and familial arrangements within

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<sup>11</sup> Interviewed by the authors in July 2010, Jaipur.

which these practices become possible. It recognises that households are sites of violence yet upholds specific normative understandings thereby reproducing and 'fixing' a certain type of gender relations. For instance, feminist legal activists and practitioners claim that an important feminist victory is the inclusion in the PWDVA of the provision of the 'right to family residence' for the victim of domestic violence. In principle, the Act upholds the right of the plaintiff to reside in the familial residence in the event of being subject to domestic violence by other residents of the household and, thereby, protects a woman's right to residence in her marital home even after a complaint has been filed. The significance of this provision, its supporters point out, lies in its sociological awareness, that women are rarely property owners and seldom live in homes that are their own, a fact that continues upon marriage, and therefore, in ensuring that women continue to stake a claim in their affinal homes. In this respect, the PWDVA takes cognizance of the precariousness of everyday existence/dependence which causes many women to desist from seeking legal recourse when experiencing violence or other forms of harm. While the idea that a woman would want to return to the original site of violence, in close contact with the aggressors against whom she has filed a complaint against, may at first appear paradoxical, this provision was seen as a triumph— and we found widespread support for it in our interviews with local, legal activists—because it upheld women's continued access to children and also material resources. This double edged

nature of the 'right to residence' is highlighted by KS (secretary of PUCL) who in a written communication to the authors suggests that that "This Act (PWDVA) can best be described as an 'iron fist in a velvet glove'. The right to residence serves its purpose where there is hope of reconciliation between the spouses and they can again live their happy life, or as a temporary measure where the woman needs time to take a decision regarding her marriage... the act has made sure that the woman has a roof above her head; but the irony is that it is just a roof and nothing else. With basic amenities lacking, the 'Right to Residence' is not doing much to make her life less miserable."<sup>12</sup>

Thus, in upholding access to households as an important aspect of a woman's 'right', the PWDVA does not in any way query either the power structure of households or the status of persons residing therein. On the contrary, the PWDVA, privileges existing gender relations and, ironically, in ensuring that women are provided access rights to the household in the event of suffering domestic violence, the law not only upholds and normalises patriarchal domestic arrangements but it also creates the desire for these arrangements (Sawicki 1991). This kind of normalising and ordering of gender relations is complex, sometimes reinforced by feminist groups themselves and also inadvertently by the women who are required to appear as plaintiffs under its legal provisions. The point we wish to emphasise here is that while households and the family are clearly identified as the site of violence, their

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<sup>12</sup> Personal Communication via email to the authors, 2012.

normative status is never queried. And even while the phenomena of violence occurring within the household is brought under the spotlight, it is not treated as part of a systemic structure of oppressive gender relations.

Underpinning the understanding of violence as belonging to discrete households is the assumption that, once the empirical fact of violence is done away with, the household will reveal itself as a more benign place. This tension between violence as a structural and institutional arrangement and an occurrence of aberrant households is visible in the ambivalent way in which local groups such as SEVA and SALAH approach the family as a site of violence against women. On one hand, the institution of the family is targeted as the primary site of violence against women; on the other, the practice of family counselling often prioritizes the integrity of the family unit over the welfare of individual women. For example, in a forum organized by SEVA ' on legal reform, a long-time women's activist in Rajasthan involved in setting up SALAH opined: '*ghar ko jodna hai, hinsa ko rokna hai*' (English translation: 'in order to unite the family/home - stop violence'). Groups such as SALAH place a strong emphasis on the family and community both as sites of oppression (for women) but also in constituting, on a practical level, the fundamental social and kinship networks through which the majority of women depend on for their material and emotional livelihood. This tension points to larger conflicts inherent in the application of rights discourses to local level contexts (such as faced by SALAH and SEVA) which more

national-level organizations which are less embedded in local communities do not struggle with at the same level as we discuss below.

The fact that the PWDVA has to be negotiated in such an indirect manner means that it cannot easily address reproductive justice. The reasons for this are several: the PWDVA continues to privilege the household and the family as normative; its relatively narrow scope/remit and definitions of accountability sit uneasily with the expansive requirements of reproductive justice as does the premise of privacy upon which the bill rests. And finally, the difficulties – both theoretical and political- of joining hands with a politics of transformation mobilised exclusively on the trope of violence against women renders the PWDVA an insufficient option.

