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MASTER THESIS

Titel der Master Thesis / Title of the Master's Thesis

„‘Bringing in the informal sector lens’: Human rights-based approaches in the advocacy of the Indian Self-Employed Women’s Association (SEWA)“

verfasst von / submitted by

Pallavi Chatterjee

angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of

Master of Arts (MA)

Wien, 2021 / Vienna 2021

Studienkennzahl lt. Studienblatt /
Postgraduate programme code as it appears on
the student record sheet:

UA 992 884

Universitätslehrgang lt. Studienblatt /
Postgraduate programme as it appears on
the student record sheet:

Master of Arts in Human Rights

Betreut von / Supervisor:

Dr. Brigitte Holzner, M.A.

Acknowledgements

I am deeply grateful to the informants from SEWA who so graciously provided me time to share their experiences in navigating India's labyrinthian bureaucratic and political structures, as well as engaging informal women workers at the grassroots. It was a valuable learning experience, and I am humbled at having been able to interact with human rights practitioners of their tenacity, grit, and resilience. I can only hope that my efforts one day resemble the same, and my actions make even a fraction of a difference as theirs.

I am similarly indebted to my excellent thesis supervisor, Dr. Brigitte Holzner, for your constant support, guidance, and patience throughout the thesis planning, researching and writing process. The present study would not have been possible without your responsiveness and understanding. Thank you so very much for supporting me every step of the way in my attempt to bring light to SEWA's rights advocacy within a development context, as well as guiding my research focus in this direction.

To the Vienna Human Rights Master faculty and the Ludwig Boltzmann Institute for Fundamental and Human Rights, I thank you sincerely for inspiring my interest in the realm of economic, social and cultural rights, and their justiciability across different contexts, and discovering my passion for advocating for the right to just and favourable conditions of work.

Finally, I am incredibly grateful for the support of my family and friends for allaying my worries, helping me zoom out to see the forest for the trees, and giving me the time and space to do justice to SEWA's incredible work in the realm of human rights. I thank you all from the bottom of my heart, and am truly blessed with your presence and support in my life.

List of Abbreviations

| | |
|--------|---|
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| COVID | Coronavirus disease 2019 |
| HRBAs | Human rights-based approaches |
| ICC | Internal complaints committee |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICMW | International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families |
| ITGLWF | International Textile, Garment and Leather Workers' Federation |
| ICFTU | International Confederation of Free Trade Unions |
| ILO | International Labour Organization |
| GAD | Gender and Development |
| LCC | Local complaints committee |
| NASVI | National Alliance for Street Vendors of India |
| NHF | National Hawker Federation |
| NGO | Non-governmental organization |
| OHCHR | Office of the UN High Commissioner for Human Rights |
| PANEL | Participation, Accountability, Non-discrimination and equality, Empowerment, Linkage to Human Rights norms |
| PIL | Public interest litigation |
| POSH | Sexual Harassment at the Workplace (Prevention, Prohibition and Redressal) |
| SDG | Sustainable Development Goal |
| SEWA | Self-Employed Women's Association |
| SMC | Stamford Common Understanding |
| SSK | SEWA Shakti Kendra |
| TVC | Town Vending Committee |
| TWFA | Third World Feminist Analysis |
| UN | United Nations |
| USAID | US Agency for International Development |
| VAW | Violence against Women |
| WID | Women in Development |
| WAD | Women and Development |

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Chapter 1: Introduction

1.1.: Background

Human rights frameworks emerging from the 1960s with the United Nations (UN) Bill of Rights have increasingly found resonance within development initiatives from the 1990s onward¹. Scholars within the fields of economics and the social sciences have emphasized the importance of human dimensions of development, as well as the protection of human dignity and development of human capabilities.² Emerging from the 1990s, human rights-based approaches to development (HRBAs) represent practical means of operationalizing human rights norms into practice, particularly within the context of development initiatives. They aim to mainstream human rights norms within development planning and implementation, and involve stakeholders besides solely government authorities – including development actors, civil society groups, and mostly importantly, rights-holders themselves. This introduction summarizes HRBA components, linkage to the protection of gender equality norms within the realm of economic rights, and HRBA principles in the advocacy of the Indian Self-Employed Women's Association (SEWA).

HRBAs are guided by what are known as the PANEL principles³, including –

- **Participation**
- **Accountability**
- **Non-discrimination and Equality**
- **Empowerment, and**
- **Linkage to human rights norms**

Such principles must thus underlie all steps of development planning and practice in order to constitute a HRBA. This orientation, fundamentally geared upon the primacy of equal dignity of all human beings, is meant to shift the 'welfare' approach of

¹ A. Cornwall and M. Molyneux (2006), 'The Politics of Rights – Dilemmas for Feminist Praxis: An Introduction', *Third World Quarterly*, vol. 27, no. 7, p. 1175

² A. Sen, (2006), 'Human Rights and the Limits of the Law', *Cardozo Law Review*, vol. 27, p. 2915

³ Scottish Human Rights Commission (2018), 'Human Rights Based Approach: A Self-Assessment Tool', retrieved from <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-based-approach/>

development projects towards an ‘agency’ approach.⁴ People who are aware of their rights might be more empowered to take steps towards their positive realization as agentic rights-holders, rather than remaining in a state of dependence upon duty-bearers.

However, development rarely occurs in isolation, and must take into account the contextual particularities of the local environments within which it occurs. This is particularly relevant for international organizations focusing on using a HRBA as a guiding framework in their interventions with ground-level communities⁵, and especially when their actions are meant to encourage challenging of existing social values and traditional beliefs towards positive change. The present global context, is characterized by participation in public life being discouraged⁶ for marginalized groups, such as women and girls, and where government authorities excuse their lack of accountability towards economic rights – such as the right to work – in the name of ‘progressive realization’.⁷ In contrast, of particular interest to the present study are the principles of ‘participation’, or how rights-holders can make informed decisions about advocating for their rights, and ‘accountability’, or the responsibility of duty-bearers towards protecting and fulfilling their rights as an extension of good governance.

State accountability towards the rights of women and girls is enshrined within the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979. It specifically calls for state protection enabling de facto equality and prohibition of discrimination across genders.⁸ In the highly diverse and heterogeneous societies within global South contexts, the impact of class, caste, religion, ability, and differential access to education and employment are also important identity markers along with gender. These directly influence the participation of groups and communities towards advocating for their

⁴ W. Suntinger, (2020) ‘Human Rights Based Approach’, p.2

⁵ R. Kelly (2019), ‘Translating rights and articulating alternatives: rights-based approaches in ActionAid’s work on unpaid care’, *The International Journal of Human Rights*, vol. 23, no. 5, p 864

⁶ R. Masad (2020), ‘The struggle for women in politics continues’, accessed from <https://www.undp.org/blogs/struggle-women-politics-continues>

⁷ K. Young (2019), ‘Waiting for Rights: Progressive Realization and Lost Time,’ *The Future of Economic and Social Rights*, Katharine G. Young, ed., Cambridge University Press, p. 8

⁸ S. Zwingel (2020), ‘Gender Equality Norms in International Governance: Actors, Contexts, and Meanings’, *Rethinking Gender Norms in Global Governance: The Delusion of Norm Diffusion*, p. 44

rights. Relevant to the study are CEDAW normative standards pertaining to non-discrimination in the realm of employment (Article 11). Herein, Article 11 (1)(a) defines the right to work as an ‘inalienable right of all human beings’, Article 11(1)(d) calls for equal remuneration for equal work, while Article 11 (1)(e) calls for the protection of women’s rights to social security and paid leave. Such standards provide commendable protective provisions for workers in the formal sector, but neglects to include workers within the informal economy, and in particular, informal women workers within global South contexts.

The ‘informal economy’ itself pertains to enterprises operating outside the formal system of an economy, usually neither paying taxes, nor registered with national governments.⁹ According to the International Labour Organization (ILO), these comprise activities such as rural and agricultural labour, as well as street vending, labour activities conducted within home environments, and domestic work within others’ homes.¹⁰ Rights-protecting provisions such as social security, unemployment benefits, pension, and paid leave are the mainstay of formal sector employees, and do not apply to informal sector workers as state obligations, as there is no identifiable employer to be held accountable.¹¹

Labour legislation in India specifically does not recognize informal workers as such, despite constitutional provisions regarding positive rights to equality before the law. Economic rights such as the right to work are classified as Directive Principles of State Policy, and not as fundamental rights. As such, these are simply goals to inform state policy, and are not enforceable by the Indian judiciary¹². Even despite existing protective legislation such as the Unorganized Workers Social Security Act (2008),

⁹ F. Bonnet, J. Vanek, and M. Chen (2019), ‘Women and Men in the Informal Economy: A Statistical Brief’, *WIEGO*, p. 2

¹⁰ K. Sankaran and R. Madhav, (2013) ‘Informal Economy: Law and Policy Demands’, *The Transformation of Work*, p. 1

¹¹ M. Chen, C. Bonner and F. Carre (2015), ‘Organizing Informal Workers: Benefits, Challenges, and Successes’, *UNDP Human Development Report Office*, p. 13

¹² G. Hogan. (2001), ‘Directive Principles, Socioeconomic Rights and the Constitution’, *Irish Jurist (1966-)*, 36, p. 189, retrieved July 8, 2021, from <http://www.jstor.org/stable/44013844>

implementation of such standards remains lax and working hours, safety, job security and other basic labour rights continue to remain neglected.¹³

Informal women workers have faced challenges towards independently advocating for their rights to livelihoods and humane work conditions through organizing into trade unions and cooperatives. However, in this respect, the quintessential example of bottom-up, participatory methods of organizing and collective action is the Self-Employed Women's Association (SEWA) based in Ahmedabad, India. Originally a trade union formally organizing poor, migrant, and informal women workers in 1972, SEWA operations began with lawyer Ela Bhatt's representing their concerns of erratic work, low wages and unfair treatment by labour contractors.¹⁴ Eventually, SEWA expanded to include other women informal and self-employed workers within other sectors of the Ahmedabad textile industry.¹⁵ Its primary goal includes organizing and mobilizing informal women workers towards 'full employment', which ensures protection of their rights to work security, but also in the realm of food, insurance and social security, as well as building self-reliance on both individual and collective levels.¹⁶

SEWA's history includes fighting for and eventually receiving formal recognition as a trade union, establishing cooperative funds, questioning the definition of 'worker' under Indian labour law, and engaging in strategic coalitions with intergovernmental and state bodies in order to fight for fair wages, healthcare, housing, and access to the market.¹⁷ Importantly, they were a primary bridge between state-sponsored relief operations and the vulnerable populations affected by the natural disasters afflicting north-western India's Gujarat state from the 1990s to the early 2000s, taking steps to fully involve communities in all rehabilitation efforts meant for

¹³ National Commission for Enterprises in the Unorganized Sector (2007), 'Report on Conditions of Work and Promotion of Livelihoods in the Unorganized Sector', p. 10

¹⁴ Self-employed Women's Association (2020), 'History', *SEWA: Self-employed Women's Association*, Ahmedabad, India, 2020, <https://www.sewa.org/history/> (accessed 8 July, 2021)

¹⁵ *ibid*

¹⁶ A. Kapoor (2007), 'The SEWA Way: Shaping another future for informal labour', *Futures*, vol. 39, p. 559

¹⁷ International Labour Organization (2011), 'Chapter 7: Self Employed Women's Association (SEWA), India', *Rural Employment and Decent Work Program*, p. 145

them. Their guiding principles include Gandhian values of non-violence (*ahimsa*) and truth (*satya*) towards ensuring a people-centred response in all external aid initiatives.¹⁸

The organization has so far expanded to represent a constellation of women workers movements across India, representing various castes and religions and describing their ethos as ‘...*democratic, inclusive, responsive, dynamic, and...self-sustaining*.’¹⁹ Their efforts have included creating the SEWA Bank (1974), which is a precursor to the global microfinance movement, obtaining recognition by the International Labour Organization (ILO) in 1996 of home-based workers as workers entitled to basic protection under formalized labour standards (C177), and lobbying for the passing of the Street Vendor’s Act (2014) to protect street vendors’ right to livelihood.²⁰ Founder Ela Bhatt was also responsible for the organization of the National Commission on Self-Employed Women and Women in the Informal Sector. Her report ‘Shramshakti’ highlights the concerns of over 100 million working women in India and proposing legislation for improving their work conditions.²¹

1.2.: Problem statement

SEWA’s strategies for the protection of informal economy women workers’ rights possibly reflect key HRBA guiding principles of accountability and participation. Many of their claims center around key economic rights – such as the right to work (Article 6 ICESCR, Article 11 CEDAW), the right to just and favourable working conditions (Article 7 ICESCR), the right to fair wages (Article 11(d) CEDAW), and the right to join trade unions (Article 7 ICESCR). Ela Bhatt’s Shramshakti Report recommends ‘...mutually beneficial cooperation’ between state bodies and grassroots movements. It argues that women informal and self-employed workers are still far too

¹⁸ T. Vaux & F. Lund (2003), ‘Working Women And Security: Self Employed Women's Association's response to crisis’, *Journal of Human Development*, vol. 4, no. 2, p. 274

¹⁹ Self-Employed Women’s Association, ‘History of SEWA’, retrieved from <https://www.sewa.org/history/>, accessed 28 July 2021

²⁰ International Labour Organization (2011)

²¹ E. Bhatt (1989), ‘National Commission on Self-Employed Women and Women in the Informal Sector’, *Self-employed Women’s Association*, Ahmedabad, India, p. 10

socially and economically disadvantaged in comparison to the structural entrenchment of power imbalances they must contend against.²²

With the gaps in existing national legislation, international human rights standards such as CEDAW are increasingly relevant for informing advocacy and organizing for the protection of the socioeconomic rights of women informal workers. The study therefore aims to explore the relationship between such existing normative standards on an international level, and the actions of ground-level organizations such as SEWA, which operationalize such protective standards in a practical setting and advocate for their implementation. Specifically, CEDAW is one such mechanism, which India is legally obligated to due to its ratification in 1993. The study is specifically focusing thus how HRBA principles such as accountability and participation are translated into practice through SEWA's activities in framing the socioeconomic rights of women informal workers as state obligations, as well as their entitlements. It further explores the extent to which normatively grounding its local practices within human rights standards protecting gender equality norms such as CEDAW has been relevant to their advocacy.

1.3.: Research questions

Main research question: In what ways are HRBA principles of participation and accountability practiced in locally meaningful ways through SEWA's work with informal women workers?

Sub-questions:

- What human rights standards are most relevant in SEWA's advocacy for state accountability for the rights of informal women workers?
- What rights and entitlements are the topics of SEWA's participatory training interventions among communities of informal women workers?
- To what extent have the protective provisions pertaining to employment within CEDAW been valuable for SEWA's advocacy?

²² R. Datta. (2003), 'From Development to Empowerment: The Self-Employed Women's Association of India', *International Journal of Politics, Culture and Society*, vol. 16, no. 3, pp. 351-368

Chapter 2: Theoretical Framework and Review of Literature

This chapter summarizes the different lenses through which the experiences of women within global South contexts advocating for their rights can be conceptualized as points of interventions for HRBAs. Specifically, framing theory is an important sociological framework which can provide some explanation for the spectrum of responses to human rights norms, from acceptance to contestation. This study focuses specifically on gender equality norms within a development context. As such, Section 2.1 describes how framing theory provides a guiding framework for the localization of human rights norms, while Section 2.2 specifies its practice within development initiatives, and the relevance of economic rights. Section 2.3 describe gendered perspectives to development discourse, in particular a Third World Feminist Analysis approach, while Section 2.4 compares different contextual factors which influence organizational advocacy and means of ‘vernacularizing’ international human rights standards. Section 2.5 summarizes and concludes.

2.1: Framing the objectives of a social movement as human rights norms

HRBAs function as guiding theories of change²³ for development projects of NGOs, various UN specialized agencies, and bilateral initiatives between states. Given that such organizations can have vastly different goals, a common understanding was necessary to be reached regarding how HRBAs should inform development planning. The UN bodies participating in the Interagency Workshop on a Human Rights-based Approach in 2003 agreed upon what is now known as the Stamford Common Understanding (SCU).²⁴ The Office of the UN High Commissioner for Human Rights (OHCHR)²⁵ defines HRBAs as ‘...*a conceptual framework for the process of human development that is normatively based on international human rights standards and*

²³ D. Chopra, P. Ekeoba, Z. Nesbitt-Ahmed, R. Moussié & M. Sherpa (2014), ‘Policy advocacy for women's unpaid care work: comparing approaches and strategies in Nepal and Nigeria’, *Gender & Development*, vol. 22, no. 3, p. 485

²⁴ UNSDG Human Rights Working Group (2003), ‘The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies, p. 1

operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.’²⁶

The idea of human rights frameworks as ‘universal’, however, is a highly contested claim. Many states have raised reservations to key provisions within CEDAW pertaining to equality between the sexes²⁷, while still others refuse to ratify conventions protecting economic rights (such as the right to work, or the right to just and favourable conditions of work) on the grounds that such provisions are already present within their national laws.²⁸ According to the three strategic pillars of the SCU, human rights are essentially the goal of all development, must thus guide all policy-making and planning of development initiatives, and must contribute to the empowerment and capacity-building of both rights-holders and duty-bearers. HRBAs have integrated second generation rights such as economic, social, and cultural rights, as well as third generation rights pertaining to collective groups into policy underlying development practice, with a specific focus on vulnerable groups, and establishing grounds for their social and legal protection via accountability of duty-bearers and the rule of law.²⁹

Meriläinen and Vos’s (2013) analysis of how human rights issues are framed within public debate and reported on by human rights organizations found an overwhelming focus on the importance of context attributes and situatedness³⁰. As such, local organizations fighting for gender equality within a political climate that is hostile or indifferent to their demands must frame their claims within their existing

²⁵ G. Berman (2008), ‘Documenting Lessons Learned for Human Rights-based Programming: An Asia-Pacific Perspective’, UNESCO Office Bangkok and Regional Bureau for Education in Asia and the Pacific, p. 13

²⁶ Office of the United Nations High Commissioner for Human Rights (2006), ‘Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation’ (United Nations 2006), <https://www.ohchr.org/Documents/Publications/FAQen.pdf>, accessed 27 July 2021

²⁷ A. Jenefsky, (1991), ‘Permissibility of Egypt's Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women’, *Maryland Journal of International Law*, vol. 15, no. 2, p. 201

²⁸ A. Piccard (2010), ‘The United States’ Failure to Ratify the International Covenant on Economic, Social and Cultural Rights: Must the poor always be us?’ *The Scholar: St. Mary’s Law Review on Minority Issues*, vol. 13, no. 2, p. 243

²⁹ A. Cornwall and M. Molyneux (2006), p. 1175

³⁰ N. Meriläinen and M. Vos (2013), ‘Framing issues in the public debate: The case of human rights’, *Corporate Communications: An International Journal*, vol. 16, no. 4, p. 300

socioeconomic and political context. Such framing processes can draw attention to the underlying causes of human rights violations, i.e. what enabling factors within a particular context exist, and what power discrepancies exist between actors.³¹ The subsequent section details some approaches of how framing theory can be used to appropriately express human rights norms across different contexts.

2.1.1: Framing as a means of interpreting ideas

‘Framing’ itself refers to a concept within the social sciences pertaining to how ideas are presented contextually and the subsequent impact this can have on cognitive processes and decision-making.³² Anthropologist Gregory Bateson (1972) defines ‘psychological frames’ as a *‘spatial and temporary bounding of a set of interactive messages’*, emphasizing the grounding of such information within a particular context in order to influence its impact upon its audience.³³ Similarly, sociologist Erving Goffman (1974) expanded upon the definition by suggesting that peoples’ ‘primary framework’ of assessing and interpreting information was mediated by their pre-existing belief systems or ‘social frameworks’ – i.e. viewing events and actions as socially premediated.³⁴ Such ‘older’ definitions are highly relevant to modern day social movements advocating for human rights standards.

2.1.2: Framing as applied to social movements

Within the context of social movements, modern day definitions by Snow (2012) conceptualize framing as *‘...the signifying work or meaning construction engaged by movement adherents...and other actors...relevant to the interests of movements and the challenges they mount in pursuit of those interests.’*³⁵ These can include movement leaders, followers, and even opponents, institutional power-holders and decision-makers, and even media figures. Snow’s analysis of how framing influences social movements derives from symbolic interactionist and constructionist

³¹ ibid

³² N. Meriläinen and M. Vos (2013), p. 293

³³ G. Bateson, (1972), ‘Steps to an ecology of mind: Collected essays in anthropology, psychology, evolution and epistemology’. San Francisco, CA: Chandler, p. 197

³⁴ I. Goffman (1974) in S. Arowolo, (2017), ‘Understanding Framing Theory’, p. 2

³⁵ D. Snow, (2012), ‘Framing and Social Movements’, *The Wiley-Blackwell Encyclopaedia of Social and Political Movements*, p. 392

principles.³⁶ Thus, people's interpretation of events and experiences is usually mediated through their cultural context. Snow describes such transformative processes of interpretation as '*...the reconfiguration of aspects of one's biography as commonly occurs in...political...conversion.*'³⁷

Benford and Snow (2000) describe a number of framing techniques which influence social changes.³⁸ These reflect strategies used by grassroots and local organizations to raise awareness and inspire collective action among marginalized communities. Some approaches most relevant to the study of how human rights norms can be localized and translated across different contexts have been summarized here.

Table 1: Framing techniques which influence social changes

| | |
|------------------------|--|
| Frame-making | Giving identity to a movement through the construction of supportive frames to their rights claims |
| Frame-bridging | Connecting organizational agendas with interdisciplinary discourse and the goals and ideologies of other stakeholders, institutions and movements. |
| Frame-resonance | Adjusting rights claims to meet the needs of different audiences |

Author: Pallavi Chatterjee, based on Benford and Snow (2000)³⁹

Grassroots movements representing highly marginalized communities, such as indigenous communities, have experienced some success in frame-making strategies and expanding their rights and recognition of their status within international law. For example, ILO Convention no. 169 initially framed 'consultation' as a simple administrative task and did not provide for more substantive rights, such as the right to veto any actions that would prove harmful to their lives and survival.⁴⁰ Latin American indigenous communities were able to challenge such relatively weak protective standards and call for stronger, more substantive conceptualizations of their right to be

³⁶ *ibid*

³⁷ *ibid*

³⁸ R. Benford, and D. Snow, D (2000), 'Framing Processes and Social Movements: An overview and assessment', *Annual Reviews Sociology*, vol. 26, p. 624

³⁹ *ibid*

⁴⁰ C. Rodriguez-Garavito (2018), 'Reimagining human rights as a frame of justice', Open Global Rights, accessed from <https://www.openglobalrights.org/reimagining-human-rights-as-a-frame-of-justice/>

consulted before any action taken upon the territories of their livelihoods. As such, they advocated for stronger framing of their rights as a collective group.

2.1.3: The relevance of framing theory to human rights practice

Strategies such as frame-making, frame-bridging and ensuring frame resonance are possibly important factors in structuring successful advocacy. Frame-bridging is especially relevant to HRBA methods of building multi-stakeholder partnerships and connections in order to collaborate towards sustainable solutions. Activists must constantly frame their claims in ways that inspire interest and action towards advocating for the fulfilment and protection of their rights. As such, from a legal perspective, the framing of human rights norms as legal obligations on parts of states forms a core element of organizational advocacy, and is an important step in ensuring accountability.

However, Sepúlveda-Carmona and Donald (2015)⁴¹ argue that legal empowerment must move beyond simply framing access to justice as a linear process, and take into account the various obstacles in its path, including poverty and unstable political situations enabling impunity, power imbalances, and other systemic barriers. Scholars such as Michael Ignatieff (2017) decry human rights practice as limited to international law, conventions, and treaties between states.⁴² Similar to economist and Noble prize winner Amartya Sen, he argues against a ‘legally parasitic view of human rights’⁴³ and instead frames them as moral claims to which every human being is entitled to by virtue of their humanity. Such arguments are raised by Rodriguez-Garavito (2018) within the context of debating whether ‘human rights thinking’ can be an effective ethical base which can have a positive impact on human behaviour on an individual and collective level.⁴⁴ This impact can potentially influence how human rights norms – and in particular, economic rights, such as the right to work – are enacted on a wider scale by states.

⁴¹ M. Sepúlveda-Carmona, & K. Donald, (2015) ‘Beyond legal empowerment: improving access to justice from the human rights perspective’, *The International Journal of Human Rights*, vol. 19, no. 3, p. 242

⁴² M. Ignatieff, (2017), ‘Human Rights, Global Ethics, and the Ordinary Virtues’, *Ethics and International Affairs*, vol. 31, no. 3, p. 5

⁴³ A. Sen, (2006), ‘Human Rights and the Limits of the Law’, *Cardozo Law Review*, vol. 27, p. 2915

⁴⁴ C. Rodriguez-Garavito (2018)

As such, the study will be guided by the definition of framing as applied to social movements, through the contributions of Benford and Snow (2000, 2013). The study finds great value in applying a human rights frame to development thinking, and further specifying how the practice of gender equality norms within such a context must be localized to different environments. These have significant implications for how effective HRBA methods can be conceptualized to ensure collaboration and capacity-building of both duty-bearers and rights-holders, and particularly when framed appropriately to meet the needs of local communities at their level of preparedness towards change.

2.2. Bridging the paradigms of development and human rights

Development and human rights have long been viewed as fundamentally different paradigms, with different means and goals, as well as the relationship of their respective actors to state authorities.⁴⁵ ‘Development’ itself was initially framed as a concept pertaining only to economic growth, but soon expanded to include key aspects of human development as well, particularly along the lines of economic, social and cultural rights.⁴⁶ Advances such as the UN Declaration on the Right to Development in 1986 reflected international agreement perceiving the implementation of human rights standards as a goal as well as the basis of development initiatives.⁴⁷ Further initiatives strengthening the promotion of human rights protection as a goal of development include the Vienna Declaration and Programme of Action (1993), and Kofi Annan’s UN Reform of 1997, which call for mainstreaming human rights in all UN activities⁴⁸.

2.2.1: Framing economic, social and cultural rights as development goals

Economic, social and cultural rights as a whole are, however, often relegated to the domain of ‘progressive realization’. Their implementation is seen as contingent upon budgetary constraints, and states are often less incentivized to ensure their

⁴⁵ P. Uvin, (2007), ‘From the right to development to the rights-based approach: how ‘human rights’ entered development’, *Development in Practice*, vol. 17, no. p. 597

⁴⁶ P. Uvin, (2007), p. 598

⁴⁷ *ibid*

⁴⁸ W. Suntinger, W (2020), ‘Human Rights Based Approach’, p. 1

protection on a priority basis, as opposed to civil and political rights.⁴⁹ The formulation of economic, social and cultural rights (2016) within international human rights law has been criticized as vague and poorly-defined⁵⁰, creating interpretative difficulties regarding their normative content. HRBAs to development are meant to be a practical means of operationalizing human rights indicators within – and beyond – development projects. They have grown to encompass highly diverse areas including climate change, sustainable urban design, and criminal justice reform.⁵¹

The increasing focus on human rights protection of economic, social and cultural rights has nuanced in discourse, particularly with the intersection with a development framework. The UN Sustainable Development Cooperation Framework of 2019, for example, uses an HRBA as its guiding principle⁵². The Sustainable Development Goals (SDGs) are grounded in international human rights law, and constitute important steps towards enacting human rights standards through measurable metrics and actions steps.⁵³ Importantly, they also emphasize the role of poverty in enabling human rights violations, such as inaccessibility of adequate healthcare, and appropriate educational opportunities, as well as precarious work conditions.⁵⁴ The SDGs focus on the disproportionate impact of human rights violations women and girls as expressed through SDG 5 on Gender Equality. Similarly, economic rights such as the right to just and favourable conditions of work are expressed through SDG 8, which aims to ‘...*promote sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all.*’ Gender equality and economic rights within development frameworks thus strongly intersect, particularly within global South contexts where women’s and labour movements have often collaborated for action.

⁴⁹ The Advocates for Human Rights, ‘Human Rights and the US’, accessed from https://www.theadvocatesforhumanrights.org/human_rights_and_the_united_states

⁵⁰ L. Forman, L. Caraoshi, A. Chapman, & E. Lamprea, (2016) ‘Conceptualising minimum core obligations under the right to health: How should we define and implement the ‘morality of the depths’’, *The International Journal of Human Rights*, vol. 20, no. 4, p. 532

⁵¹ W. Suntinger (2020), p. 2

⁵² United Nations Sustainable Development Group (2021), ‘Human Rights Based Approach’, accessed from <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>

⁵³ Office of the High Commissioner for Human Rights, ‘Human Rights and the 2030 Agenda for Sustainable Development’, retrieved from <https://www.ohchr.org/en/issues/SDGS/pages/the2030agenda.aspx>, accessed on 27 July 2021

⁵⁴ Open Global Rights, ‘The SDGs and Human Rights: How can human rights remain central in SDG implementation’, accessed from <https://www.openglobalrights.org/SDGs/>

2.2.2: Overcoming challenges in implementing human rights practice

From a practical standpoint, HRBAs are highly valuable due to framing links between human rights injustices and the legal obligations on part of states, and can be useful tools for litigation; they also strengthen the concept of citizenship, which is especially relevant for marginalized groups.⁵⁵ However, Broberg and Sano (2014) describe potential sources of difficulties in implementing human rights practice within development contexts⁵⁶. HRBAs as enacted by external organizations could possibly worsen existing inequalities in societies, which might manifest as inappropriate governance due to the granting of rights used to secure power for certain groups at the expense of others. This criticism is especially relevant to diverse and heterogeneous populations, such as in India, where such differential treatment of marginalized groups might even be justified as necessary, but which might still be contested.

Similarly, Wandenhole and Gready (2014) contend that HRBAs can often conflict with development organizations' results-based planning goals. Human rights actors are often construed as adversaries to the state, focusing on identifying rights violations and castigating state actors; development actors, on the other hand, are viewed as partners of the state, and must attempt to bridge the gap between communities at the ground level and higher-level state mechanisms.⁵⁷ The authors thus argue that simply the formal adoption of an HRBA by a development organization would be characterized by slow organizational change, challenges posed by bureaucratic operations, and other forms of internal resistance.⁵⁸

In response to such arguments, Newman's (2011) proposed dichotomization of grassroots-based to positivist articulations of human rights⁵⁹ is one such solution of overcoming such distributional deficits. Some of its key elements have been summarized in the table that follows.

⁵⁵ M. Broberg & H. Sano (2018), 'Strengths and weaknesses in a human rights-based approach to international development – an analysis of a rights-based approach to development assistance based on practical experiences', *The International Journal of Human Rights*, 22:5, p. 674

⁵⁶ *ibid*

⁵⁷ W. Vandenhole & P. Gready (2014), 'Failures and Successes of Human Rights-Based Approaches to Development: Towards a Change Perspective', *Nordic Journal of Human Rights*, 32:4, p. 310

⁵⁸ *ibid*

⁵⁹ R. Kelly (2019), p. 863

Table 2: Newman’s dichotomy of rights-based approaches

| Grassroots-based approaches | Positivist approaches |
|---|---|
| <ul style="list-style-type: none"> • Influencing communities directly • Bottom-up advocacy • Eliciting active participation • Increasing knowledge of rights in locally meaningful ways • Working collectively for action. | <ul style="list-style-type: none"> • Influencing state actors directly • Top-down advocacy • Greater recourse to existing legal (often international) standards • Advocating on behalf of an affected group |

Author: Pallavi Chatterjee, adapted from K. Newman (2011)⁶⁰

HRBAs must necessarily find a balance between them in order to satisfy the service delivery aspects of development organization’s goals, as well as directly and positively impact communities, while ensuring state actors remain in the loop. As such, HRBA practitioners must construct their frames appropriately to find a middle ground between duty-bearers and rights-holders. While upholding human rights standards often constitutes an obligation on part of the former, it is equally important to ensure understanding of their relevance to the latter. Hence, this study considers how a balance of both such approaches can contribute to successful human rights advocacy.

2.2.3: Framing economic and social rights as relevant to lived experience

HRBAs as a whole have the potential towards positive, transformational change when localized to the context of their operations, and balancing multi-stakeholder goals. Their ability to address the implementation of deficits regarding economic, social and cultural rights is especially relevant. A key contribution of HRBAs to protecting economic and social rights thus includes deploying it as a theory of change within civil society initiatives.⁶¹ This would especially facilitate collective action and litigation strategies for justice. Existing literature finds such an approach essential when engaging directly with vulnerable populations, including *inter alia* the elderly, post-conflict

⁶⁰ K. Newman (2011), ‘Challenges and Dilemmas in Integrating Human Rights-based Approaches and Participatory Approaches to Development: An Exploration of the Experiences of ActionAid International’ (PhD diss., Goldsmiths, University of London, 2011), 120–3, p. 234

⁶¹ R. Kelly (2019), p. 864

societies, workers with irregular migration status etc.⁶² HRBAs to peacebuilding efforts in Northern Ireland conducted by Cahill-Ripley identified the importance of framing economic, social and cultural rights as relevant and immediately applicable within the daily lives and experiences of post-conflict affected populations.⁶³ Sepúlveda and Donald have identified poverty as one of the greatest barriers in accessing justice, further exacerbating socioeconomic and political inequality. As such, any resulting approach to reform must not limit itself to merely judicial reform, but instead analyze the structural factors underlying ‘...existing asymmetries of power’.⁶⁴ This would frame awareness of such issues as a direct concern of affected communities.

Similarly, legislative changes occurring as a result of strategic litigation are important factors in facilitating a ‘human rights’ culture.⁶⁵ Coe et al. attribute changes in societal attitudes towards vulnerable populations (including LGBT+ individuals, persons with disabilities, etc.) at least to an extent to legislative change.⁶⁶ Such populations are thus represented as protected within national law, thus potentially changing the way they are perceived by wider society. However, solely changing legislation and subsequent policy responses can hinder protection of such rights-claims if overly focused on vulnerable populations as solely beneficiaries of resources.⁶⁷ This can effectively negate their role in and contribution to society. HRBAs can thus contribute to a framing of such rights-claims concretizing claimants’ position as empowered rights-holders and contributors to the local society and economy.

Within this spectrum of rights, the relevance of norms of gender equality is especially prominent, given the disproportionate negative impact upon women that denial of access to education and employment opportunities has, and particularly within global South contexts. Gender equality norms constitute the basis of Sustainable

⁶² A. Cahill-Ripley, (2019) ‘Exploring the local: vernacularizing economic and social rights for peacebuilding within the Protestant/Unionist borderland community in Northern Ireland’, *The International Journal of Human Rights*, 23:8, p. 1249

⁶³ *ibid*

⁶⁴ M. Sepúlveda-Carmona, & K. Donald, (2015), p. 243

⁶⁵ K. Bell, & S. Cerny, (2014), ‘Developing public support for human rights in the United Kingdom: reasserting the importance of socio-economic rights’, *The International Journal of Human Rights*, vol. 18, no. 7-8, p. 833

⁶⁶ *ibid*

⁶⁷ *ibid*

Development Goal (SDG) 5, and constitute an end to itself, rather than signifying the fulfillment of another goal. Thus, their protection and fulfillment is clearly linked to both development and human rights objectives.

2.3: Gendered perspectives to development practice

The 1970s increasingly focused on mainstreaming gender perspectives within development assistance, as well as encouraging the normative embedding women's rights as legally-binding human rights to be protected and fulfilled.⁶⁸ It was in 1979 that CEDAW was adopted as a predominant facet of international law protecting women's human rights, and has since been ratified by 189 countries. Its provisions cover various fields in which women face discrimination, and promote special temporary measures to level out gender representation across fields such as economic and educational opportunities. The present study was founded on the desire to apply CEDAW standards towards the protection of women's economic rights within global South contexts, as well as investigate its relevance within development practice.

2.3.1: Different approaches to women's human rights in a development context

Norms of gender equality do not have a uniform history of advocacy and embeddedness. Zwingel (2020)⁶⁹ argues that gender norms such as women's representation and participation within economic, development and political processes receive great institutional support and lobbying efforts from women's organizations, feminist bureaucrats ('femocrats') and state parties. In sharp contrast, norms addressing violence against women and reproductive/sexual health are far more contested.

Within the 1970s, a major development was US feminist groups successfully lobbying for the 1973 Percy Amendment to the US Agency for International Development (USAID), which established the Women in Development (WID) program.⁷⁰ Such developments reflected the emerging belief within transnational women's movements that development assistance should necessarily include a gendered

⁶⁸ J. Jaquette, (2017), 'Women/Gender and Development: The growing gap between theory and practice', *Springer Science + Business Media New York*, p. 243

⁶⁹ S. Zwingel, (2020), 'Gender Equality Norms in International Governance: Actors, Context, Meanings', *Rethinking Gender Equality in Global Governance: The Delusion of Norm Diffusion* p. 41

⁷⁰ J. Jaquette, (2017), p. 244

perspective – over a gender-blind approach – and take into account the unique needs of women. Contextualizing this to a global South context was Ester Boserup's 1970 critique of modernization forces, demonstrating how they fostered systems of deeply-entrenched gender hierarchies within developing countries. Technological advances from the colonial era disproportionately favoured men in the cultivation of cash crops and thereby access to lucrative markets, while women were relegated to economically and socially-disadvantaged sectors of subsistence farming, and often denied property in rural African and Asian contexts.

WID processes of lobbying development authorities for more equitable representation of women as income-earners soon received criticism that they did not sufficiently challenge underlying inequitable structures such as capitalism and intrusive state intervention.⁷¹ Framing women as beneficiaries of rights-protecting provisions largely to the extent that they contributed economically was widely criticized by proponents of the socialist feminist Women and Development (WAD), and later Gender and Development (GAD) movements. These movements focused more so on analyzing the underlying causes of inequality – such as patriarchal belief systems, harmful traditional beliefs, and inequitable economic practices within capitalist systems. In terms of positionality to states, they were more critical and even adversarial in nature. WAD and GAD approaches, which call for structural change of the economic and political structures engendering inequalities, perceive such '*...political incrementalism under liberal capitalism*' as piecemeal and inadequate.⁷²

GAD proponents especially draw inspiration from socialist critique of capitalist structures that are fundamentally exploitative of labour in nature. Thus, they believe that simply improving economic opportunities for women in terms of income-generating activities would be unsustainable over time. Such approaches have especially been espoused by women's rights activists and feminist groups within the global South.⁷³ They position inequalities and underdevelopment as a product of inequitable trade relationships between their economic and political contexts, and that of the global

⁷¹ J. Jaquette, (2017), p. 246

⁷² J. Jaquette, (2017), p. 244

⁷³ S. Zwingel, (2020), p. 54

North. The first UN Conference on Women in Mexico in 1975 featured global South feminists who identified poverty and underdevelopment resulting from colonialism and inequitable economic relationships as factors underlying inequalities as well.⁷⁴

An important contribution within GAD approaches is Moser's Gender Analysis Framework, which recommends integrating gender-planning within all steps of development work, and focuses on analyzing power imbalances across genders.⁷⁵ The goal of gender planning itself focuses on emancipating women from their subordination, and achieving equality, equity and empowerment. Importantly, Moser specifies that the practice of gender planning varies widely across different contexts, and would depend on factors such as the extent of women's subordination to men.

Women's productive contributions are described as less visible and less valued than those of men. As such, their subordinated position and multiple work roles (in productive and reproductive capacities) underlie their needs, which are distinguished between those of a practical and strategic nature.⁷⁶ Practical gender needs are defined as needs which must be met to assist women in their current activities and pertain to immediate necessities. Strategic needs are those which would enable women to challenge and fight for change of existing power imbalances across genders pertaining to labour, power and control. Some examples distinguishing the two are provided here.

Table 3: Moser Gender Analysis Framework: some examples

| Practical needs | Strategic needs |
|---|---|
| <ul style="list-style-type: none"> - Access to paid work - Access to education - Water, sanitation and hygiene | <ul style="list-style-type: none"> - Collective organization - Leadership capacity-building - Freedom of speech, association |

Author: Pallavi Chatterjee (adapted from C. March, I. Smith, and M. Mukhopadhyay)⁷⁷

A conference by the Institute of Development Studies in 1979 linked women's

⁷⁴ *ibid*

⁷⁵ C. March, I. Smith and M. Mukhopadhyay (1999), 'Moser Framework' in 'A Guide to Gender-Analysis Frameworks', published by Oxfam Great Britain, Litho and Digital Impressions Ltd, Witney, UK, p. 55

⁷⁶ *ibid*

⁷⁷ *ibid*

subordination to both patriarchal belief structures, as well as economic exploitation within capitalist frameworks.⁷⁸ Many of the challenges faced by women are deeply-entrenched within societal structures, and thus highly normalized. Moser suggests that women might only be able to articulate their strategic needs once they have exchanged knowledge with one who introduces the possibility of challenging the social order; these could be external change agents (such as NGO workers), or even community members who might have experienced other environments.⁷⁹ HRBA practitioners of different organizations are examples of such change agents. Addressing the strategic needs of women in global South contexts forms the basis of HRBA practices of organizations such as ActionAid, UNICEF, CARE and others.⁸⁰

Herein, the focus on creating systems of empowerment and agency are increasingly relevant facets of human rights practice, as represented in the 'E' of the PANEL principles. Kabeer (2005)⁸¹ describes 'disempowerment' as being denied choice, while 'empowerment' pertains to encouraging the capacity to choose for oneself to those formerly denied such opportunities. For such choices to be meaningful and relevant, disempowered women must be provided the ability to choose differently for themselves, and alternatives must both exist and be seen to exist. Disempowerment is often characterized by poverty, which in turn engenders dependency upon powerful others and effectively negates the capacity for meaningfully choosing for oneself. Women's subordinate position in society is subsequently both a product and enabler of such lack of choice, due to such an engineered lack of alternatives.