### **Reproductive Justice, Privacy, Violence and Accountability**

Reproductive justice, its proponents point out, is ‘essentially, a framework about power. It allows us to analyze the intersectional forces arrayed to deny us our human rights, and it also enables us to determine how to work together across barriers to achieve the necessary power to protect and achieve our human rights’ (Ross 2009). Reproductive justice encompasses both reproductive health and rights but includes these in such a way so as to



advance gender, social and economic equality.<sup>13</sup> The need to formulate reproductive rights in terms of reproductive justice was influenced by fieldwork findings which pointed to the complex interrelationships and interdependencies of various rights, especially those of sexuality and reproduction, and that broader strategies of expansive citizenship entitlements and rights needed to be developed if reproductive rights claims were to have any traction on the ground. Reproductive justice, then, requires a fundamental recasting of the way in which laws are framed, public policy is developed and citizenship entitlements are enacted. Furthermore, due to its complex and multidimensional spread that spans across public/private divides, reproductive justice cannot be delivered by a set of rights focused on the private citizen alone or one that is exclusively centred on individual 'choice' talk', in fact it is very much the converse. Indeed, locally in Rajasthan there is little understanding or even a term in the vernacular for reproductive rights. This does not mean, however, that there is no sense of reproductive entitlement (Unnithan-Kumar 2003)<sup>14</sup>. The actual phrase used by women in our ethnographic study to ask for legal intervention under the PWDVA is very often a reference to '*nyay*' or justice and often articulated as '*hamhe [nyay] dilwa di jiye*' [please ensure we obtain justice or *nyay*]. There is, of course, an

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<sup>13</sup> <http://reproductivejustice.org/assets/docs/ACRJ-A-New-Vision.pdf>. Accessed 16 December 2011. For a reframing of the global reproductive rights agenda see also Correa and Petchesky (1994: 107).

<sup>14</sup> Reproductive rights by women are recognized in specific ways such as in the right to become pregnant but not in terms of the right to determine sexual access to one's body, or the right not to have children. In relation to sex selection, Unnithan Kumar (2010) suggests that women may perceive reproductive rights to include the right to terminate the foetus they carry.

existing literal term for a right in the vernacular available in Hindi /Urdu/Rajasthani which is usually *adhikaar* or *haq*<sup>15</sup> (Madhok 2013) but according to the legal activists we worked with, it is almost never employed by women seeking legal counsel. It is crucial to keep in mind that the very term 'reproductive rights' does not capture the same set of issues and struggles in different social, political and cultural contexts. While in 'Western' feminist discourses, the term is widely associated with the right to abortion (and the non-interference of the state in influencing women's *choice*), in much of the Global South there is considerable more emphasis on the state's *positive* obligation to enable women to exercise reproductive control. This was clear in the very ways in which NGO workers with whom we spoke as part of the research defined 'reproductive rights': namely as *the right of women to become pregnant and to the safe delivery of their babies*. This insistence on the role of the state as the primary duty-bearer of reproductive rights mainly through provisioning the necessary infrastructure for enabling women to access pre- and post-natal care and emergency obstetric care was a demand we encountered without exception in our fieldwork. In tying reproductive rights and health to social justice, reproductive justice shifts the emphasis from the individual and from personal 'choice talk' (Bailey 2011) to questions of inequality, justice and systemic oppression within which reproductive rights are denied or rendered ineffective. Effective safeguards for reproductive justice then require a robust set of citizenship guarantees and expansive

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<sup>15</sup> While it will be fair to claim that the language of rights (*haq*) and justice or 'nyay' is inflected a great deal by existing constitutional language, this is not to say that alternative justificatory premises for both rights and justice do not exist. See Madhok (2009, 2013)

structures of accountability that insist on accountability of both nation states and of transnational corporations.