Similarly, Kabeer describes 'agency'⁸² as '*...the processes by which choices are made and put into effect*', and specifically in ways challenging power relations. Since much of women's subordination stems from a systemic denial of choice, they might develop beliefs and values that legitimize their devalued position. Such belief systems must be challenged, reformulated, and translated in order to encourage an inward-

⁷⁸ A. Whitehead (2006), 'Some Preliminary Notes on the Subordination of Women', *Institute of Development Studies Bulletin*, vol. 37, no. 4, p. 25

⁷⁹ C. March, I. Smith and M. Mukhopadhyay (1999), p. 20

⁸⁰ R. Kelly (2019), p. 860

⁸¹ N. Kabeer, (2005), 'Gender Equality and Women's Empowerment: A critical analysis of the third Millennium Development Goal', *Women and Development*, vol. 13, no. 1, p. 14

⁸² *ibid*

focused process of empowerment, which focuses both on the capacity to decide for oneself, as well as the internal motivation, meaning and purpose underlying such capacities. All such contextual factors form the foundations upon which HRBAs must be planned.

2.3.2: Third World Feminist Approaches contextualizing women's rights

In contextualizing the importance of framing human rights and gender equality norms to local contexts, Ulrich (2007) attributes women's relative impoverishment on a global scale to unequal access to markets, credit and capital, which in turn negatively impacts their status within families and communities.⁸³ Ulrich's conceptual framework is based on a GAD-focused interpretation of women's status, particularly in her argument that underdevelopment occurs within an economic context of globalization. This tends to put developing countries at a disadvantage and create inequitable trade relationships across states. Such underdevelopment further disadvantages women, as it exacerbates existing socioeconomic inequalities.⁸⁴ Despite globalization having increased women's economic contributions and activity, they have also consolidated unsustainable labour practices fundamentally marginalizing women, such as a lack of recognition by trade unions, or acknowledgement as formal employees.⁸⁵

In what ways must existing international protective provisions be framed so as to adequately protect the economic rights of women in global South contexts? Ulrich argues that a Third World Feminist Analysis (TWFA) of CEDAW in particular would be far more effective in framing such existing normative standards in locally meaningful ways. Her 2007 case study of localizing CEDAW's economic provisions to an Indian village is expanded on in Chapter 3. Scholars such as Gayatri Chakravorty Spivak (2013) contextualizes the term 'Third World' as reflecting attempts to break away from the post-Second World War dichotomy between Western and Eastern blocs, and define an approach outside of the emerging 'new world order'.⁸⁶ Chandra Talpade-Mohanty

⁸³ A. Ulrich, (2007), 'Can the world's poorest women be saved?: A critical Third World Feminist Analysis of the CEDAW's Rural Women's Economic Rights and alternative approaches to Women's economic empowerment', *Alberta Law Review*, vol. 45, no. 2, p. 478

⁸⁴ A. Ulrich, (2007), p. 479

⁸⁵ A. Ulrich, (2007), p. 481

⁸⁶ G. Spivak, (2013), *The Spivak Reader: Selected Works of Gayatri Chakravorty Spivak*, p. 270

further specifies that the Third World consists of a combination of both geographically 'southern' nation-states in '*...Latin America, the Caribbean, Sub-Saharan Africa, South and South-east Asia, China, South Africa, and Oceania...*', but also '*...black, Latino, Asian, and indigenous peoples in the US, Europe, Australia, some of whom have historic links with the geographically-defined third worlds.*'⁸⁷ Mohanty importantly uses the term 'Third World' interchangeable with 'women of color', identifying a common context of struggle against existing sexist, racist, and imperialistic structures. Both were prominent feminist post-colonial voices within the 1980s, and greatly contributed towards nuancing debate on women's positionality within development contexts.

The usage of the term 'Third World' within a Western feminist context is often limited to discourse on underdevelopment and deprivation, though Sangari argues that its usage unites the economic and political geographies associated with such experiences.⁸⁸ Johnson-Odim similarly argues that the term applies both to '*...underdeveloped/over-exploited geopolitical entities...and to refer to oppressed nationalities from these world areas who are now resident in "developed" First World countries.*' As such, she argues that '*...the feminism emerging from white, middle-class Western women narrowly confines itself to a struggle against gender discrimination.*'⁸⁹

A TWFA approach could thus possibly analyse the gendered hierarchies and harmful traditional beliefs underlying women's social and economic exploitation within global South contexts, and might provide solutions to framing CEDAW protective provisions accordingly. Other feminist theories tend to over-focus on sex-based discrimination and in doing so, neglect intersecting dimensions of inequalities, such as issues of ethnicity and the remnants of colonial-era systemic discrimination. TWFA approaches specifically focus on the experience of female inequality as a product of both male domination, as well as specific historical contexts. Such factors greatly impact their legal needs and relationship to the state as a result.

⁸⁷ C. Talpade-Mohanty, (2003), 'Cartographies of Struggle', *Feminism without Borders: Decolonizing Theory, Practicing Solidarity*, Duke University Press, London, p. 47

⁸⁸ K. Sangari, (1987), 'The Politics of the Possible', *Cultural Critique*, vol. 7, p. 165

⁸⁹ C. Johnson-Odim, (1991), 'Common Themes, Different Contexts: Third World Women and Feminism', *Third World Women and the Politics of Feminism*. Eds. Mohanty, Russo, Torres. Bloomington and Indianapolis: Indiana University Press

2.3.3: India's post-colonial struggle and its impact on women's rights

Post-colonial nationalist and independence movements within global South contexts were often characterized by strong mobilization efforts led and driven by women, effectively legitimizing their organization and activities within the public sphere.⁹⁰ SEWA's philosophy draws from Gandhi's encouragement and support of women's participation during the Indian Civil Disobedience Movements preceding independence in 1945. Such a historical context included women exercising their civil and political rights towards voting, assembling for mass movements organized by the Indian National Congress, and marching in demonstrations.⁹¹ Such legitimacy afforded to women's public participation framed their interpretation of rights awareness and ideals of universal citizenship beyond divisions of class, caste and religion.

Unfortunately, even despite such positive developments with regards to civil and political rights, women's economic and social rights would progressively lag behind. The subsequent decades of India's political and economic history would demonstrate a disappointing picture of under-representation of women in political processes, let alone formally recognized economic activities. Despite women representing 37% of all community leaders, such leadership is often highly ornamental and *de facto* leadership resides with upper-caste male figures.⁹² Local level institutions across Indian states remain quite leader-centric, which creates difficulties for democratically-elected representatives from disadvantaged backgrounds in affecting change within societies yet governed and controlled by the local elite.⁹³ It is within such contexts that women engaging in labour activities in non-formal work environments must negotiate for recognition and rights-protecting provisions underlying their work. Such a sociocultural context is also characterized by women's subordinated position in society and practices such as son preference, early marriages, and lesser financial investment in the future of

⁹⁰ I. Agnihotri and V. Mazumdar, (1995), 'Changing Terms of Political Discourse: Women's Movement in India, 1970s-1990s', *Economic and Political Weekly*, vol. 30, no. 29, p. 1873

⁹¹ D. Shukla, (1988), 'Political socialisation and women voters: (a case study of Kodarma constituency)', Anmol Publications, New Delhi, India, p. 45

⁹² P. Rai, (2011), 'Electoral Participation of Women in India: Key Determinants and Barriers', *Economic & Political Weekly*, vol. 46, no. 3, p. 52

⁹³ A. Rathod, (2014), 'Women's Political Participation and Representation in India.' Delhi Policy Group, Issue brief no. 1066.

girl children. These directly and deleteriously impact women's health, as well as opportunities towards education and employment.

This section thus summarized some of the major trends within global feminist and women's rights discourse within development paradigms, and offered gendered perspectives to the operationalization of human rights norms and indicators. While universal in formulation, human rights – and more specifically, gender equality – norms do not occur in isolation from the environments of their application. Such contextual particularities must necessarily be taken into account, given their influence upon women's lives and needs. Such developments also emphasize the crucial need to involve and engage multiple stakeholders – including development authorities, local communities, and state powers. Such engagement is increasingly relevant when considering the positionality of women with respect to those making decisions and enacting policies affecting their lives and needs. A successful HRBA must keep in mind all such factors in its planning and objectives.

How can HRBAs focusing on furthering gender equality, norms be introduced within sociocultural and political environments where gender-based inequalities are deeply entrenched? The concept of 'vernacularization' of such norms to local contexts is one possible means of overcoming such interpretive deficits.

2.4: 'Vernacularizing' human rights and gender equality norms

While human rights and gender equality norms can rightly be considered universal, their expression within different sociocultural contexts is not uniform, and must often be translated to approximate the social reality of local actors. Merry and Levitt (2020)⁹⁴ further this argument towards ground-level communities and the actions of local NGOs. They describe norms as '*...embedded within social relationships, identities and subjectivities and are transformed by the social context into which they move*', dependent upon how they are framed contextually and mediated by existing power relationships, ideologies and social relationships. She thus argues that norms that

⁹⁴ S. Merry and P. Levitt, (2020), 'Remaking Women's Rights in the Vernacular: The Resonance Dilemma', *Rethinking Gender Equality in Global Governance: The Delusion of Norm Diffusion*, p. 145

are codified within law have more ‘fixedness’ and are more likely to be meaningful and relevant to local actors.

Merry and Levitt (2020) thus describe the process of ‘vernacularization’ in diffusing norms within a particular social context and facilitating their embeddedness and acceptance. ‘Vernacularization’ itself is described as ‘...*a situated process in which ideas and norms are constantly being reinterpreted and renegotiated in the context of particular social situations.*’ This reflects a strategy employed by local NGOs and grassroots movements to localize universal human rights and gender equality norms within the particularities of a specific situation or context.

2.4.1: Framing theory as applied to vernacularizing human rights norms

Druckman (2001) similarly focuses on the effects of framing of information as directly influencing citizen behaviour, and especially on the choices and preferences emerging from exposure to information and manipulation of such information.⁹⁵ The existing culture of ‘human rights’ rhetoric pertains largely to civil and political rights. As such, there is a pressing need to translate new meanings linked to economic, social and cultural rights – such as the right to just and favourable conditions of work – in culturally meaningful ways. Successfully framing human rights frameworks as a relevant goal for local populations would depend on the credibility of the source of such a frame. This in turn imbues the issue of ‘human rights’ with credibility as well, and will be more likely to be accepted on a cognitive level depending on the credibility of the framing actor. Local communities would thus be more encouraged to participate and involve themselves in collective efforts towards accountability for their situations.

Coombs (1992) similarly refers to the importance of actor legitimacy in drawing attention to issues, and framing them as relevant towards particular audiences.⁹⁶ This would necessarily involve the direct participation of affected communities, and the building of trust and common ground. Those involved in such advocacy efforts (such as national and regional institutions, NGOs, civil society organizations (CSOs), and others

⁹⁵ J. Druckman, (2001), ‘The Implications of Framing Effects for Citizen Competence’, *Political Behavior* no. 23, p. 225

⁹⁶ W. Coombs, (1992), ‘The Failure of the Task Force on Food Assistance: a Case Study on the Role of Legitimacy in Issues Management’, *Journal of Public Relations Research*, Vol. 4 No. 2, p. 111.

– particularly those operating at the local and grassroots level – can play an important role in providing a coordinated response to rights framed in ways that are ‘real’ for vulnerable populations. As such, HRBAs can function as a practical and effective tool for claiming one’s rights and entitlements that are more directly relevant to the everyday lives of local communities.

For this to occur, the present study argues that one’s rights and entitlements must be *considered* relevant in the first place. Destrooper (2016) offers positive examples of human rights practice diffusing into local realities, particularly through the practice of ‘meaningful consultation’. Human rights frameworks can be effectively engaged with, understood and used as a guiding framework for community self-reliance and action against injustice, particularly when local communities are actively involved in the process. Destrooper’s (2016) study of meaningful consultations with communities targeted by UNICEF’s Sanitized Villages programme⁹⁷ is one such example. She describes how when international organizations engage in rights-awareness training interventions in a respectful, engaged manner which establishes equality between the organization and local community members, the relevance of human rights standards to local actors greatly increases and ensures planning and interventions that are more responsive to their needs.

2.4.2: Vernacularizing gender equality norms

Merry and Levitt (2020) thus describe how such universal norms can be transformed and expressed in highly different ways – often when intersecting with factors such as organizational structure, funding, and relationship with state authorities. Vernacularization is thus described as ‘translation in context’.⁹⁸ An’Naim (1990) even refers to this process as one facilitating cultural ‘legitimacy’, i.e. when ideas are adapted to an existing cultural value system, or when areas of common interest are identified between ‘foreign’ human rights norms and ‘local’ law systems, such ideas might be better accepted. Merry and Levitt provide various examples of such vernacularizing in practice; on a local level, they describe how a Nigerian NGO defined women’s rights on

⁹⁷ T. Destrooper (2016), ‘Responsive planning in development interventions: consulting rights-holders in the Sanitized Villages Programme in Kongo Central’, *Development in Practice*, 26:3, p. 340

⁹⁸ S. Merry, and P. Levitt, (2020), p. 147

the basis of interpretations of various Quranic verses. On the international level, they cite the Yogyakarta Principles of 2006 as an attempt by the UN to define LGBT+ rights within the context of protection from discrimination, itself a well-established tenet of international law.

When extending such practices to organizational strategies, Kabeer (2003) argues that grassroots organizations are best positioned to address the needs of marginalized communities of women and conceptualize empowerment in locally relevant ways by assessing the underlying causes of inequalities.⁹⁹ In a practical sense, such organizations might also be the only accessible means by which marginalized women can express themselves and develop consciousness regarding their circumstances, as opposed to large-scale national and international NGOs. Many such movements have enacted innovative means of implementing human rights standards, encouraging community participation, and advocating for accountability within local contexts. Burroughs (2005)¹⁰⁰, for example, describes ‘inward-looking strategies’ as a means of assessing systemic inequity through a human rights lens. Merry et al. (2010)¹⁰¹ similarly reports how social movements in the US are progressively drawing upon international human rights standards to shape civil resistance to the US state. Cities such as Seattle and Boston have declared themselves human rights cities, which model their municipal ordinances on international human rights law.

Och (2018) describes the specific strategies of integrating such international norms within a local context as ‘framing’ and ‘grafting’¹⁰²; ‘framing’ refers to the presentation of norms in a way meant to resonate with a particular audience, while ‘grafting’ involves linking international norms to existing local norms with similar stipulations (similar to the ‘L’ of the PANEL principles, or ‘linkage to human rights norms’). The latter in particular offers local NGOs the justification on a legal or policy

⁹⁹ N. Kabeer (2003), ‘Empowerment from below: Learning from the Grassroots’, *Reversed Realities: Gender Hierarchies in Development Thought*, p. 229

¹⁰⁰ G. Burroughs, (2005), ‘More Than an Incidental Effect on Foreign Affairs: Implementation of Human Rights by State and Local Governments’, *New York University Review of Law and Social Change*, 30: p. 414

¹⁰¹ S. Merry, M. Rosen, P. Levitt, and D. Yoon, (2010), ‘Law From Below: Women’s Human Rights and Social Movements in New York City’, *Law and Society Review*, 44 (1), p. 104

¹⁰² *ibid*

level that international norms are suitable frameworks to apply when addressing concerns of gender inequality on a local level, while the former demonstrates how international human rights standards fit appropriately with existing cultural practices. Merry and Levitt thus describe women's human rights as having a '*...transcendent authority based on the recognition that these were ideas that many countries had accepted...the collective opinion of a global society, and perhaps also global ideas of modernity.*' As such, organizations engage in frame-building, using human rights norms to build partnerships with other similar groups, and reframe international human rights norms in different ways.

2.4.1.: Summary and conclusion

The present chapter has thus demonstrated the importance of vernacularizing international human rights norms to the local level, and the factors mediating their dissemination. HRBAs to development have the potential of normalizing implementation of economic and social rights through their linkage to women's practical and strategic needs, which in turn they must be encouraged to articulate and organize for. Change agents could possibly be NGO workers or members of their own community, which emphasizes the importance of actor credibility in the framing of human rights and gender equality norms.

Connecting framing theory with the dissemination of human rights norms, the present chapter demonstrates how since gender equality norms are neither universally nor uniformly accepted on a global scale, they must be framed in ways adapting to local realities, cultural practices, and attitudes in order to resonate within such environments. At times, this can result in less radical changes to belief systems and might even perpetuate existing traditional attitudes about gender roles. However, for change to be sustainable, it must necessarily be gradual, and gender equality norms must be framed in ways that resonate with local audiences and encourage acceptance and engagement, rather than resistance. These are not objective criteria, and each local environment will reflect different needs and constraints.

As such, especially relevant to the present study is how change agents must frame their rights-based advocacy on the basis of various environmental factors. Some

of these factors include organizational structure, characteristics, funding, national context, partnerships with similar organizations and movements, and relationship with state authorities. All such elements influence the manner of vernacularization adopted by organizations, and their subsequent practices within the sociocultural and political context of their operations. For HRBAs to be considered effective, they must frame human rights norms as adapted to local environments to gain perspective on how women's rights and gender equality norms are conceptualized, and enact change subsequently keeping in mind such local understandings.

The increased efficacy of human rights and gender equality norms through legal 'fixedness' warrants an exploration of the legal framework within which such movements operate, and their implications for the furthering of women's human rights within an Indian context. The next chapter will provide an overview of the Indian legal context within which organizations such as SEWA must structure their advocacy.

Chapter 3: India's legal landscape

India is a federal union of 28 states and seven union territories. As a whole, a hybrid legal system exists, combining civil, common and customary law, and importantly international human rights law as well¹⁰³ – but also within a context of relatively obstructive bureaucratic operations¹⁰⁴, significant corruption within government institutions¹⁰⁵, and problems of implementation of protective legislation. Given that HRBAs call for multi-stakeholder collaboration across state and private actors, the enacting of human rights norms as actionable steps at the ground level is an important tool for affecting meaningful change. This section as a whole thus aims to analyse the legal framework within which SEWA must structure their advocacy, existing protective legislation, and the gaps which must be filled through recourse to international standards. Section 3.1 provides a picture of the international human rights norms relevant to informal workers, with a focus on CEDAW and ILO frameworks as applied to protecting Indian women's economic rights. Section 3.2 explores the Indian legal landscape with regard to labour conditions, while Section 3.3 goes deeper in detail into specific key pieces of national legislation most relevant for SEWA's advocacy. Section 3.4 summarizes and concludes.

3.1: International human rights standards

HRBAs frame state obligations as including the meaningful participation of communities in decision-making, and ensuring equitable distribution of resources and benefits. A key principle of HRBAs is reflected in the 'L' of the PANEL principles, i.e. the principle of practice including a linkage to human rights norms, which are essentially legal and political obligations on part of states. Herein, concepts of non-

¹⁰³ A. Bhan and M. Rohatgi, 'Legal systems in India: an overview', accessed from [https://uk.practicallaw.thomsonreuters.com/w-017-5278?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-017-5278?transitionType=Default&contextData=(sc.Default)&firstPage=true)

¹⁰⁴ S. Vij (2021), 'Its 2021 and the Indian bureaucracy remains the greatest impediment to progress', accessed from <https://theprint.in/opinion/its-2021-and-the-indian-bureaucracy-remains-the-greatest-impediment-to-progress/587750/>

¹⁰⁵ PTI (2021), 'India falls to 86th rank in corruption perception index in 2020', accessed from <https://economictimes.indiatimes.com/news/economy/indicators/indias-rank-slips-to-86th-in-corruption-perception-index-2020/articleshow/80512814.cms>

discrimination and equality (the ‘N’ of the PANEL principles) are similar useful advocacy points as well.

The practice of such methods on the ground level warrants exploration of the existing international standards that must be translated and localized in order to best address the needs of informal women workers. Some of these standards include the ICESCR, CEDAW, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW). Even more specifically for labour standards exist a number of ILO Conventions which are particularly relevant for SEWA’s advocacy, in particular ILO C177 (the Home Work Convention, 1996). SEWA actually played an important role in lobbying for and presenting research and data for ILO C177, which resulted in its promulgation. Along with C189 (Domestic Workers Convention, 2011) and C190 (Violence and Harassment Convention, 2019), ILO Conventions and CEDAW especially play an important role in SEWA’s advocacy at the government level and in their negotiations with stakeholders.

3.1.1.: General UN human rights standards in the Indian context

India acceded to the ICESCR in 1979, but has expressed reservations to Article 7 (c) ICESCR (right to just and favourable conditions of work), and Article 8 ICESCR (the right to join and form trade unions.) ICESCR General Comment no. 18 on the right to work specifically calls upon states to enact effective measures and increase resources allocated to reducing unemployment among marginalized populations, particularly in order to improve economic growth.¹⁰⁶ Similarly, the ICESCR Committee in General Comment No. 23 (2016) recognizes that just and humane conditions of work apply to informal economy workers as well.¹⁰⁷ Its 40th session in 2008 provided a grim picture of India’s status of implementation and protection of provisions pertaining to economic, social and cultural rights. Serious problems of non-implementation of court decisions by

¹⁰⁶ UN Committee on Economic, Social and Cultural Rights, ‘General Comment No. 18: The Right to Work (Art. 6 of the Covenant)’, E/C.12/GC/18

¹⁰⁷ UN Committee on Economic, Social and Cultural Rights, ‘General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)’ (2016), E/C.12/GC/23

state authorities were recognized as highly prevalent.¹⁰⁸ In particular, the Committee noted that deeply-entrenched societal inequalities exacerbated discrimination against vulnerable groups, such as women.

However, state policy amendments can fail to elicit effective change for women, often due to lax state involvement and scant enforcement. What have been criticized as weak enforcement mechanisms for international human rights guidelines are even less effective within the Indian context, as India has not ratified the Optional Protocol for either ICESCR or CEDAW, and has taken no action for ICMW. Similarly, while India has ratified the International Covenant on Civil and Political Rights (ICCPR) in 1979, the Optional Protocol for the same remains unratified, and Articles 21 (right to peaceful assembly) and 22 (right to freedom of association) include reservations. Reference to ICCPR standards occurs within the context of principles of equality and non-discrimination enshrined within the Indian Constitution, as described in Section 3.2.

As such, for the purpose of the study, the chapter will focus more so on CEDAW and ILO Conventions no. 177, 189 and 190 within the Indian context.

3.1.2.: A case study of CEDAW within the Indian context

India acceded to CEDAW in 1993, a full two decades after SEWA was founded. CEDAW obliges states to provide for essential services in order to facilitate women's participation in the workforce. Article 11 CEDAW specifically pertains to the right to work, and describes the steps state authorities must take in order to overcome gender-based discrimination within the realm of employment. CEDAW General Recommendation no. 34¹⁰⁹ (2016) specifically recognizes the vulnerability of rural women to limited formal and paid employment opportunities due to lower levels of skills and literacy, and their vulnerability to health risks and long hours of work in *'...low-skilled, part-time, seasonal, low-paid, or unpaid jobs, home-based activities and*

¹⁰⁸ UN Committee on Economic, Social and Cultural Rights, 'Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant and of a document submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK)' (2008), E/2009/22

¹⁰⁹ UN Committee on the Elimination of Discrimination against Women, 'General recommendation No. 34 (2016) on the rights of rural women', C/GC/34

subsistence farming’, as well as ‘...disproportionately represented in the informal sector, uncovered by social protection.’

Since the present study is focusing on the relevance of CEDAW on women’s rights protection within the Indian context, it references a case study undertaken by Ulrich (2013) in a village along India’s western coast, called Masure. She uses a Third World Feminist approach (TWFA) in analyzing the effectiveness of CEDAW’s economic standards for women in rural India. Within such a context, CEDAW provisions pertaining to equality, non-discrimination, and more specifically, the creation of economic cooperatives and self-help groups might fall short of their protective potential.¹¹⁰ They must take into account local practices and patterns of interaction between rural women, as well as the influence of identity markers such as caste.

Article 14(2)(e) CEDAW, for example, specifically calls upon state parties to ensure that rural women ‘...participate in and benefit from rural development and, in particular...organize self-help groups and cooperatives in order to obtain equal access to economic opportunities through employment or self-employment.’ Ostensibly, women should benefit greatly from organizing into economic cooperatives, particularly towards advocating for equality of wages and greater control over their finances. However, administrative requirements on part of state authorities demand that economic cooperatives follow a rigid hierarchical structure, with a president, vice-president, treasurer and secretary. This runs counter to the relatively egalitarian patterns of interactions between rural women.

While Article 14(2)(e) CEDAW does not explicitly prescribe such a structure, Ulrich suggests that the Western influence of its formulation places such implicit expectations upon cooperative and self-help groups when seeking institutionalization from state powers. Local practices and beliefs regarding power structures must thus be kept in mind in order to effectively frame such protective provisions in a way that can address the economic rights of rural women. Ulrich argues that unionizing of self-employed women (into organizations such as SEWA) is a possible means of protecting women’s economic interests when international and domestic law cannot sufficiently

¹¹⁰ A. Ulrich, (2007), p. 487

safeguard these, due to traditional labour laws being based upon the ‘ideal’ worker model, which is usually a male worker with a wife.¹¹¹

However, CEDAW standards have a remarkable flexibility of adaptation, even when advocated for by countries which have not even ratified them. They are one such guide for the actions of local NGOs and other ground-level movements towards affecting change when working in tandem with municipal or mid-level state authorities. When linking the usage of CEDAW standards towards the protection of rights of informal economy workers, Kabeer (2008)¹¹² describes how the South African Domestic Service and Allied Workers Union complained to state authorities about their exclusion from unemployment benefits, using South Africa’s obligations to CEDAW stipulations as a central reference point in their demands for state accountability. Similarly, Nicaraguan NGO, MEC, has also developed a code of ethics based on CEDAW definitions of ‘discrimination’. CEDAW definitions of ‘sexual harassment’ have also shaped Indian national legislation, as demonstrated in Section 3.3.

3.1.3: ILO Conventions 177, 189, and 190

India is one of the founding members of the ILO, but demonstrates a disappointing history of ratification of its conventions.¹¹³ As a whole, only two conventions relating to women workers have been ratified, i.e. C045, or the Underground Work (Women) Convention, 1935 (no. 45), and C089, or the Night Work (Women) Convention (Revised), 1948 (no. 89). The first has been in force since 1938, the second from 1950. Some of the ILO fundamental conventions (also referred to as the ‘human rights conventions’) that India has ratified are summarized as follow.

- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No.105)
- Equal Remuneration Convention, 1951 (No.100)

¹¹¹ Ibid, p. 495

¹¹² N. Kabeer (2008), ‘The Indispensability of Voice: Organizing for Social Protection in the Informal Economy’, *Gender and Social Protection Strategies in the Informal Economy*, p. 284

¹¹³ NORMLEX: Information system on International Labour Standards, Ratifications for India, accessed from

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:10269

- Discrimination (Employment Occupation) Convention, 1958 (No.111)
- Minimum Age Convention, 1973 (No.138)
- Worst forms of Child Labour Convention, 1999 (No.182)

Importantly, India has not ratified the ILO fundamental conventions pertaining to collective bargaining (C098), or freedom of association of workers (C087), the Home Work Convention, 1996 (C177), the Domestic Workers Convention, 2011 (C189), or the Violence and Harassment Convention, 2019 (C190). All such conventions, but in particular the latter three, provide key protective provisions for informal women workers, many of whom engage in labour activities from within their homes and other domestic environments. SEWA has extensively campaigned for ratification of all three conventions, and lobbied heavily for the promulgation of C177 at the ILO level.

A quick distinction between ‘home-based workers’ and ‘domestic workers’ is as follows: home-based workers engage in labour activities predominantly within their own homes, while domestic workers do so in others’ homes, with as many as 100 million people working from a ‘home’ setting on a global scale, with the vast majority being women who must also engage in unpaid care work outside of their labour activities.¹¹⁴ C177 distinguishes between some categories of home-workers, and only applies to home-based workers who are working on contract for others. Own-account workers of the second category form the overwhelming majority of SEWA’s members.

Table 4: Categories of home-based workers

| | |
|---|--|
| Dependent/industrial outworkers | Work for paid companies, or third party agents, typically on a piece-rate basis |
| Self-employed home-based workers/own-account workers | Produce goods and services in their own homes and sell to others, e.g. in the local market |

¹¹⁴ The Global Labour Institute for Home Net South Asia (2012), ‘Promoting the ILO Home Work Convention (C177) and the Rights of Homeworkers A Manual for Workers’ Educators and Facilitators’, p. 5

Author: Pallavi Chatterjee, adapted from Home Net South Asia (2012)¹¹⁵

Some of the key features of ILO C177, C189 and C190 are summarized here.

Table 5: Key ILO Conventions relevant to informal women workers' rights

| Convention | Key features | Global ratifications |
|------------|--|----------------------|
| 177 | <ul style="list-style-type: none">• Broad definition of 'home work'• Third party contractors have obligations equivalent to any other employer (especially in the absence of a direct employer)• Home workers should be entitled to<ul style="list-style-type: none">○ Access to social security○ Freedom from discrimination○ Fair remuneration○ Right to organize○ Access to health and safety benefits, maternity benefits○ Collective bargaining• Proscribes unfair labour practices (such as arbitrary wage deductions) | 10 |
| 189 | <ul style="list-style-type: none">• Definition of 'domestic work' as work performed in a household or households• Domestic workers should be entitled to the same basic labour rights as available to others –<ul style="list-style-type: none">○ Reasonable hours of work○ Weekly rest○ Limits on in-kind payment○ Clarity on terms and conditions of employment | 8 |

¹¹⁵ The Global Labour Institute for Home Net South Asia (2012)

| | | |
|-----|---|---|
| | <ul style="list-style-type: none"> ○ Freedom of association ○ Right to collective bargaining ● Special measures to protect especially vulnerable workers (such as girls, workers of certain nationalities, or with live-in status) | |
| 190 | <ul style="list-style-type: none"> ● Defines violence and harassment as a range of unacceptable behaviours and practices, with a particular focus on gender ● Scope extends to – <ul style="list-style-type: none"> ○ Formal and informal economy ○ Urban and rural environments ○ All workers of all contractual statuses ○ Persons vulnerable to discrimination ● Expands definition of workspace beyond physical, including – <ul style="list-style-type: none"> ○ Work-related trips, social activities ○ Cyberbullying ○ Experiences involving third parties | 6 |

Author: Pallavi Chatterjee, adapted from ILO C177, C189, C190¹¹⁶

The ILO tripartite organizational structure reflects far more participatory processes than other UN specialized agencies, including multi-stakeholder partnership across state authorities, Workers Groups, and Employers Groups. It has even issued a number of conventions which recognize alternative expressions of rights claims across different cultures, such as indigenous communities. ILO standards are also commendably comprehensive, due to their focus on statistical analyses and databases which can help monitor progress and ensure accountability across states.

SEWA has contributed heavily to ILO research initiatives, particularly in bringing visibility to women informal workers' labour activities. According to the ILO, labour activities conducted by home-based and domestic workers are often hidden and

¹¹⁶ International Labour Organization Conventions 77, 89, 90

unregistered, left uncaptured within national surveys and censuses.¹¹⁷ This occurs despite home-based and domestic work making up to 4-12% of wage employment within developing countries and composed of nearly 83% of women and girls, many of whom are migrant workers.¹¹⁸ C189, for example, acknowledges how domestic work is often ‘...undervalued and invisible’ and conducted by persons who are ‘...vulnerable to discrimination in respect of conditions of employment and work, and to other abuses of human rights.’ As such, they contribute to framing women’s labour activities as ‘work’ within environments (or new ‘work spaces’) not traditionally covered within national labour law, and underlie advocacy claims for extending existing protective provisions for formally-employed workers to informal workers as well. Unfortunately, ILO conventions pertaining to informal women workers have a disappointingly low rate of ratification, and lack enforceable mechanisms in general. Even when ratified, India’s bureaucratic governmental structure, lack of transparency within state operations, and relative inaccessibility to individuals and communities from marginalized communities create difficulties for implementation.

This section thus summarizes some of the existing international protective standards that are especially relevant for advocating for the rights of women informal workers, many of which form the basis of SEWA’s advocacy. India has ratified CEDAW and ICESCR and the majority of the ILO fundamental conventions, and there is some evidence on the impact of such international human rights standards upon national legislation for labour rights. Challenges do exist for implementing such provisions and ensuring that protections and entitlements for formally-employed workers also extend to informal workers. The following section details some of these existing legislative Acts, as well as through a gendered perspective.

3.2: The Indian national legislative landscape

Public Interest Litigation (PIL) is a well-established facet of advocacy within the Indian context. Forster and Jivan (2008) define PIL as ‘...proceedings in which the public or the community at large has some pecuniary or legal interest’, and describe

¹¹⁷ International Labour Organization (2021), ‘The difficulty of capturing home work in statistics’, *Working from home: From Invisibility to Decent Work*, p. 31

¹¹⁸ *ibid*

these as a means of ensuring state compliance with human rights norms.¹¹⁹ PILs ensure the recognition of broader public interests before courts, which increase their likelihood of enforcement. This in turn can address the systemic nature of human rights violations, and present a means to monitor state accountability towards domestic implementation of international human rights standards.¹²⁰ SEWA works closely with lawyers to structure their advocacy, and much of their efforts have underlain the promulgation of key pieces of legislation within the international (such as ILO C177) and national context (such as the Street Vendors Act, 2014).

PILs have often been used to extend the guarantees promised under articles 13-30 of the Indian Constitution (which protect civil and political rights) to economic, social and cultural rights as well.¹²¹ Langford (2009) identifies India as one of the first states to have developed extensive jurisprudence in the realm of economic, social and cultural rights.¹²² For example, the Indian Supreme Court has declared water as '*...the basic need for the survival of human beings, and is part of the right to life and human rights*'.¹²³ This extension of legally enforceable civil and political rights (such as the right to life, Article 2 ICCPR) to also apply to economic, social and cultural rights (such as the right to an adequate standard of living, Article 11 ICESCR) is one such strategy towards flattening the 'rights hierarchy' between the different generations of rights.

However, within the Indian Constitution, the 'right to work' is considered a directive principle of state policy, not a fundamental right, and thus is not legally enforceable before a court of law. Directive Principles of State Policy are still '*...fundamental in the governance of the country*' under Article 37 of the Indian Constitution, and states are under the duty to apply such principles in law and policy-making. Articles 36-51 of the Indian Constitution are all considered directive principles of state policy. Article 38 pertains to the reduction of inequalities in status and opportunity, while Article 39 pertains to the distribution of society's resources to serve

¹¹⁹ C. Forster, and V. Jivan, (2008), 'Public Interest Litigation and Human Rights Implementation: The Indian and Australian Experience', *Asian Journal of Comparative Law*, vol. 3, p. 3

¹²⁰ C. Forster, and V. Jivan, (2008), p. 2

¹²¹ C. Forster, and V. Jivan, (2008), p. 4

¹²² M. Langford, (2009), 'Domestic adjudication and economic, social and cultural rights: A socio-legal review', *International Journal of Human Rights*, vol. 6, no. 11, p. 92

¹²³ *Narmada Bachao Andolan v. Union of India and Others*, Writ Petition (C) No. 319 of 1994.

the common good. Such provisions form the basis of PILs across a number of cases, particularly in the realm of the protection of livelihood.

Other key labour rights relegated to such an aspirational ‘guideline’ status include minimizing economic inequalities, ensuring wage equality across genders, the prevention of worker exploitation, and the provision of free legal aid to ensure equality of access to justice. Some of these pertaining to labour rights are summarized here.

Table 6: Directive Principles of State Policy enshrined in the Indian Constitution

| Article | Directive principles of state policy |
|---------|---|
| 41 | The right to work, to education, public assistance in case of unemployment, old age, sickness and ‘disablement’ |
| 42 | The right to just and humane conditions of work, maternity relief |
| 43 | Promotion of cottage industries in rural areas |
| 43A | Promotion of participation of cottage industries in industrial management |

Author: Pallavi Chatterjee, adapted from Part IV Indian Constitution

Extending economic rights pertaining to work to the realm of civil and political rights (such as equality before the law) has resulted in extensive jurisprudence. For example, Article 39 (d) of the Indian Constitution prescribes equal pay across genders. Despite not being legally enforceable in itself, the concept of ‘equal pay’ is still protected and judicially enforceable under Article 14 (equality before the law) and Article 16 (equal opportunity to all citizens in matters related to employment in the public sector) of the Indian Constitution. A number of cases demonstrate the recognition of equal pay across genders as a fundamental right (such as *D. S. Nakara v/s Union of India*, 1983, *P. K. Ram Chandra Iyer v/s Union of India*, 1984, *state of Haryana v/s Rajpal Sharma*, 1997.) A number of related legislative Acts also ostensibly protect the right to equal pay for equal work, such as the Equal Pay for Equal Work Act, 1975, the Equal Remuneration Act, 1976, and the Equal Opportunities, Protection of Rights and Full Participation Act, 1995.

Indian labour laws as a whole are highly comprehensive. After independence in 1947, the Indian Constitution provided for fundamental labour rights, including the right

to join and participate in trade unions, the principle of workplace equality, and creating living wages within decent working conditions.¹²⁴ As of 2020, 44 existing labour laws will be replaced by four broad labour codes passed by the Indian Parliament, which include stipulations on social security, occupational safety, health and working conditions, and wages.¹²⁵ Such protective provisions might ostensibly protect women workers from discrimination and mistreatment, but when viewed from a gendered lens, might fall short in adequately considering all aspects of ‘women’ as an identity category, as well as what activities are recognized as ‘work’ in the first place.

3.2.1: Indian labour legislation analyzed through a gendered lens

A consideration of reports submitted by state parties to the CEDAW Committee in 1999 included India’s initial report, where the Committee recognized the non-enforceable nature of the right to work within the Indian Constitution¹²⁶. The combined second and third periodic reports submitted by India to the Committee reference existing legislation ostensibly meant to protect the rights of women informal workers¹²⁷. Examples include the Equal Remuneration Act, the Beedi¹²⁸ and Cigar Workers (Conditions of Employment Act) of 1966, and the Maternity Benefits Act of 1961. Within such protective legislation, women workers are entitled to benefits such as the presence of creches within work environments, stable and well-defined working hours, health facilities for women workers, and paid maternity leave for 135 days (as well as prohibition of dismissal during this period.)

However, factories and other work environments do not always formally employ women workers from marginalized backgrounds, usually under the pretext of a deficit in skills and education. Real-life practices more closely approximate what the ILO has

¹²⁴ T. Roy, (2016), ‘Law and the Economy in Colonial India’. University of Chicago Press, p. 118

¹²⁵ Summary of Labour Codes 2020, accessed from <https://www.labourcode.org/2020/06/29/summary-of-labour-codes-2020/>

¹²⁶ Committee on the Elimination of all forms of Discrimination against Women (1999), ‘Consideration of reports submitted by state parties under Article 18 of the Convention on the Elimination of all forms of Discrimination against Women: Initial reports of State Parties, India’, CEDAW/C/IND/I, p. 47

¹²⁷ Committee on the Elimination of all forms of Discrimination against Women (2005), ‘Consideration of reports submitted by state parties under Article 18 of the Convention on the Elimination of all forms of Discrimination against Women: Combined second and third periodic reports of State Parties, India’, CEDAW/C/IND/2-3, p. 67

¹²⁸ Beedis are locally processed cigarettes wrapping tobacco flakes within leaves, commonly sold in Indian stores.

defined as ‘non-standard employment’.¹²⁹ These include informal contracts and payment on a piece-rate basis, thus establishing them as mere contract workers who are not recognized as ‘employees’, and who thus do not qualify for such benefits¹³⁰, or even special clauses within labour laws providing for the protection of women workers in specific work environments such as factories, mines, plantations and commercial establishments. The combined second and third report by the CEDAW Committee recognizes the discrepancy in benefits¹³¹ enjoyed by formal workers as opposed to informal workers, who ‘...face deprivation in terms of wages, working conditions and welfare benefits...’, and in particular women informal workers whose economic contributions remain unacknowledged despite constituting 93% of the informal economy and representing the most marginalized and vulnerable communities.

Despite some protective steps taken by the Indian state towards bridging this gap, such as the Unorganized Sector Workers’ Social Security Scheme, no mention is made of the impact of such policies on informal women workers within the reports due to the Indian Labour Department having failed to even finalize the rules for the Code on Social Security 2020, which only received parliamentary approval in September 2020. Similarly, despite no legal restrictions for women regarding their choice of employment, the CEDAW Committee recognizes gendered divisions of labour concentrating women within certain employment sectors, and in some cases, even de facto restrictions on the employment of women within others.¹³² This occurs despite Indian courts having established the irrelevance of gender discrimination in employment, particularly in light of contemporary knowledge and experience.¹³³

¹²⁹ International Labour Organization (2016), ‘What is non-standard employment?’ Non-standard employment around the world: Understanding challenges, shaping prospects, p. 9

¹³⁰ *ibid*

¹³¹ *Ibid*, p. 71

¹³² Committee on the Elimination of all forms of Discrimination against Women (2005), ‘Consideration of reports submitted by state parties under Article 18 of the Convention on the Elimination of all forms of Discrimination against Women: Combined second and third periodic reports of State Parties, India’, CEDAW/C/IND/2-3, p. 93

¹³³ Committee on the Elimination of all forms of Discrimination against Women (1999), ‘Consideration of reports submitted by state parties under Article 18 of the Convention on the Elimination of all forms of Discrimination against Women: Initial reports of State Parties, India’, CEDAW/C/IND/I, p. 48

This section thus summarizes an overview of the Indian national legislative context, which includes various laws and protective provisions, as well as supportive practices for advocacy, such as PILs. However, ensuring justiciability for economic rights continues to remain a challenging process. The experience of enacting such legislation on the ground level is provided through two major examples in Section 3.3.