Scholars have noted the comparative ease with which political mobilisations centred on the issues of 'violence against women' gather momentum and political support in contrast to those which draw attention to the gendered impact of food insecurity, unemployment or inadequate housing. Inderpal Grewal (2005) writes that global events such as the UN World Conference on Women have consistently shown that only certain issues, those of rape and domestic violence, strike a "consensus" within global feminist activism. According to Grewal, this consensus over violence within 'global feminism'<sup>16</sup> was influenced very early on by a dominant understanding especially within US liberal feminists that domestic violence was a "cultural" rather than an socio-economic issue affecting different groups of women differently, or as Narayan puts it, of third world/immigrant women suffering "death by culture" (Narayan 1997), who required "saving" from the patriarchal violence of their everyday lives (Grewal 2005). In the international arena, this perception soon approximated the colonial terms of engagement powerfully articulated by Spivak (1999: 284) but this time in a performative postcolonial global feminist context of "white [wo] men saving brown women from brown men" (Wood 2002: 431).

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<sup>16</sup> See 'Scattered Hegemonies' (1994).

In India, the emphasis of the feminist movement<sup>17</sup> has experienced a different trajectory to that pursued in the global feminist arena. Here the domestic violence act (PWDVA 2005) does not precede but instead is a result of nearly a quarter century of legislative/political activism and analysis of prejudicial practices of the state and its agencies including the judiciary. In the 1980s, and as Flavia Agnes (1997) has pointed out, while there were a slew of legal reform measures undertaken by the federal state—mostly in response to the pressure mounted by feminist organizations who mobilized against state atrocities, rights violations and gender prejudicial legal judgments—these however, fell short of delivering gender progressive legalism, informed as they were by prevailing gender orthodoxies and moralities<sup>18</sup>. The right to abortion, a central plank of the feminist movements in other parts of the globe, has never been pivotal to the Indian feminist movement owing to its being a ‘measure’ of population control ( Menon 2004); and reproductive rights too have been less prominent, interpreted mainly as having do with

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<sup>17</sup> Different strains within the movement have championed a diverse range of issues related to the environment, sexuality, representation, health, civil rights (Kumar 1999); in fact, the movement is often said to have experienced three discernable ‘waves’ (Gandhi and Shah (1992): its anti colonial/nationalist phase, its autonomous/large classed mobilisation phase and the 1980s onwards which is witnessing the ‘third wave’, of the women’s movement in India (Menon 1999) with debates on sexualities, intersectional oppressions, identities, and a renewed emphasis on institutional and legal reform and citizenship becoming increasingly important.

<sup>18</sup> These gender orthodoxies were also partially reflected in the feminist movement itself which till recently has been unreflexively heteronormative ( Madhok 2010). The assumption of heteronormativity, retains its strong grip over the passage of the PWDVA 2005 too.

motherhood and less so with bodily integrity, sexual autonomy etc. In light of plummeting sex ratios and illegal contraceptive trials on very poor women's bodies, however, both abortion and contraception have increasingly become critical issues in the current phase of the feminist movement.

It is our contention that although the language of violence is central to the PWDVA, it fails to grapple with a wider systemic violence, thereby proving itself inadequate to capture the complexity of the claims for reproductive justice. For, as we argue in this paper, reproductive rights require expansive citizenship guarantees and restructuring existing inequalities and the PWDVA is inadequate for the purposes. It not only fails to present a challenge to normative gender relations but, furthermore, it depoliticises and neutralises the structural inequalities that sustain domestic violence by explicitly keeping the state outside structures of accountability and welfare provisioning.

Consider for instance, the construction and interpretation of the "private" in the PWDVA.<sup>19</sup> At first reading, the links between reproductive rights and a law that regulates forms of sexual violence in the realm of the private<sup>20</sup> would

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<sup>19</sup> Here we are referring to "private" in both senses: as a quality belonging to persons and one that exists as a description of spatiality.

<sup>20</sup>It is important to note that the PWDVA only remarks on 'sexual abuse' in a general way and does not explicitly include 'marital rape' which continues to be legal in India.

be seen as only reasonable.<sup>21</sup> Feminist critiques of the public/private distinction— one that is central to classical liberal political theory and its organisation of sociality and gender relations— rests on it being not only gender iniquitous but also one that reflects the values and policies of the public sphere (Ramsay 1997). Feminists have both striven to uncover the subordination and exploitation that attaches itself to the organisation of domestic relationships, but have also demonstrated perceptible wariness on an excessive dependence on the law to regulate subjects and subjectivities that are always already constructed by the law.<sup>22</sup> So, for instance, feminists have shown how the private is intensely regulated through legislation on abortion, rape, adoption, marriage, state welfarism, among others which not only reinforce ideas of dependency and subordination but also actively reproduces these (Ramsay 1997:194, Cruikshank 1999).