3.3: Specific legislation relevant to SEWA's advocacy

Two key pieces of legislation relevant to SEWA's advocacy for accountability are the Sexual Harassment at the Workplace (Prevention, Prohibition and Redressal) Act¹³⁴, known as the POSH Act, 2013, and the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. The history of such legislative Acts draws from its impact upon the lives of informal women workers and actions towards the protection of their livelihoods. While other relevant pieces of legislation such as the Minimum Wage Act (1948) and the Protection of Women from Domestic Violence Act (2005) do exist, the present study will focus on the preceding two due to their relevance and applicability to HRBA principles of accountability and participation, as well as due to their relevance to informal women workers' rights.

3.3.1: The Vishaka Guidelines and the POSH Act, 2013

The POSH Act of 2013 reflects nearly two decades of advocacy, demonstrations and lobbying by women's groups across India following the 1992 rape of Bhanwari Devi, a Dalit social worker from the state government of Rajasthan's rural development program. At the time, women having faced sexual harassment within the workplace would have to file a complaint under Sections 354 and 509 of the Indian Penal Code, which was criticized as leaving the severity of their experience to the discretion of law enforcement authorities¹³⁵. Women's rights activists across India led by lawyer, Naina Kapur and her organization Sakshi, filed a PIL before the Indian Supreme Court, particularly through the usage of a collective platform known as Vishaka¹³⁶. They

¹³⁵ Legal India (2013), 'Critical Analysis of Sexual Harassment under IPC', accessed from <https://www.legalindia.com/critical-analysis-sexual-harassment-ipc/>

¹³⁶ N. Kapur, (2008), 'Sexual Harassment and Law Reform in India,' Expert Group Meeting on good practices in legislation on violence against women: United Nations Office on Drugs and Crime, EGM/GPLVAW/2008/EP.03

petitioned for the protection of the fundamental rights of working women under Articles 14 (equality before the law), 15 (non-discrimination), and 21 (right to life and personal liberty) of the Indian Constitution.

The 1997 Vishaka and others v/s the State of Rajasthan case was a landmark decision by the Indian Supreme Court, where it was recognized that ‘...*international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein.*’ This decision would culminate in the Vishaka Guidelines, where the Union of India was instructed to enact a law appropriate for addressing and preventing workplace sexual harassment. Importantly, the Vishaka Judgement includes the Indian Supreme Court’s recognition that ‘...*gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right.*’

The judgment also references Article 11 CEDAW, particularly 11(a) which defines the right to work as ‘...*an inalienable right of all human beings*’. Furthermore, its definition of ‘sexual harassment’ draws from CEDAW General Recommendation no. 19: Violence against Women, acknowledging how workplace sexual harassment constitutes a form of gender-specific violence which threatens gender equality in employment.¹³⁷ The CEDAW definition itself defines sexual harassment as including ‘...*unwelcome sexually determined behaviour as physical contacts and advance, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions*’, and which can directly and deleteriously impact women’s health and safety through enabling a hostile working environment.

The Vishaka Guidelines form the basis of the POSH Act, which was passed by both houses of the Indian Parliament and came into force in 2013. It has been conceptualized to address both the ‘organized’ (or formal) and ‘unorganized’ (or informal) sectors, which includes state authorities, private and public sector organizations, NGOs, educational institutions, and importantly, also domestic

¹³⁷ UN Committee on the Elimination of Discrimination Against Women (CEDAW), ‘CEDAW General Recommendation No. 19: Violence against women’,

environments such as homes.¹³⁸ Within its stipulations, CEDAW-prescribed requirements for ‘...*effective complaints, procedures and remedies, including compensation*’ are provided for within the POSH Rules (2013), which mandate the creation of grievance redressal mechanisms known as Local Complaints Committees (LCCs), operating at the district level. Such specific factors ostensibly bolster the capacities of informal women workers in order to bring up complaints when no formally-established workplace exists (which itself requires the setting up of an Internal Complaints Committee, or ICC, to handle such complaints).

When no such ICC exists due to the organization having fewer than 10 employees, or if the complaint is against the employer, LCCs must be set up in order to investigate complaints and address them. LCCs are especially relevant for bringing up cases of sexual harassment of domestic workers, or of third party agents who are not employees – all factors linked to the experience of informal women workers. They must specifically include representation of women workers within the different district municipalities, as well as those of marginalized caste or tribal backgrounds.

3.3.2: The POSH Act and the Criminal Amendment Act, 2013: A quick comparison

The POSH Act, 2013, also coincided with the promulgation of the Criminal Law (Amendment) Act of the same year. Nearly 80,000 recommendations and guidelines from lawyers, women’s rights groups and the wider public formed the basis of a judicial committee report on expanding existing laws to deal more substantively with cases of gender-based violence.¹³⁹ The Act itself was lauded for expanding previous definitions of gender-based violence within the Indian Penal Code, such as rape, to including acts beyond forcible vaginal penetration. It also included new offences such as acid attacks, stalking, trafficking, voyeurism, and importantly, sexual harassment.

Within section 354A of the Indian Penal Code, sexual harassment (by a man) has been defined to include –

¹³⁸ N. Desai, (2020), ‘Prevention of Sexual Harassment at the Workplace (POSH): Legal and HR considerations’, p. 5

¹³⁹ J. Verma, L. Seth and G. Subramanian (2013), ‘Report of the Committee on Amendments to Criminal Law’, p. ii

- i. Physical contact and advances involving unwelcome and explicit sexual overtures; or
- ii. A demand or request for sexual favours; or
- iii. Forcibly showing pornography; or
- iv. Making sexually coloured remarks; or
- v. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Such behaviours in aggravated cases are penalized through ‘...*rigorous imprisonment up to three years, or with fine, or with both*’ in cases including the first three. In comparison, the POSH Act prescribes consequences for employers or employees having sexually harassed women through different means.

1. Any punishment must firstly be administered as prescribed under the internal rules of the organization
2. If lacking these, the perpetrator must be subject to disciplinary action. These include –
 - a. Written apologies
 - b. Warnings and reprimands
 - c. Withholding of promotions, or pay raises
 - d. Dismissal from service
 - e. Undergoing counseling, or community service
 - f. Compensating the aggrieved woman from their own wages.
 - i. Such compensation itself is calculated through considering the
 1. Emotional impact upon the aggrieved woman
 2. Possible loss of career opportunities
 3. Medical expenses for emotional trauma suffered
 4. The income and status of the alleged perpetrator.
3. Failure to create an ICC or comply with POSH stipulations could incur a fine of Rs. 50,000, and repeated offences a revocation of statutory business licenses.

While such standards are less punitive and possibly more rehabilitative in nature, the present status of implementation of sexual harassment under both POSH and Criminal Amendment Acts is woefully lacking. Pradeep and Ray (2017)¹⁴⁰ criticize the POSH Act on a number of grounds.

- i. The determination of whether a complaint constitutes sexual harassment is firstly left to the discretion of the ICC.
 - a. ICCs are provided quasi-judicial powers under the Act, but it is questionable whether they can continue to do so while the perpetrator is under investigation.
 - b. ICCs must also be led by women employees in senior positions, which is itself a rarity even within formal organizations in India.
- ii. No provisions exist to address anonymous complaints.
- iii. Employers have a questionable record of submitting annual reports on the redressal of complaints of sexual harassment to the Labour Department.

In total, only three states in India (out of 28) have mandated the establishment of LCCs¹⁴¹, and their powers of enforcement have been criticized as ineffective as a whole. The different definitions and consequences of sexual harassment, and specifically workplace sexual harassment, across different legislative Acts leads to confusion and patchy implementation on part of state authorities. When intersecting with difficulties in establishing recognition for home-based and domestic workers as ‘workers’ entitled to key labour rights, the POSH Act, 2013 can fall short due to difficulties in advocating for one’s rights as a woman, or as a worker.

As such, while commendably comprehensive and based on international human rights standards, the POSH Act, 2013 unfortunately represents a well-intentioned piece of legislation whose enforcement potential is heavily constricted by the existing

¹⁴⁰ R. Pradeep, and A. Ray, (2017), ‘Challenges in Implementation of the Sexual Harassment of Women at Workplace’, accessed from <https://www.shrm.org/shrm-india/pages/india-challenges-in-implementation-of-the-sexual-harassment-of-women-at-workplace.aspx>

¹⁴¹ POSH At Work (2016), ‘Local Complaints Committee (LCC) across all Indian States, accessed from <https://poshatwork.com/local-complaints-committee-lcc-across-indian-states/>

bureaucratic governmental system of its operation. This has significantly impacted SEWA's advocacy strategies, and reflects some of the challenges in ensuring embeddedness of international human rights standards and gender equality norms within national legislative processes.

3.3.3: The Street Vendors Act, 2014

The final key legislative act relevant for SEWA's advocacy is the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. According to the Ministry of Housing and Urban Poverty Alleviation, Delhi alone accounts for nearly 200,000 of India's 10 million strong population of street vendors, many of whom are migrants and from other highly marginalized backgrounds¹⁴². Under the definition of 'home-based worker', street vendors might be considered own-account workers who might create their goods and services within a home environment, which they then sell at local markets. Many such workers work anywhere between 10-12 hours a day, often facing harassment and violence from local law enforcement, and sometimes having to pay bribes in order to continue their trade within the public space.¹⁴³ The relative inaccessibility of valid licences and permits compels them to sell their goods illegally, which increases their vulnerability to evictions, violence, and fines.

The Street Vendors Policy was introduced in 2004, and later revised as the National Policy on Urban Street Vendors of 2009, by the National Commission for Enterprises in the Unorganized Sector, along with the National Alliance for Street Vendors of India (NASVI) and SEWA.¹⁴⁴ A national policy by itself is not legally enforceable, but rather reflects a statement of intent by state authorities and is an initial step towards creating a new legal framework.¹⁴⁵ For such a policy to go into effect, it

¹⁴² Ministry of Urban Employment and Poverty Alleviation, Government of India, 'National Policy for Urban Street Vendors', accessed from <https://www.manushi.in/governance/national-policy-for-urban-street-vendors>

¹⁴³ M. Soofi, (2012), 'Street Vendors: The god of small sellers', accessed from <https://www.livemint.com/Leisure/NN6NKSUIU0wsojynMwFBBJ/Street-Vendors--The-god-of-small-sellers.html>

¹⁴⁴ National Commission for Enterprises in the Unorganised Sector (2006), 'National policy on urban street vendors', p. 5

¹⁴⁵ S. Sinha and S. Roeber, (2011), 'India's National Policy on Urban Street Vendors', WIEGO Policy Brief (Urban Policies) no. 2, p. 1

must be ratified at the state and city level. The Street Vendors Policy (2004) was lauded by civil society organizations as reflecting a highly supportive approach towards street vendors, and its recognition of their dignity and socioeconomic contributions to urban life and poverty alleviation.¹⁴⁶ SEWA was heavily involved in local advocacy efforts for protective standards for street vendors. In the words of founder, Ela Bhatt, ‘...*what we need is a change of perception, so that businesses and planners see vendors as entrepreneurs and vending as legitimate employment... We must make politicians see us not just as vote banks, but as contributors to a new India.*’¹⁴⁷

Some of the recommendations of the National Policy on Street Vendors (2004) have been summarized below.

Table 7: Key recommendations of the National Policy on Street Vendors (2004)

| | |
|--------------------------------|---|
| Legal Status | Formulating laws appropriate for legitimate vending and hawking zones in cities and towns, and ensuring their enforcement. |
| Civic facilities | Clearly demarcating identified spaces as vending/hawking zones. |
| Organization | Promoting the unions, cooperatives and/or associations of street vendors to enable their collective empowerment. |
| Participative Processes | Any decision taken on street vendors should include multi-stakeholder engagement in its formulation, including local authorities and law enforcement, resident welfare associations, and civil society organizations (such as NGOs, lawyers, town planners, and citizens) |
| Promotional Measures | Access to services such as credit, upskilling and training, housing, social security and capacity-building through self-help groups. training institutions and microfinance. |

Author: Pallavi Chatterjee¹⁴⁸

Bolstering such advocacy was existing jurisprudence, including the 1989

¹⁴⁶ S. Sinha, and S. Roevers, (2011), p. 2

¹⁴⁷ *ibid*

¹⁴⁸ Department of Urban Employment & Poverty Alleviation Ministry of Urban Development & Poverty Alleviation Government of India, ‘National Policy for Urban Street Vendors’ (2004), accessed from <http://nidan.in/nidanwp/wp-content/uploads/2014/07/National-Policy-on-Urban-Street-Vendors-2004.pdf>

Supreme Court decision in Sodhan Singh v/s the New Delhi Municipal Corporation, which affirmed the value ‘small traders on the sidewalks’ could bring to the general public, if properly regulated. In its own words, ‘...*the right to carry on trade or business mentioned in Article 19(1)g of the Constitution, on street pavements, if properly regulated cannot be denied on the ground that the streets are meant exclusively for passing or repassing and no other use.*’¹⁴⁹

However, even the National Policy (2004) was largely ignored by state governments, given its non-binding nature.¹⁵⁰ It was revised and introduced once more in 2009 in conjunction with rising activism among local groups. The most prominent of these was NASVI, which organized street vendors into a registered body called the Footpath Vikreta Ekta Manch in 2011.¹⁵¹ The Indian Supreme Court would finally call upon the Union of India in 2010 to implement binding laws based on this national policy which would ensure protection of the fundamental rights of street vendors over time. In its own words, ‘...*we as a court in a welfare State do realise the hardship to which many of the petitioners may be exposed if they are prevented from carrying on the business. The only solution for this is the adoption of the policy of full employment...*’¹⁵²

The subsequent bill was finally introduced in the Indian Parliament by the Union Minister of Housing and Urban Poverty Alleviation, and finally passed by both upper and lower houses by 2014. Some of the key features of the Street Vendors Act, 2014 are summarized as follows, and reflect significant differences from the original National Policy introduced earlier.

Table 8: Key features of the Street Vendors Act, 2014

| | |
|-------------------------------|---|
| Registration of street | Every five years, Town Vending Committees (TVCs) will conduct surveys of all street vendors within their jurisdiction, and issue them |
|-------------------------------|---|

¹⁴⁹ Sodan Singh Etc. Etc vs New Delhi Municipal Committee & ... on 30 August, 1989

¹⁵⁰ M. Soofi, (2012), ‘Street Vendors: The god of small sellers’, accessed from <https://www.livemint.com/Leisure/NN6NKSUIU0wsojynMwFBBJ/Street-Vendors--The-god-of-small-sellers.html>

¹⁵¹ *ibid*

¹⁵² Gaiinda Ram & Ors vs M.C.D. & Ors on 8 October, 2010

| | |
|--------------------------------|---|
| vendors | certificates, without which they may not be evicted. |
| Certification | All street vendors above the age of 14 must be provided a certificate of vending after declaring that they will only carry out business independently, or through the help of contributing family members, and that they have no other means of livelihood. |
| Relocation orders | If a designated area is specified as a no-vending zone, vendors must be notified 30 days beforehand so that they may relocate. Failing to do so incurs a fine of Rs. 250 per day, and local authorities may physically remove them and/or confiscate their goods. |
| Dispute resolution body | Civil judges, or judicial magistrate, and two other professionals as prescribed by the state government. Each zone of the local authority must include a TVC. |

Author: Pallavi Chatterjee¹⁵³

The final Act differs significantly from the National Policy (2004) in its emphasis on certification and registration over the rights-based recommendations provided earlier. The National Hawker Federation (NHF) has complained that TVCs have no representation of street vendors despite having recommended at least 40% representation.¹⁵⁴ None of the participatory processes recommended earlier are reflected within the final version. The Act could arguably even replicate previous limitations, such as leaving certification and registration of street vendors to the discretion of local authorities. It has also been criticized for vagueness in its legal definitions¹⁵⁵, and for operating under a male norm regarding who constitutes a street vendor, despite the majority of street vendors in India being women.

Furthermore, the mere presence of the Act has failed to have a measurable ground-level positive impact for street vendors as a whole. Rai and Mohan (2017)¹⁵⁶

¹⁵³ Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014

¹⁵⁴ M. Ali (2016), 'Street vendors find shortcomings in Bill', accessed from <https://www.thehindu.com/news/cities/Delhi/street-vendors-find-shortcomings-in-bill/article4066639.ece>

¹⁵⁵ M. Soofi, (2012), 'Street Vendors: The god of small sellers', accessed from <https://www.livemint.com/Leisure/NN6NKSUIU0wsojynMwFBBJ/Street-Vendors--The-god-of-small-sellers.html>

¹⁵⁶ S. Rai, and D. Mohan, (2017), 'Gaps in Implementation of Street Vendors Act are making Delhi's Merchants Invisible', accessed from <https://thewire.in/economy/street-vendors-act-implementation-gaps>

criticize its faulty implementation, despite being grounded in Article 14 of the Indian Constitution, pertaining to the right to equality before the law, and Article 19(1)(g), pertaining to the freedom to practice any profession, trade and business. Studies from the OP Jindal Global University (2017)¹⁵⁷ demonstrated a number of inadequacies of the Act upon conducting a case study of local markets in Delhi, which include –

- i. Lack of awareness on part of street vendors of the existence of the Act
- ii. A lack of TVCs, despite these being a mandatory requirement within the Act
 - a. Street vendors must vote for 40% representation within these TVCs, and only then will they be provided certification.
 - b. A lack of certification increases vulnerability to mistreatment by law enforcement authorities
- iii. A lack of adequate grievance redressal mechanisms, or surveys conducted to ensure protection of street vendors
- iv. Corrupt practices within local law enforcement, including extortion and bribes, despite local markets being regulated by the local municipal corporations

Similar to the POSH Act, the Street Vendors Act reflects another well-intentioned, if only formal, commitment on part of state authorities to protect the rights of informal workers. SEWA's efforts in formulating the National Policy of 2004 reflect far more focus on rights-based provisions over the prioritization of legitimacy and certification as reflected in the final Act. Importantly, the right to access to public space as an extension of freedom of association and assembly was referenced in order to protect informal workers' economic and social rights. However, such legislative Acts represent the difficulties in implementing such rights-based provisions when their context of operations is fundamentally slow to change, difficult to monitor, and resistant to practice of human rights standards. Only through adequate enforcement mechanisms and commitment to substantively implementing such protective provisions can the economic and social rights of marginalized communities be protected and fulfilled.

¹⁵⁷ D. Mohan, and R. Sekhani, (2017), 'Governing Dynamics of Informal Markets: A Case Study of Local Markets in Delhi', Centre for New Economics Studies, p. 36

3.4: Summary and Conclusion

Despite commendable underlying foundations to legislation through the combined efforts of organizations such as SEWA, favourable Supreme Court decisions, and organized advocacy of marginalized communities, ground-level implementation of such protective provisions remains woefully inadequate. While there is no dearth of laws or protective provisions for securing labour rights in India, difficulties exist in adjusting them to everyday situations and for groups not covered within their scope. In some cases, however, positive strategies for advocating for marginalized communities through PILs exist, particularly through reframing non-enforceable economic and social rights through enforceable civil and political rights provisions. The Indian Supreme Court has similarly played an important role, particularly through its consideration of reports, awareness and visibility-raising initiatives of organizations such as SEWA.

The importance of such contextual factors has significant implications for how HRBAs must be structured. Linking practice to human rights standards is a commendable orientation for any organization, but for such standards to have a measurable impact, the existing system must be actively involved in such practice. When awareness of existing protective standards does not exist among communities at the ground level, the impact of human rights norms lessens in relevance to their immediate realities. As such, it is crucial that such norms are disseminated among them in ways that add meaning and relevance to their lives, such that they can advocate for the protection and fulfillment of their rights and entitlements.

This study was thus guided by the desire to understand how such organizations fill in such implementation gaps through their everyday practice, and in SEWA's case, extending the protective provisions applying to formally-employed workers to informal women workers. This formed the basis of the research questions, as well as the interviews conducted among key informants within the national SEWA teams. The next chapter describes the research methodology used for the present study.

Chapter 4: Research Methodology

This chapter presents the research methodology of the study, exploring SEWA's rights-advocacy strategies, making use of semi-structured, open-ended interviews with SEWA informants, and then processing the resulting data through qualitative narrative analysis to discern recurring codes and wider themes. Section 4.1 presents the study's qualitative basis which contextualizes SEWA's practices within a HRBA framework. Section 4.2 briefly describes the sampling and data collection, and Section 4.3 the data processing and analysis methods followed. Section 4.4 closes with reflections on the research experience.

Section 4.1: The study's basis in qualitative methods

The study follows an exploratory qualitative research method, defined by Stebbins (2001) as '*...a broad-ranging, purposive, systematic, prearranged undertaking designed to maximize the discovery of generalizations leading to description and understanding of an area of social or psychological life.*' Such methods illustrate how phenomena manifest, particularly when existing literature is limited.¹⁵⁸ Similarly, informants can contribute to new ideas and perspectives through their participation within exploratory studies. The lack of an explicit link between SEWA's rights-based advocacy and HRBAs underlay the study's aim to bridge this gap.

Complementing this is Rabinowitz's (2014)¹⁵⁹ definition of 'periodization' as a process of categorizing events across distinct time periods. This specific tool was important for framing SEWA's rights-based practices and advocacy within the wider historical context of its occurrence. In this way, the interview questions specifically asked about key events in SEWA's history of advocacy with national and international stakeholders, specific examples of where participatory processes yielded positive results across stakeholders, and when reference to international standards (including, but not limited to CEDAW) were helpful in furthering their goals.

¹⁵⁸ D. Hunter, J. McCallum, and D. Howes (2018), 'Defining Exploratory-Descriptive Qualitative (EDQ) research and considering its application to healthcare', in *Proceedings of Worldwide Nursing Conference 2018*, p. 1

¹⁵⁹ A. Rabinowitz (2014), 'It's about time: Historical periodization and linked ancient world data', *Ancient World Digital Library*, accessed from <http://dlib.nyu.edu/awdl/isaw/isaw-papers/7/rabinowitz/>

Bryman¹⁶⁰ defines qualitative research methods as strategies that emphasize ‘...words rather than quantification in the collection and analysis of data.’ The importance of a qualitative approach to the present study was thus aptly clear, given the focus on informants’ personal narratives regarding what key events stood out particular to them which constituted relevant in SEWA’s history. Given SEWA’s explicit focus on advocating for informal women workers’ rights, as well as their organizing and mobilizing activities focusing on capacity-building, the link to HRBAs was thus evident. The specific means of doing so emerged from informants’ responses.

Section 4.2.: Sampling and data collection

Bryman (2016) defines ‘purposive’ sampling as ‘...a non-probability form of sampling’, which aims to ‘...sample cases/participants in a strategic way, so that those sampled are relevant to the research questions that are posed.’¹⁶¹ Sampling thus specifically aimed to interview SEWA informants involved in their projects in leadership and training capacities, so as to obtain data most relevant to the research study. The sample interviewed were all graduates of higher education institutes, and spoke fluent English. All informants were provided a consent form developed by the researchers’ colleague, with her permission, and returned signed.

An interview guide was developed keeping in mind the three main research foci of accountability, participation, and recourse to international standards. The research sub-questions specifically provided the thematic foundations from which interview questions were created, pertaining specifically to SEWA’s interactions with government authorities, informal women workers, and recourse to international standards. Informants were contacted via email and phone due to COVID-19 restrictions, with a brief introduction regarding the purpose of the study and request for an interview. At the end of each interview, each informant was asked to provide the contact details of a colleague whom the researcher reached out to immediately to gauge their interest in participation, and with full assurance of anonymity. The sample of three informants was well-distributed across SEWA informants working more directly with government and

¹⁶⁰ A. Bryman (2016), *Social Research Methods*, Oxford University Press, 5th ed, p. 374

¹⁶¹ A. Bryman (2016), p. 408

development authorities, and those working directly with informal women workers. As such, sampling included convenience, purposive and snowball characteristics.

Primary data was thereafter collected through semi-structured, in-depth interviews conducted in a mix of English and Hindi with SEWA informants over Google Meets, as the researcher was unable to physically visit India at the time, and due to many of the SEWA offices having closed due to the pandemic. The interviews themselves resembled both qualitative and structured interviews; Bryman (2016) differentiates between the two in attributing to the former rich, detailed responses, while the latter provides answers that can be coded and processed efficiently.¹⁶²

Section 4.3: Data processing and analysis

Interviews were manually transcribed, translated, processed and analyzed through qualitative narrative analysis, with a view to discerning codes pertaining to over-arching themes related to still wider themes of accountability, participation, and international standards in general. The narrative analysis method was particularly useful as a periodization tool. Bryman (2016) defines ‘narrative analysis’ as a means of eliciting and analyzing data that accounts for the ‘...*temporal sense*’¹⁶³ according to which people interpret events as affecting their lives. As such, narrative analysis methods focus on how people interpret events, over merely describing them, and ‘...*the stories that people employ to account for events.*’¹⁶⁴

Similarly, Bryman (2016) defines ‘coding’ as a process occurring when reviewing raw data from transcripts and ‘...*giving labels (names) to component parts that...appear to be particularly salient within the social worlds of those being studies.*’¹⁶⁵ Overall, data processing and analysis resembled Strauss and Corbin’s 1990 approach; the researcher initially began with open coding – or the ‘...*process of breaking down, examining, comparing, conceptualizing, and categorizing data*’¹⁶⁶, in order to identify recurring themes and categories within informants’ responses.

¹⁶² A. Bryman (2016), p. 467

¹⁶³ A. Bryman (2016), p. 589

¹⁶⁴ A. Bryman (2016), p. 590

¹⁶⁵ A. Bryman (2016), p. 573

¹⁶⁶ A. Bryman (2016), p. 574

Connections between categories were developed through axial coding, or the process whereby '*...data are put back together in new ways after open coding...*' Core categories were formed thereafter, representing recurring issues that involved overlapping categories, and thereafter organized under the main themes pertaining to the three research questions. From these organized themes, the researcher see above was able to identify specific strategies used to further accountability, and encourage participation across different stakeholders.

Section 4.4.: Personal experience and limitations of the study

While researching SEWA's advocacy strategies, the researcher observed a gap in the existing literature regarding their recourse to international standards, including CEDAW. As such, informants might have demonstrated some reactivity due to having been provided the interview questions beforehand, particularly in the contextualizing of SEWA activities and advocacy within a CEDAW context. In the examples provided by the informants, periodizing these responses provided a valuable contextual foundation for the kind of advocacy strategies that were used, particularly on the basis of existing political developments at that temporal period on both national and international levels. While many of their activities could be contextualized on the basis of HRBA principles of accountability and participation, more value was added through exploring their specific means of doing so within the challenging Indian legal and political context.

The researcher could, however, not physically visit India to speak to SEWA informants in person, and hence was unable to interview any informal workers themselves. This could possibly have limited the perspectives provided on the relevance of human rights and gender equality norms in their everyday lived experience. Time constraints similarly limited the number of informants for the study, despite the new and interesting insights revealed from each interview. The informants interviewed were themselves of 'elite' backgrounds, having had advanced educational opportunities, enjoying relatively privileged socioeconomic circumstances and exposure to international and transnational movements. However, the interviews themselves yielded rich, highly insightful data regarding SEWA's advocacy strategies, and were a valuable learning experience for the researcher.

Chapter 5: Presentation and Discussion of Results

This chapter presents and analyses the results of interviews conducted with SEWA researchers and organizers, as well as other key documents on the experience of advocating for the right of women informal workers in India. In doing so, it addresses the topics of the three research sub-questions, i.e. what human rights standards are most relevant in SEWA's advocacy for state accountability, what rights and entitlements are most relevant when initiating the participation of informal women workers, and to what extent CEDAW's economic rights provisions have been relevant to SEWA's advocacy. Section 5.1 firstly presents areas of congruence between SEWA's rights-based advocacy and the existing literature. Section 5.2 details SEWA's advocacy strategies for accountability with government figures, and Section 5.3 describes their methods of rights-awareness among informal women workers in order to elicit their participation. Section 5.4 analyses the impact of using national and international standards within their advocacy, and what strategies of vernacularization could be most effective across different stakeholders.

5.1: An overview of SEWA's rights-based advocacy

Framing processes pertaining to social movements, as described by Benford and Snow (2000) strongly focus on changes to one's identity and thought-patterns with regards to oneself. This occurs within a context of 'political conversion' (Snow, 2000) where SEWA's activities focusing upon building resilience and the capacities of informal women workers – among the most marginalized and poor within Indian society – is one such example, focusing on framing their identities within a context of new skills, social support and a burgeoning awareness of their rights and entitlements. As such, their claims reflect key economic and social rights most directly relevant to the lived experiences of informal women workers, such as –

- The right to work (Article 6 ICESCR, Article 11(a) CEDAW)
- The right to just and favourable working conditions (Article 7 ICESCR)
- The right to join and form trade unions (Article 8 ICESCR)

5.1.1: SEWA's balanced approach to stakeholders

SEWA's strategies firstly reflect both grassroots and positivist-based approaches to human rights advocacy. Throughout their four decades of advocacy and practice, they have taken important action steps in bridging the bureaucratic gaps in state policy and reaching vulnerable communities. Their focus on safeguarding livelihoods, social protection, and food security even during times of crisis is grounded on building the capacities and self-reliance of vulnerable groups, and reflects a programmatic approach grounded in HRBA standards as expressed by the third pillar of the SCU.

SEWA's operations are highly decentralized, despite being recognized as a Central Trade Union, and divided across research programs at the formal level which focuses on partnerships with government authorities and donors, and at the grassroots level which focuses on unionizing and collectivizing communities of informal women workers. They focus strongly on bringing attention and visibility to the concerns of informal women workers through reference to state human rights obligations (representing a positivist approach), as well as working closely with informal women workers themselves to help them understand their rights and entitlements as 'workers' and supporting them in taking action steps accordingly (thus a grassroots approach). In the words of an informant,

A visual representation of SEWA's role in balancing its rights-based advocacy is presented as below. They are an important linchpin between multiple stakeholders, ensuring appropriate representation of informal women workers at multiple levels. Their success in engaging such different actors can be attributed to the flexibility of their approaches and willingness to adopt actors' goals within their own praxis. This demonstrates the iterative nature of their advocacy strategies, and how they collaborate across different stakeholders in tandem. Reference to informal women workers' socioeconomic contributions, their rights as voting citizens, and drawing recognition and visibility to their labour activities represent key advocacy points for SEWA's bridging the implementation gaps of Indian labour laws and policies.

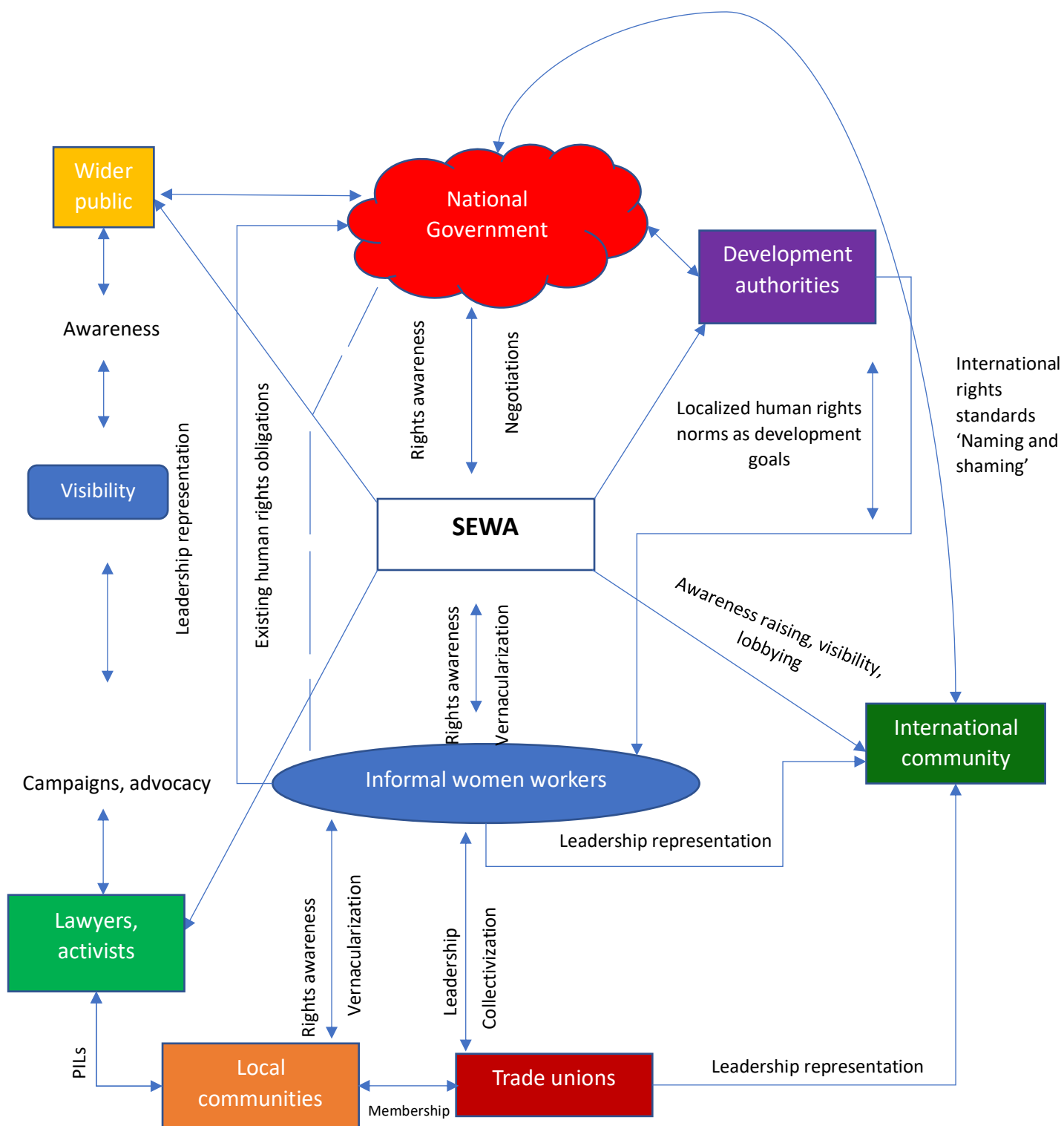


Diagram 1: SEWA's positionality and multiple roles across stakeholders

Author: Pallavi Chatterjee

As shown in the diagram, for a HRBA to be successful, it must thus balance its methods and build capacities of both duty-bearers, as well as rights-holders.

Practitioners must frame their rights claims appropriately in order to bring value to different stakeholders, including those with the potential to positively impact human rights protection, such as development authorities. Both a grassroots approach, as well as a positivist approach are effective means of ensuring rights awareness, visibility of rights deficits, as well as subsequent action steps to take as a result.

5.1.2: Bridging development and gender perspectives to rights-based advocacy

When contextualized to wider discourse of gendered perspectives to development, SEWA's approaches to human rights advocacy reflect clear influences of WID, WAD and GAD approaches. A summary of some similarities is represented here.

Table 9: Comparison of gendered perspectives to development with SEWA's practices

| WID | WAD | GAD |
|--|---|--|
| <ul style="list-style-type: none"> • Working in tandem with state and development authorities • Focus on women's equality, economic independence • Lobbying for representation of women as income-earners | <ul style="list-style-type: none"> • Women should independently define what constitutes 'development' • Fund-pooling for supporting labour activities | <ul style="list-style-type: none"> • Questioning gender power relationships as underlying causes of women's subordination • Advocating for women's strategic needs within their society and context. |
| SEWA | | |
| <ul style="list-style-type: none"> • Guiding practice of mutually beneficial cooperation • Framing the socioeconomic contributions of | <ul style="list-style-type: none"> • Building awareness and recognition of oneself as a 'worker' entitled to rights • Financial | <ul style="list-style-type: none"> • Expanding definitions of 'worker' to include self-employed women within labour law |

| | | |
|---|---------------------------------|--|
| informal women workers as development goals | cooperatives, such as SEWA Bank | <ul style="list-style-type: none"> • Collective action and unionizing |
|---|---------------------------------|--|

Author: Pallavi Chatterjee¹⁶⁷

On a surface level, it might seem that WID approaches approximate SEWA's advocacy to a large extent. SEWA's is a pragmatic and non-confrontational approach towards working with government authorities. Their advocacy frames the protection of the rights of women informal workers in line with existing policy and extending such protective provisions towards them, based on the results of their surveys and action research. Such approaches are similar to WID objectives towards women's economic independence, equality within public spheres, and questioning harmful traditional beliefs – though while working in tandem with government authorities to address such challenges. In the words of a SEWA informant, *'...we try to be part of the government, we insert ourselves in government mechanisms, we try to build that lens there.'*

SEWA's strategies find resonance within WAD and GAD approaches as well. Similar to WAD approaches, SEWA encourages women informal workers to define independently what constitutes as 'development', as well as setting up fund-pooling to support their labour activities through initiatives such as SEWA Bank. Likewise, GAD approaches also contribute to SEWA's advocacy for questioning the disadvantaged position of women informal workers within society. GAD approaches attribute this to inequitable power relations along gender lines and harmful traditional practices which fundamentally discriminate against women in public and private spheres. Such an approach also harkens to intersectional approaches, which view the experience of inequalities as a combination of identity factors such as ethnicity, caste, class background, sexuality and other such markers.

GAD strategies are also most geared towards enacting practical action steps for addressing women's needs within the particular society and context of their functioning. SEWA specifically advocates for the recognition of women informal workers' economic contributions within the work environment of their daily lives and

¹⁶⁷ J. Jaquette, (2017), p. 244

experiences. They frame their rights-advocacy on the basis of recognizing areas of labour activity as ‘work’ in the absence of formal legal codification of the same. Such approaches take into account the existing context of limited educational and employment opportunities women informal workers face, as well as the multiple forms of discrimination they face across identity markers beyond simply gender. As such, they seek to build capacities and improve their sense of self-efficacy *within* this context, so that organic change through awareness of one’s rights as a worker can be sustainable.

SEWA’s five decades of collaborating, engaging, and negotiating with multiple stakeholders at different levels clearly demonstrate their commitment to their rights-based advocacy. Their strategies are further expanded upon in the upcoming sections.

5.2.: Accountability practices in SEWA’s rights-based advocacy

In general, SEWA, functions as an intermediary between state authorities and communities of women informal workers. Some of the most relevant rights which are often raised in their advocacy and negotiations with state authorities can all be linked back to their fundamental orientation as a labour movement – thus the right to work, and the right to just and favourable conditions of work. Their different projects branch off into different aspects of concerns relevant for informal women workers, such as workplace sexual harassment and gender-based violence – but essentially, all such advocacy is linked to furthering efforts to improve their conditions of work, and recognizing and valuing their socioeconomic contributions. HRBA principles of non-discrimination and equality are thus important bolstering factors for ensuring accountability.

The main rights and entitlements referenced in SEWA’s negotiations for accountability among government authorities are summarized here.

Table 10: Rights most relevant when negotiating for accountability

| Right to work: Recognition as workers | | | | |
|--|--------------------------|------------------------------------|-------------------------------------|--------------------------------------|
| Right to livelihood | Right to social security | Health benefits (Maternity rights) | Freedom of association and assembly | Unionizing and collective bargaining |

| Right to just and favourable conditions of work | | |
|---|---|---|
| Decent work (visibility) | Right to occupational health and safety (dignity) | Freedom from violence <ul style="list-style-type: none"> • Gender-based violence <ul style="list-style-type: none"> ○ Workplace sexual harassment • Discrimination <ul style="list-style-type: none"> ○ Intersection of gender and occupation ○ Influence of caste, religion |

Author: Pallavi Chatterjee

The right to ‘decent’ work is central to SEWA’s advocacy for accountability, with the primary starting point of recognizing women informal workers as workers entitled to the same employment benefits and rights associated with formal organizations and employees. In the words of an informant, within a context where ‘...93% of our workers are informal workers, and in that...mostly women...’, key issues affecting women’s rights – such as gender-based violence – are primarily translated through a labour lens. Thus, SEWA projects focusing on gender-based violence would present the results before government and development authorities with a focus on how such harmful practices affected women’s occupational health, safety, workplace productivity, and contributions to the national economy and Indian society. In the words of a SEWA informant, ‘...decent work won’t be possible without a safe environment to work, or an environment free from violence and harassment. It’s not just violence based on gender, though sexual violence usually is. But for the informal sector, you see the remainder of societal inequalities magnified – caste, migration status, age, class, religion.’

An analysis of the interview data yielded a number of strategies that SEWA follows when negotiating with government and development authorities. Framing processes described by Benford and Snow (2000) and key events from SEWA’s history form the basis of their rights advocacy, and are summarized as follow. The following strategies form the basis of the upcoming sub-sections, and describe the different strategies used by SEWA to elicit accountability on part of government authorities.