There is much scholarship on the relative merits and negatives of the use of the privacy argument— its critics pointing out that the postulation of privacy rests primarily on the assumption of the autonomous liberal individual who requires privacy and freedom to make choices in the area of reproduction, marriage and procreation in an unencumbered manner, free from all external interference. As Mary Poovey (1992: 240) writes, such a foundational model of the autonomous individual “ignores the extent to which social relations permeate the home and even such ‘personal’ realms as sexual activity. In

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<sup>22</sup> See Menon (2004).

postulating an individual capable of 'free choice', in other words, the privacy defence ignores the extent to which women have been subjected to violence, especially in relation to their sexuality". The crucial point from the vantage of reproductive justice however, is that while privacy is important— women's right to choose cannot be made subservient to the will of others including that of the state - but neither can insisting on women's right to choose be an insistence for it to be pursued in a "private way" and through private initiatives and resources. Thus the liberal individualist defence of reproductive rights, while significant, can neither be an adequate nor a sufficient premise for reproductive justice.

The PWDVA (2005) recognises the "private" as one that mirrors "closed-off" social relations, including those of violence and intimidation. It acknowledges that families are coercive, inequitable, gendered institutions based on unequal power relations, and by bringing violence within households under legal purview, the PWDVA stipulates that citizenship rights cannot be suspended within families. However, these progressive insights of the PWDVA are diluted when it simultaneously proceeds to assume that the persons who inhabit the realm of this inequitable "private" are free-choosing individuals who are similarly positioned i.e., should there be a violation of one's specified rights then the violated person would be able to summon the violator of her rights in a court of law and seek compensation for the violence suffered on

her person from another private person, or the violator, and be able to continue to share household space with her violator(s).

The PWDVA as it currently stands positions the state as but a neutral bystander with no responsibility for welfare provisioning, or accountability in the event of increased vulnerability and violation of rights within shared households. For instance, in not provisioning domestic shelters – one of the ways in which state responsibility for the injured citizen is registered – or indeed ensuring separate budgetary allocation for the Act<sup>23</sup>, the PWDVA marks a sharp departure from feminist programmes and policy demands that accompanied demands for legal intervention into domestic violence which insisted that the state not only recognise domestic violence but also provide welfare provisioning to the victims of domestic violence.<sup>24</sup> In failing to extend public provisioning to victims of domestic violence, the PWDVA reflects the prevailing neoliberal political sensibility that emphasises self-sufficiency and private striving enabled through a participation in market relations. A significant condition of neoliberal postcoloniality is a reliance on “legal instruments...to accomplish order, civility and justice” (Comaroff 2006:133) and the deployment of the formal language of rights to bolster the self-reliant, entrepreneurial subjects, independent of state welfarism (Madhok and Rai

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<sup>23</sup> According to a recent report, ‘Only 14 states have separate budgetary allocations for the Act. P. 29. [http://www.dsw.gnu.ac.in/UserFiles/File/UTTHAN\\_MARCH\\_2012.pdf](http://www.dsw.gnu.ac.in/UserFiles/File/UTTHAN_MARCH_2012.pdf)

<sup>24</sup> Indeed these are critiques brought out by the Lawyer’s Collective themselves (Jaising 2009).



2012, Wilson 2007). The withdrawal of state responsibility rests on a fundamental misunderstanding of the concrete social identities and positioning of persons as essentially “private” and who suffer harm in a private and discrete manner. This understanding does little to protect reproductive justice not only in the private but also in the public realm. For instance, it is unclear how PWDVA would allow reproductive rights violations claims against the state, if the state is itself outside its purview.

So, if the language of violence, more generally, and in particular as invoked in the PWDVA, makes for an uncomfortable politics, and if this language both depoliticises and institutes a victim of violence; one who is not only discretely positioned but also largely untied to larger structures and relations of inequality and oppression, would then a greater alignment with rights language produce a more substantive mechanism for attaining reproductive rights. But of course, rights too are deeply problematic, paradoxical even (Brown 2000) and the catapulting of reproductive rights of “poor women” to the forefront of international rights is not without its difficulties. While the language of rights confers subject-hood on persons only when they are able to speak in its own terms, i.e. as a rights-bearing subject, the discourse of violence both installs a victim and allows it to be spoken for more easily. The domestic violence legislation is interesting because it both sets up a victim and yet expects it to speak in its own name; she is expected to both name and institute proceedings against the perpetrator of violence while also

representing herself as a self-reliant, self-sufficient rights-bearing agent. In order for rights to be effective to any degree, they require not only clear articulation within state legal structures but also enforcement by nation states often through legal systems ill designed to accept rights claims from those who have little by way of social capital.<sup>25</sup>

In our discussion of the workings of the public/private divide in the PWDVA, of the difficulties accompanying a feminist legal politics premised exclusively upon addressing the “violence against women” and in our highlighting of the lack of welfare provisioning in the PWDVA which leaves the reproductive health of poor women severely compromised we have aimed to foreground the difficulties that the PWDVA poses for an intellectual, activist and policy agenda of reproductive justice; our aim has been to insist that reproductive justice requires state responsibility for upholding reproductive rights and health in *both* the public and the private spheres.

## **Conclusion**

So, what will reproductive rights framed in terms of reproductive justice require? Reproductive justice, as we pointed out at the outset, is strongly

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<sup>25</sup> For feminist discomfort on rights see in particular (Brown 1995; Grewal 2005; Kiss 1997; Menon 2004, Spivak 1999).

oriented towards securing social justice (Bailey 2011) and requires attending to questions of rights, gender just laws and citizenship entitlements. As we have tried to show both through our ethnography and through our analysis of the PWDVA, the deployment of existing legal instruments to address reproductive rights violations reduces them to single 'issues' and to discrete incidents (domestic violence, dowry) and in so doing, fails to capture the complexity and multi-dimensionality of the larger structural power inequalities and injustices within which these violations occur but also underplay struggles around reproductive rights. Furthermore, through highlighting a case from our fieldwork (p. 3-4), we have argued that reproductive rights need to be framed more expansively than either 'violence' (it is important to note the silence of the PWDVA on reproductive rights violations), or 'autonomy', or indeed 'choice' (where the most salient issue is access to abortion and contraception); and following from this, therefore, that the range of violations described in this paper cannot be captured either through a framework of reproductive rights or violence as under the PWDVA: the first tends to focus on the choices of discrete individuals and on the negative rights of women rather than the importance of 'enabling conditions' (Correa and Petchesky (1994: 107), and the latter divests the state and the wider corporate community from all structures of responsibility and accountability while also instituting a victim who must resort to private resources in order to claim her right against domestic violence.

What then are the mechanisms through which a discursive and policy shift towards reproductive justice can be constituted? As we have outlined earlier in the paper, a reproductive justice framework would insist on the indivisibility of a four-tier approach comprising gender-just legal constitutionalism; sexual, health and reproductive rights; expansive citizenship entitlements; and a policy framework designed for transnational accountability. In the Indian context, a reproductive justice framework would require strengthening and reinforcing existing constitutional guarantees to life, equality and state directives on public health (Articles 21, 14, 15, 47) to include reproductive rights entitlements. While it might be useful to legislate in favour of a law explicitly designed to safeguard reproductive rights, we are wary of yet another exercise in 'governance feminism' neglectful of the 'complex distributional consequences' of law (Halley et al 2006: 421), and one that is unaccompanied by gendered citizenship guarantees and health services on the ground. In addition to the elevation of reproductive rights as fundamental rights, the scope of these rights must be expanded to cover reproductive and sexual rights and health. The importance of access to reproductive health services which includes access to contraception, abortion counselling and clinics, ante and postnatal care, reproductive health screenings, treatment of reproductive cancers including HIV/AIDS amongst others must be non-prejudicial and universally accessible without heed to sexuality, age, gender, caste, religion, married status among other hosts of intersectional identities. In addition to a robust and clear framework of state-

supported reproductive rights and sexual health, reproductive justice requires a coordinated effort linking national and international efforts to regulate pharmaceutical and other corporate bodies invested in reproductive technologies as well as those surrounding surrogacy.<sup>26</sup> These frameworks must be transnational in scope and orientation with stringent accountability measures for state, transnational corporate and international civil society actors, and tightly linked to material structures, opportunities and services oriented towards gender equality and justice.

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<sup>26</sup> Bailey 2011: 719; Unnithan-Kumar 2013

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