Table 11: Accountability strategies in SEWA's advocacy

| | |
|------------------------|--|
| Frame resonance | Political rights guarantees as a key point for advocacy |
| Frame-making | <ul style="list-style-type: none"> • Extending applicability of existing labour legislation • Advocating for recognition through visibility of informal women's work |
| Frame-bridging | Building strategic multi-stakeholder partnerships |

Author: Pallavi Chatterjee

5.2.1: Frame resonance – ‘They’re residents. They’re voters. Just do your job.’

Much of SEWA's efforts are channelized towards changing perceptions of informal women workers in the eyes of policy-makers, donors and wider society. They advocate for their recognition as embedded and visible within Indian society, contributing to the national economy, as well as exercising their rights as citizens. As has been demonstrated in Chapter 3, civil and political rights have often been interpreted so as to protect economic and social rights, which has had some positive impact on ensuring their enforceability. In this regard, SEWA heavily focuses on framing the identities of informal women workers as voting citizens when negotiating with state or municipal authorities, with the intent that such reframing will encourage greater accountability. In the words of a SEWA informant, *‘...for a government official to look out and see not just one person, but maybe a group of twenty determined women...in some cases, you don't have to respect these women, but just do your job as a bureaucrat. They're residents, they're voters, just do your job, your duty is to them.’*

SEWA leaders engage in extensive capacity-building efforts among informal women workers regarding their rights as citizens, and the power of their right to vote. A SEWA informant describes the relative apathy among younger women regarding democratic processes in India, and the importance of impressing upon them *‘...that they have to put forward their demands, how important voting is, how consciously we have to vote... I remember, while talking to them, I said that all these politicians have all become so powerful, sitting on a higher seat, that we have to collectivize so that our voices together can reach these higher pedestals they've put themselves on.’*

SEWA teams on the national level also strongly advocate for existing government policies to be adjusted to include informal women workers as beneficiaries. This too occurs through reference to their rights as voting citizens, and local governments duties towards upholding these rights. As such, when the Delhi government mandated that rations for COVID-19 relief would only be made available if claimants had a ration card, the SEWA Delhi team was able to draw attention to the fact that most informal women workers did not have ration cards in the first place, largely due to the majority being migrants from different states. They successfully argued that depriving them of food simply because they lacked appropriate documentation constituted a gross violation of their rights as citizens. The Delhi government, described as far more responsive than those of other state-level governments, agreed and came up with an e-coupon system for availing of goods. SEWA Delhi once more intervened, informing the government authorities of the lack of access to technology among informal workers and lobbying for allowing them to show their social security cards instead (which SEWA assists informal women workers in obtaining).

As mentioned in Chapter 2, grassroots movements representing marginalized communities often face challenges when their fundamental rights are not adequately represented in national or international standards. However, framing their claims within the context of enforceable civil and political rights such as legitimacy of residence status and voting rights has the possibility of resonating better with state authorities, and ensuring that negotiations can evolve towards protecting economic and social rights as well. As such, the interrelatedness of human rights frameworks is a highly useful conceptual base to frame rights-based advocacy in order to be relevant to policy-makers. In the words of a SEWA informant, the informal women workers they work with are themselves able to articulate that *'...these are our demands, this is what we want, we are voters, we are citizens, we have rights.'* This is the result of a long process of capacity-building and recognition of oneself as a worker entitled to rights, but it is exactly this mobilization towards independently advocating for one's rights that constitutes SEWA's goals.

5.2.2: Frame-making – Extending laws, ensuring visibility

SEWA's organizing, mobilization and advocacy for 'full employment' for informal women workers has succeeded in effecting policy change at the state level. They ensure visibility of the challenges faced by informal women workers through conducting action research, compiling reports documenting their circumstances in tandem with lobbying and negotiating with state authorities, private market actors, communities and other stakeholders. Even secondary literature such as Baruah (2010)¹⁶⁸ provides examples for their lobbying for supportive legislation for welfare funds, creating insurance schemes for informal women workers, issuing identity cards that ensure recognition of women as workers, increasing access to maternity benefits, day-care centres near work/home, and organizing training and certification initiatives.

A common challenge faced by SEWA leaders is responding to claims that existing labour laws do not apply to the informal economy, and that their involvement is unnecessary. Their response to such arguments is that anything affecting the formal sector has a trickle-down effect, immediately and negatively impacting the informal sector. In the words of an informant, '*...it consolidates what are appropriate practices.*' Suspending, for example, an 8-hour day requirement within factories would communicate a lack of adherence to such standards. Within the informal economy, an informant mentioned that '*...there (are) no restrictions on the number of hours a worker has to work. In the formal sector, if you're not following the 8 hours, means in the informal sector, you're definitely not following the 8 hours.*' As such, '*...laws are important. They don't apply to us, but we will figure out how to make them apply because we need something.*' Such beliefs corroborate Merry and Levitt's (2020) argument of the efficacy of norms that have legal 'fixedness', and constitute key advocacy points.

As such, when questioned specifically what rights and standards are most relevant for advocating for informal women workers' rights, a SEWA informant was quite expansive in their response. '*We will refer to any standards that work for our*

¹⁶⁸ B. Baruah (2010), 'Women and globalisation: challenges and opportunities facing construction workers in contemporary India', *Development in Practice*, 20:1, p. 34

members. We will quote both CEDAW, all the way down to some random bureaucratic regulation at the municipality level. So anything that will help our case, even ILO Conventions. In some cases, we say “This is the law of the land, you’re not implementing it.” In others, “This law doesn’t exist, we’re campaigning for it now.”

The 2020 labour reforms which condensed 54 Labour Codes into 4 is seen as a negative development, as this is described as having occurred without consultation of organizations representing workers’ groups, and ‘...would mean losing valuable provisions...bringing it down to 4 would make workers give up certain rights. We have to find a middle ground. For us, more laws is good, it means you’re thinking of more issues. You can amend the laws if you want, if you’re not implementing a single one.’

When applied in practice, this often means working together closely with government authorities at the level of the different Indian states. The specific orientation of each state government is especially relevant to the degree of willingness to engage with SEWA’s advocacy. In the state of West Bengal, the local government has forbidden the creation of more unions. This means that SEWA West Bengal is not recognized as a union at the level of the state, but instead at the national level, which prevents them from being able to negotiate with the state government. However, SEWA Delhi, SEWA Gujarat, SEWA Rajasthan and many others are registered as state-level unions. In the words of the informant, ‘...SEWA West Bengal can’t work towards the rights of home-based workers, but (SEWA) Delhi can, and once it works in Delhi, Gujarat, Rajasthan, then we can get a national campaign that works for us all.’ Such factors are important aspects to constructing frames for rights-based advocacy, as they must resonate with local governments as a starting point.

With regards to laws pertaining to gender-based violence and specifically workplace sexual harassment, a SEWA informant lauded the existence of the POSH Act, 2013 for having ‘...broadly taken in a whole gambit of “workplaces”, private, public space...’ and for generally being well-defined. Unfortunately, they also believed that ‘...from an informal sector lens, the POSH Act has many gaps, it’s very vague for informal sector workers, and this shows the reality. Our government doesn’t know what the informal sector wants, because they don’t know what our problems are, what our

demands are, they don't have that lens.' SEWA informants have attributed this lack of knowledge to a lack of data regarding informal workers in general, which creates resistance to engaging in changes to existing legislation. Among their goals for increasing recognition and visibility for informal women workers includes having them counted within national surveys conducted by the Labour Department.

SEWA leaders and organizers have often been compelled to fill in the implementation gaps of POSH stipulations. In many cases, LCCs are simply not formed at the district level, and if so, are mostly non-functional. They are also significantly less powerful in terms of enacting consequences for perpetrators, as within POSH stipulations, they only have the same powers as vested in a civil court under the Code of Civil Procedure, 1908. This affects their capacity when investigating cases of workplace sexual harassment. In the words of a SEWA informant, *'...the POSH Act comes under the Ministry of Women and Child Development, and this is a welfare approach, and that's where the government lacks the lens. They feel that they need a welfare approach, which comes under civil law, not penal law, so punishments are not so much the focus. Instead, the focus is on protection and prohibition. So...we want to make sure that there's convergence and that the law comes under the Ministry of Labour and Employment, so there's work on worker rights. So a shift from welfare to labour rights is what we want, for worker rights.'*

SEWA's accountability claims are thus framed within the context of enforceable political rights linked to informal women workers' citizenship and voting rights, and assessing existing laws and policies for gaps where informal women workers might not be sufficiently protected. As demonstrated in Chapter 2, legislative changes occurring as a result of advocacy can have a positive impact on societal attitudes towards marginalized groups, such as informal women workers, whose identities are reframed as bringing value to India's society and economy, and not merely beneficiaries of rights provisions. SEWA's accountability strategies follow HRBA practices of strengthening notions of citizenship and framing of informal women workers as empowered rights-holders, through bringing visibility to their labour activities through extensive research conducted at the ground level, as well as multi-stakeholder partnerships. These are

important tools of advocacy, especially when referenced in tandem to state obligations of upholding citizen rights, with reference to enforceable civil and political rights, as well as HRBA principles of non-discrimination and equality.

Section 5.2.3: Frame-bridging – Strategic Partnerships

SEWA has also had to advocate for the rights of certain groups of informal women workers, such as domestic workers, who lack specific protective legislation addressing their needs. Where the right to public space had been used to negotiate for the rights of street vendors to conduct their business in as citizens, for domestic workers, *‘...somebody else’s private space...becomes their public space. So to negotiate within that is very difficult...will you see the violence a home-based worker faces as domestic violence or workplace violence? The lines are so blurred in the kinds of rights also, if we talk about rights-oriented language, what rights will the woman ask for? Rights as a worker, rights as a woman? There is no language that exists where she can articulate or demand for rights as a woman who works from home. There is a clear intersection between these two identities, and there is no language that exists.’*

In response to such deficits, SEWA created a platform in 2012 for domestic workers, in order to elicit the collaboration of organizations and unions representing domestic workers. This would also provide domestic workers themselves an opportunity to articulate their needs. Coinciding with the promulgation of C189 in 2012, the platform collectively demanded comprehensive legislation for domestic workers, which occurred in tandem with the ILO involving governments to discuss international standards for the same. At the Indian level, SEWA was able to become a part of a task force set up by the Ministry of Labour and Employment which represented India at ILO conferences, in collaboration with multiple national domestic workers movements. SEWA’s collaboration with organizations representing workers across Indian states has culminated in the formation of Street Net and Home Net South Asia, which are international networks for street-based workers' and home-based workers' organizations. They continue to reach out to and partner with organizations across India so as to create pressure upon the national government to ratify different ILO Conventions.

Even when faced with resistance, opportunities for collaboration with governments also arise. A key event was the 1994 UN International Conference on Population and Development in Cairo, where ‘...*India was representing all of India and took all the facts that (SEWA) had brought up.*’ An informal woman worker (and SEWA member) represented the Indian delegation to speak. In the words of the informant, ‘...*on an international level, the government isn’t competing with us. Over there, in 1994, (the informal woman worker representative) ended up getting out the idea that women’s health, pregnancy and maternity were actual concerns for labour movements. The Indian government were among the forefront, championing this on an international level. In India, they weren’t willing to give us rights, but...all of a sudden, they realized that the international space is one such arena for them.*’

Examples from secondary literature include Moser and Norton (2001)¹⁶⁹ describing how SEWA advocated for the extension of the Minimum Wage Act to textile workers in order for them to qualify as beneficiaries of statutory minimum wage regulations. Herein, SEWA activists worked closely with the Labour Department in order to create oversight practices for the homeworking industry, while organizing worker rallies, protests, sit-ins, and strikes among home-based *bidi* workers. Their decade-long efforts resulted in judicial victory at the state level, which ensured negotiations with employers and agreements for wage increases and the guarantee of pension rights. These negotiations occur every two years through SEWA’s collective bargaining methods, and are most prominent in the states of Gujarat and Rajasthan.

SEWA’s methods of negotiation, partnerships and collaboration with state authorities occur across regional and state levels, and include both grassroots and positivist approaches towards human rights protection. Their recourse to existing laws and legislation reflects HRBA practices of working with the system and not against it, in order to advocate for human rights protection within the context of human development. Such a pragmatic approach increases resonance of their rights claims among government authorities, and which has been demonstrated through their

¹⁶⁹ C. Moser and A. Norton (2001), ‘A conceptual framework for applying a rights approach to sustainable livelihoods’, *To claim our rights: Livelihood Security, Human Rights and Sustainable Development*, Overseas Development Institute, p. 24

successful history of lobbying for protective legislation. Their successes reflect the slow, gradual nature of embedding human rights and gender equality norms within society, and the need for persistence in following up and ensuring continued commitment to such obligations.

5.3: Participatory practices within SEWA's rights-based advocacy

This study was based on the desire to learn how SEWA structured its rights awareness-raising activities among informal women workers, and framing economic and social rights as relevant to their everyday experience. SEWA's participatory processes ensure that informal women workers are empowered towards exercising agency and advocating for their own rights, rather than SEWA having to exercise its influence and access to negotiating spaces to intercede on their behalf. Developing such leadership capacities within informal women workers is an important step towards initiating such action, and ensure that not just government authorities, but informal women workers themselves, exercise accountability. Importantly, the HRBA principle of empowerment is linked strongly to participation, as empowered informal women workers are more likely to participate in advocating for their rights and entitlements.

A summary of some of the topics of SEWA's training interventions are summarized as follow.

Table 12: Topics of SEWA's participatory training interventions

| | |
|------------------------|---|
| Frame-making | <ul style="list-style-type: none"> • Self-recognition as a worker <ul style="list-style-type: none"> ○ Reframing one's identity as a rights-holder ○ Freedom from gender-based violence as a worker right |
| | <ul style="list-style-type: none"> • Collective leadership: political rights, unionizing, collectives |
| Frame resonance | <ul style="list-style-type: none"> • Building unity and common ground under the banner of 'worker' • Addressing discrimination against Dalit/Muslim workers |
| | <ul style="list-style-type: none"> • Capacity-building: negotiating with stakeholders |
| Frame-bridging | <ul style="list-style-type: none"> • Institutional support: claiming one's rights and entitlements |
| | |

Author: Pallavi Chatterjee

SEWA's commitment to participatory processes is demonstrated in key

documents such as the National Policy for Street Vendors (2004), where they recommended providing street vendors the opportunity to have a say in any decision concerning them, in cooperation with other stakeholders such as local law enforcement and civil society groups. However, as demonstrated in Chapter 3, low awareness and poor implementation of the Street Vendors Act negatively impacts informal workers' rights and lessens their chances of protection. The mere existence of protective legislation does not necessarily always lend itself to changes in societal attitudes and deeply-embedded discriminatory beliefs overnight.

Informal workers – and informal women workers more so – internalize such negative attitudes as well, particularly in the undervalued and unrecognized aspects of their labour activities. In the words of an informant, '*...One has to understand that women, especially women in urban slums and our houses, my mother, my grandmother, they're all very important agents of patriarchy. Women propagate more patriarchy than men.*' As such, women's sense of empowerment and agency is considerably reduced from such negative beliefs, as their subordination is constantly legitimized within their immediate sociocultural, economic and political context. For HRBAs to be effective, practitioners must be cognizant of such beliefs, understand their embeddedness within the existing society, and structure their challenging of existing power relations within the constraints marginalized communities face.

Section 5.3.1.: Frame-making – Individual and collective identities as workers

SEWA has taken vast strides in addressing such attitudes through its participatory organizing and collectivizing activities with informal women workers. Their training interventions focus on developing the leadership capacities of particularly forthcoming women within communities of informal women workers. These women are referred to as '*aagewans*', a portmanteau of '*aage aane waali behen*', or 'a woman who comes forward.' *Aagewans* are democratically-elected grassroots community leaders who are the primary participants of SEWA's rights-awareness training interventions, where they are supported in developing the skills required for effective community organization and leadership. Thereafter, the *aagewan* returns to her own community and is responsible for educating her fellow women, with SEWA taking less of an active,

even background role. In the words of an informant, '*...we try and get this idea in that it's (the aagewan's) job to get the other women to...participate and how this benefits them. It becomes like the mandate of this confident woman to encourage the participation of the other women, like an ethical commitment.*'

Aagewans are a key driving force behind SEWA's grassroots activism and advocacy. It is through their choice to participate that organic change within societal attitudes can slowly, gradually be encouraged – particularly among informal women workers themselves. Their sense of identity must firstly be questioned and encouraged towards more positive reframing, approximating Snow's argument for transformative processes of interpretation as mentioned in Chapter 2. Informal women workers are encouraged by the *aagewan* to reconfigure '*...aspects of (their own) biography*' through situating their identities and labour activities in the realm of potentially empowering political and economic rights. When encouraged to think about their rights as workers, one SEWA informant admitted that during unionizing activities, the informal women workers participating actually had a rudimentary understanding of some of the rights and benefits associated therewith. In their words, '*...when I go around describing your rights as workers, like "the rights you are entitled to as a worker", automatically, they respond "Yes, we don't get any holidays." They automatically say "We work 12 hours, but only get payment for 3-4 hours."*'

Informal women workers are thus keenly aware of their practical needs. The challenge lies in reframing beliefs regarding the labour activities they were engaging in, including domestic work, which many considered shameful, due to its undervalued position in society. However, '*...now that they've begun identifying as workers, they automatically realize that there's rights associated with that.*' Informal women workers are empowered to challenge their exclusion from existing protective legislation and call for stronger reframing of their economic rights. In the words of an informant, '*...it takes us a couple of years to get her to proudly stand and say "I am a worker" ... "I do work" ...its easy to say 'I'm just helping my husband', but it's more difficult to say that about you. Women coming together and identifying that other women are doing work is one way of recognizing their efforts.*'

While SEWA leaders might be able to localize understanding of human rights and gender equality norms among a particular group of women, *aagewans* themselves are far better-suited to address and analyse inequalities, discriminatory practices, and experiences of injustice within local communities through their knowledge of informal women workers' constraints and practical needs. *Aagewans* would also be able to encourage solidarity, cooperation, and identifying strategic needs among communities of informal women workers more effectively, given the immediacy and relevance of their identities to their shared challenges. Such an approach reflects HRBA formulations meant to address underlying causes of human rights violations, such as deeply-entrenched discriminatory beliefs and structural barriers to accessing justice.

Building such solidarity is especially relevant when addressing topics such as gender-based violence. SEWA informants admit to the challenges in eliciting informal women's workers participation when discussing topics such as violence against women. As such, an informant describes such programs as focusing on '*...strengthening their ideas of violence in the world of work...focusing on the root causes of violence....how societal structures contribute to keeping violence in its place, and the whole game of power and control, how gender is used by the patriarchy, and how our social institutions and structures support a broad framework which influences our laws, society, religion, how all these mechanisms work to keep women in their place, and how important it is to challenge it, to break it. These ideas are very normalized – like, you're born as a woman, so it's like your fate that you'll face violence.*' Such strategies complement Moser's Gender Analysis Framework; informal women workers are encouraged to reinterpret their circumstances through SEWA's intervention, particularly through addressing societal structures legitimizing their subordination.

The difficulties in integrating informal women workers' dual role – as woman and as worker – also impact their participation in speaking up about gender-based violence. When discussing the challenges of conducting business and attempting to protect their livelihoods, violence and harassment are usually not prioritized. According to an informant, '*...the focus is on having no money, no work, so harassment has been normalized by them completely...and they're not aware of any rights, laws, political*

rights...we whisper about violence...but actually coming ahead and confronting it is important. Informal workers might be based at home, so their home is their workspace, so when she faces domestic violence, this is related to harassment at the workspace also.’ Moser’s Gender Analysis Framework and its assessment of women’s practical and strategic needs is especially relevant here, given how poverty underlies many of the obstacles barring women’s paths to advocating for their strategic needs.

As such, SEWA’s leadership development methods take into account women’s practical and strategic needs, and encouraging steps towards actualizing them through such changes in their sense of identity and positionality. When faced with reluctance to engage in reframing her labour activities as a worker, one SEWA informant described the specific strategies used to encourage such reframing of self-identity – *‘This is something we bring up constantly, how much work did you do? You did this much work, and got this much salary, do you think it’s fair? Do you want to demand more? Do you think it’s enough, will you be able to survive?’* At times, it was even necessary to compare SEWA informants’ formally-employed situation to that of informal women workers, in order to illustrate the differences and the deficits. Despite some frustration and anger involved, the informal women workers were able to reframe their situation as one warranting greater recourse to protection of their rights as workers and citizens.

This positive reframing of their identities is particularly bolstered through SEWA’s collective empowerment approaches, and their focus on building solidarity and unity among communities of informal women workers. SEWA rarely works with women in isolation; most of their participatory activities occur within a collective setup. Initially, some resistance is encountered, particularly with regards to unionizing and exercising collective leadership. In the words of an informant, *‘...for them, a collective meeting, they usually identify it as something men do. But for women to come out and be part of unions...they’re taken aback at first, but as we gradually move ahead with the conversations, they do feel okay with it. One thing people miss out and which doesn’t really come to notice is the social conditioning these women have.’*

Eliciting participation within unions under a common collective identity is an important step in building awareness of informal women workers’ political rights. One

SEWA informant described how union membership helped a migrant domestic worker falsely accused of theft by her employer. Under Section 46 of Code of Criminal Procedure, 1973, women may not be arrested between 6 PM and 6 AM, and if so, only by a woman police officer. When local law enforcement appeared at the domestic workers' doorstep, her knowledge of such laws empowered her to not comply with the officers' threats and intimidation, and she refused to step out of her premises due to the time being 7:30 PM, and there being neither a search warrant woman, nor a woman police officer present. Eventually the police officers left, and the charges against her raised by her employer were dropped. According to the informant, *'...not a lot of people know this, that women aren't supposed to be arrested between 6 pm and 6 am, but being a part of a union, she knows because it's discussed during community meetings, she knew these were her rights...so once that sort of confidence, agency comes in the hands of the women, the path further becomes fairly easier.'*

Collective participation has bolstered SEWA's self-sufficient approach to independently creating their own resources, tailored to the needs of informal women workers. When constantly facing mistreatment from local financial services in taking out loans, a key event in SEWA's history included members and informal women workers deciding to set up their own women-led financial cooperatives. In the words of one, *'We may be poor, but we are so many. Why don't we start a bank of our own? Our own women's bank, where we are treated with the respect and service that we deserve.'*¹⁷⁰ In response, the members of SEWA Gujarat raised the shared capital together, pooled their funds, and went to negotiate with the Cooperative Departments. When faced with challenges such as the requirement of signing one's name on registration forms, SEWA founder Ela Bhatt organized literacy training sessions within the local communities. Informal women workers taught themselves how to sign their own names, and the resulting creation of SEWA Bank in 1974 was a precursor to the global microfinance movement, which continues till today.

SEWA's participatory modes of interaction with informal women workers thus construct supportive frames for their identities as workers on both individual and

¹⁷⁰ Shri Mahila Sewa Sahakari Bank Ltd., accessed from <https://www.sewabank.com/history.html>

collective levels. These are important steps in encouraging solidarity and unity across such communities, and reflect key considerations of their practical and strategic needs, as well as how their identities must be reconfigured towards knowledge of and action towards their political and economic rights. Rather than top-down approaches to rights awareness-raising, SEWA's methods demonstrate a gradual release of responsibility towards their members, who are supported more intensively at first, before being empowered to take action independently as a collective group.

SEWA members' rallying cry unites them under the banner of 'women workers.' However, given India's highly heterogeneous population, difficulties in such identity-building and shaping can also occur, particularly when deeply-embedded discriminatory practices against communities of different caste and religious backgrounds continue to persist.

Section 5.3.2: Frame resonance – Intersectional and equalizing approaches to unity

Already a marginalized group, informal women workers of disadvantaged-caste (or 'Dalit') or of Muslim backgrounds face additional challenges in advocating for their rights as workers, not only from employers or government authorities – but also from fellow SEWA members and informal women workers. Notions of caste purity and pollution permeate every level of Indian society, and recent decades have seen a sharp increase in inflammatory political rhetoric, discrimination, and even violence against Indian Muslims. For example, according to one informant, '*...in Lucknow, our Domestic Worker Program has to do a lot of campaigning because most of the domestic workers are Muslim and Hindu families won't let Muslim women work in their homes.*' From yet another, '*...some Dalit domestic workers aren't even offered water at their places of work.*'

SEWA informants admitted that such discriminatory practices were even followed by SEWA members and informal women workers. Some might refuse to attend meetings organized at a Dalit or Muslim SEWA members house, and will insist on meeting at a nearby public space instead. At times, they have also refused to eat together in the same premises with fellow SEWA members of different caste and/or

religious backgrounds. All these negatively affect the participation of Dalit and Muslim SEWA members.

Such discriminatory practices are described as far more subtle within urban environments, where shared economic aspirations tend to draw individuals and groups from diverse backgrounds and communities. Dalit informal women workers seek such opportunities as there is some anonymity involved, and therein, the possibility of not being mistreated due to their caste background. However, one's caste can be discerned from one's family name. Dalit domestic workers might thus be instructed to clean the washrooms and lavatories of buildings, but another domestic worker of a more advantaged-caste background will be appointed to cook all the household meals. Such discriminatory practices draw from older (and now outlawed) practices of untouchability, where it was believed that simply being in physical contact with an individual from the Dalit caste would make one 'impure.' While illegal within the Indian Constitution, such practices of untouchability and caste segregation continue to persist even within modern Indian society.

In response, SEWA organizers enact practices meant to build a sense of oneness and unity among SEWA members, while also respecting their differences. Each meeting begins with the famous song *Aye malik, tere bande hum*¹⁷¹ from the 1957 Bollywood movie, *Do Aankhen, Baarah Haath*, and sung by playback singer, Lata Mangeshkar. SEWA members from the 1970s had themselves suggested it, given its near-universal appeal across the country. Following this is a Hindu prayer, a verse from the Quran, and thereafter a poem by Gandhi, which is secular in theme. SEWA members then affirm their vow to uphold Gandhian values of *ahimsa* (or non-violence), and *satya* (or truth), followed by a moment of silence. Such meetings are held uniformly, with no distinction made between interacting separately between Hindu, Muslim or Dalit SEWA members; SEWA organizers insist on meeting, and later sharing meals, at the same location. In the words of an informant, '*...I've made it a rule for my meetings, we will always meet at (a Muslim SEWA Member's) house. All of our meetings are at her house, and now she complains that she doesn't want meetings at her house.*' Such solidarizing rituals

¹⁷¹ The title translates into 'Oh master, we are your followers'

contribute to a sense of normalizing interactions across SEWA members of different backgrounds.

Despite focusing their strategies on addressing the needs of ‘women workers first’, SEWA organizers and leaders are well aware of the negative impact such discriminatory beliefs have on members’ participation, as well as their own projects. Organizers try and use their credibility in order to break such negative patterns, and ensuring sensitivity to such concerns in their projects. In the words of an informant, *‘...it’s a constant conversation and the responsibility of SEWA staff...and we try and change our programs that way. For example, water programs – a Dalit community would have it so much harder than a Brahmin community. So we have to figure that out, weave that in and understand that that community and advocacy would take much more work. So both advocacy on SEWA’s part, on behalf of members outside, but also within the movement.’*

While organizers have some possibility of enacting such positive change, homogenizing the experiences of informal women workers is not an effective framing tool. In the words of an informant, *‘...it’s difficult to say that just in the name of sisterhood or solidarity that the problems are the same. Nobody can forge sisterhood or solidarity by saying “Come on, all our problems are the same, let’s all just be friends.” They might, however, acknowledge that (a Muslim SEWA member’s) problems are different from (a Hindu SEWA member’s), and probably after that acknowledgment, things might get better, for them to collectivize under the same larger banner.’* Such approaches resemble Mohanty’s conceptualization of the term ‘Third World’ as a common identity marker for women of different ethnicities and nationalities struggling against similar imperialistic structures.

As such, SEWA’s practices of bridging the gap between such solidarity-building approaches include constantly initiating such conversations under a shared collective identity, encouraging participation in working collectively towards shared goals, and gradually developing a sensitivity to intersecting dimensions of discrimination over time. Such belief systems are deeply-embedded within the local context, and overcoming them requires a combination of equalizing and intersectional approaches

that can affirm shared identity across one category, while also acknowledging differences in treatment across others. Such contextual factors influence SEWA organizers and leaders' vernacularization of HRBA principles of equality and non-discrimination, such as presenting them as organizational values under Gandhian terms of non-violence – or within the melody of a Bollywood song – instead.

5.3.3.: Frame-bridging – Institutional support paving the way for improved capacities

SEWA's approach to gradually releasing responsibilities and leadership capacities is another way they balance out using their lobbying power and institutional support to improve the capacities of their informal women worker members. However, eliciting the participation of only women who are particularly forthcoming and confident in their abilities is not enough. The positive effects of their participation must also trickle down to the individual level.

At this individual level, SEWA organizers specifically train aagewans on negotiation skills, particularly with government authorities. In the words of an informant, *'...privilege embeds certain ways of talking, right? So we try to empower her so as to enable her to push back against me a little bit, so we can work with her, and then she takes it to her community. Then they all decide what steps they want to take, like for example "We need electricity."'* The bulk of SEWA's rights-based advocacy thereafter is providing aagewans and their communities the kind of background institutional support required to collectively bargain with government authorities, such as by providing them direction to the municipal offices, arranging for transportation, accompanying them as translators – but leaving the majority of negotiating up to the informal women workers themselves.

SEWA organizers are well-aware that their comparatively privileged socioeconomic position could ease the path, but when SEWA negotiates with any state authority, it's always an informal economy worker herself.' In the words of an informant, *'It's a very conscious effort on our part to step back and let the actual workers who planned this and decided its an important issue and speak with the government official.'* SEWA's capacity building initiatives equip them with the skills to negotiate for the fulfillment of practical needs such as, *'...lights, garbage lights, water*

protection, sanitation workers.’ In the words of an informant, ‘For informal workers, it would mean going every week for ten weeks in a row before someone agrees to pass out a tender...But if they do it, it’s their light, our light, I won against the government. They feel confident that it was their achievement. So it’s a very long process, rights-based process, but then...it’s filtered into the community and it becomes self-sustaining.’

As such, according to SEWA organizers, the embedding of practices contributing to a sense of agency among informal women workers must necessarily be present – rather than a top-down, welfare approach, which might fail to address their needs. In the words of an informant, ‘...they know their challenges in the world of work and they’re fighting for the right to work, decent work, all the social protection they need...so for them, telling that from a national level, we are taking into account your demands and fighting for acceptance and bringing it up on an international level, it gives them energy...SEWA believes they have agency, they are change agents. If you give them the information, they will respond positively.’

A final example of SEWA’s balancing act between institutional support and supporting independent action is in the SEWA Shakti Kendras (SSKs), or Empowerment Hubs set up within local communities. SSKs are important sources of information regarding social security and welfare schemes, and assist SEWA members in filling out and submitting forms for such programs initiated by the government. Such welfare schemes often fail to reach remote rural areas. Given the difficulties associated with navigating India’s bureaucratic governmental system, SSKs help informal women workers avail of public welfare benefits they might earlier have not been made aware of, or able to avail of due to low levels of literacy, limited access to Internet sources, and difficulties in mobility.

SEWA informants having worked closely with communities of informal women workers share how SEWA members are reluctant to approach government offices. They fear being turned away, or mistreated, and often request SEWA organizers to intercede on their behalf. However, municipal offices usually require the person submitting the form to be present there physically themselves. SEWA organizers must thus build a sense of confidence and self-efficacy among SEWA members, which is further aided by

the sense of collective membership to a union. In the words of an informant, *‘They need to have accountability and responsibility for the kind of work that they want from the government. We say, “We’re bringing the forms, you have to submit them.”’*

To summarize, accountability and participation as HRBA values intermingle in SEWA’s rights-based advocacy. Not only government authorities, but also informal women workers themselves, must exercise accountability towards both themselves and one another on the basis of rights. Doing so increases the positive impact of active participation and involvement in enacting one’s own rights in practice. SEWA exists as a bridge between worlds, in this respect – casting its protective presence over a marginalized community as a starting point, before encouraging their steps towards advocating for the fulfillment and protection of their own rights through their own collective efforts. In doing so, it balances out intersecting impacts of identities towards more integrated systems of solidarity under the identity of ‘women workers’. In the words of an informant, *‘...we’re not leading the movement, it’s your movement. I’m supporting your movement. I can tell you “Don’t go straight, take a right”, but you’re the driver of the movement.’*

Section 5.4.: Normative standards and SEWA’s advocacy

As a whole, SEWA considers itself a labour movement. Informants affirmed their belief in women’s rights being human rights, however predominantly within a labour lens. This framing of gender equality norms within a labour lens permeates every aspect of their advocacy, including their different programs. Herein, programs focusing on violence against women (VAW) included a strong focus on national legislative Acts which drew from India’s obligations under CEDAW. However, at a ground-level and within their direct interactions with informal women workers, ILO standards were considered far more effective and relevant. SEWA’s experience with CEDAW advocacy has been far more limited in comparison to their transnational involvement with ILO standards, including the lobbying for new standards protecting the rights of home-based and domestic workers. However, many of these challenges can be attributed to the nature of the existing legal and political system within India, which provides both advantages and constraints to SEWA’s rights-based advocacy.

The outline of this section and the different contexts within which SEWA refers to both international and national normative standards is summarized as below.

Table 13: Recourse to normative standards within SEWA's advocacy

| | |
|-------------------------------|--|
| <u>Frame-making</u> | <ul style="list-style-type: none">• Normative standards within SEWA's VAW projects |
| <u>Frame-bridging</u> | <ul style="list-style-type: none">• SEWA's transnational activism |
| <u>Frame resonance</u> | <ul style="list-style-type: none">• Rights advocacy across different audiences |

Author: Pallavi Chatterjee

Section 5.4.1.: Frame-making – Protective standards within SEWA's VAW projects

Many laws protecting women's rights and workers' rights in general existed before India's formal ratification of CEDAW in 1993. However, CEDAW ratification was still seen as helpful towards triggering the push for institutions to legislate and work on different topics and laws. The Protection of Women from Domestic Violence (DV) Act of 2005 was referred to as an example; specifically, it encompasses the provisions of CEDAW General Recommendation no. 19, similar to the POSH Act, 2013, and the Vishaka Guidelines. However, SEWA informants mention difficulties in implementation of all such pieces of legislation, including a lack of funding allocated for the DV Act, 2005, as well as difficulties in accessing justice through its provisions.

Similarly, SEWA's advocacy pushes for protecting the rights of informal women workers through intersecting categories of 'woman' and 'worker.' This can lead to difficulties in advocating for the rights of home-based workers, for whom 'home' environments constitute a workplace, or domestic workers who engage in labour activities within others' homes. When 'home' and 'work' environments intersect within the context of violence, difficulties arise in legal interpretation due to the lack of formal national recognition of international standards such as ILO C177, C189 and C190.

A conflicting data point arose during data analysis. On one hand, a SEWA informant described CEDAW as not directly relevant for women's economic empowerment, providing some congruence with Ulrich's 2007 case study. However, on the other hand, the Vishaka Guidelines – itself based on CEDAW protective standards regarding women's right to work (Article 11 CEDAW) – are considered crucial to

SEWA's VAW programs. Originating as these did due to the impact of violence on an informal woman worker, the POSH Act, 2013 might be more useful as a point of argument, given that its formulation ostensibly extends to both 'organized and unorganized sectors.' Despite SEWA organizers having to fill in its gaps by bringing in the informal sector lens, the presence of such laws is still considered highly positive. They provide SEWA the opportunity to insert itself into negotiations with governments, push for intersectional perspectives to protective standards, and table the demands of informal women workers, and emphasize that these are demands from the ground.

However, given the relatively interconnected nature of SEWA's rights-based advocacy towards the rights of women workers, as well as the extension of protective labour provisions to home environments, ILO standards have emerged as far more relevant to their ground-level advocacy. Specifically, ILO C190 is considered a highly useful standard for initiating conversations among communities of informal women workers on identifying violence, recognizing one's work space as a rights-affirming environment, and one's labour activities as a rights-affirming identity. SEWA was also able to participate in government-led task forces and legislative efforts in 2010-2011 for the creation of protective standards for domestic workers (later culminating in ILO C189). In the words of an informant, '*...these are the intervening spaces where SEWA gets in, wherever we can, we push.*' The ILO itself has similarly provided SEWA a crucial space for international awareness-raising and lobbying for protective standards. As such, SEWA organizers prioritize ILO standards, due to higher relevance to their daily practice and the lived experiences of informal women workers, but also possibly due to their own direct involvement within negotiations at an international level. SEWA's transnational activism is further expanded upon in Section 5.4.2.

CEDAW standards are still, however, perceived by the informants as connected to those of ILO conventions. Both emerge from the UN, but have different processes. India's failure to ratify the Optional Protocol to CEDAW effectively removes it as a possible source of subsidiary protection, which might have affected SEWA's recourse to its standards as a means of ensuring accountability. However, the positive impact of CEDAW standards on key pieces of legislation – and specifically through recourse to

provisions protecting women's economic rights, such as the right to work – is apparent. CEDAW as a whole is considered an important guiding document, described by an informant as '*...(improving) the lives of women. We take it seriously.*' SEWA organizers speaking of the relevance of CEDAW standards might interpret and express its protective provisions through a labour lens. CEDAW protective provisions against eliminating all formal gender-based discrimination, similarly, is considered highly relevant for SEWA's women's rights work. They represents a key discussion point when raised during interactions with donors and government figures, as discussed in Section 5.4.3.

Section 5.4.2.: Frame-bridging – SEWA's transnational activism

In general, SEWA situates international rights standards within the exigencies of grassroots environments. Many such national and international standards involved extensive transnational engagement and participation of groups representing marginalized communities, such as informal women workers, and who are most vulnerable to human rights violations. It is for addressing the needs of such communities that such groups have sought recourse to advocating for their rights at an international level, based on the need to represent the lived experiences of the communities and their demands generated by local movements, and many times, due to a lack of traction or responsiveness from their respective national governments.

A key event in this respect is SEWA's extensive involvement in lobbying efforts for ILO C177. SEWA played an important role in its promulgation, and are campaigning at present for it's ratification at the national level, as well as C189 and C190. As the first trade union to organize informal women workers, many who were home-based, they were quick to build partnerships with the existing women's movements and labour movements during the UN Decade for Women between 1975-1985. SEWA is currently the 8th largest Central Trade Union within the ILO, and its research and documentation among *bidi*, garment and textile workers across India was presented during negotiations, drawing visibility to their vulnerability to exploitation, precarity of work conditions, and the utter lack of protection for their rights within

existing Indian labour law. This would win them the support of the global trade union movement, as well as recognition from the International Union of Food-workers (IUF).

Subsequently, other international trade unions such as the International Textile, Garment and Leather Workers' Federation (ITGLWF), and the International Confederation of Free Trade Unions (ICFTU) would go on to call for international standards guaranteeing the protection of home-workers labour rights. SEWA was heavily involved in subsequent lobbying efforts for tabling the issue, and even joined a coalition with the IUF, ITGLWF, and various home-based workers' organizations and global NGOs. Despite initial resistance from the Employers' Group during negotiations at the ILO level, C177 was finally adopted in 1996, with 246 voting 'yes', 14 voting 'no' and 152 abstentions, predominantly from the Employers' Group delegates.

The purpose of this specific case of SEWA's success at an international level is to illustrate its specific orientation as a movement. Working closely as it does with informal women workers, this lends itself to a three-way intersection between the women's rights movement, the workers' rights movement, and the cooperative movement. The latter especially focuses on ensuring access to financial services among marginalized and socioeconomically-disadvantaged populations, particularly during times of crisis. SEWA's philosophical orientation similarly began from Gandhian principles and continues to espouse values such as truth and non-violence in its activities. However, in the words of an informant, *'...we've expanded beyond Gandhi in many ways, taking in concepts of intersectionality...we are political but non-partisan...it's the woman worker who is front and foremost, no party, no caste, no religion, no ethnic identity.'*

All such historical factors have impacted SEWA's identity as an intersectional labour movement. Its five-decade history, as well as its close ties to other national movements and its ability to navigate the intervening spaces within decision-making bodies have led to some reluctance in explicitly identifying as a feminist, or even human rights-based movement. These reflect further conflicting data points, given SEWA's explicit rights-based advocacy and focus on rights awareness-raising and negotiating for the extension of rights protective provisions across different sectors. However, given the

multiple stakeholders SEWA must negotiate and collaborate with, this could reflect the need to pragmatically adapt their approaches and strategies so as to ensure resonance of their rights-based advocacy across different audiences. For example, in the words of an informant, *‘Our advocacy strategy, and in my opinion, that of the Indian women’s movement, or even generally which is in the rights-based approach, is that it’s not against the government. It’s like, “We want to complement you.”’*

As such, despite not having formally established itself as espousing a HRBA, SEWA’s commitment to HRBA practices and using human rights standards within their advocacy for accountability and participation is evident. Their organic practice of such standards takes different forms, reflecting the importance of vernacularizing international human rights and gender equality norms within different local contexts. When negotiating with government or development authorities, a different human rights language is required, as opposed to when conducting unionizing or rights-awareness raising with communities of informal women workers at the ground level.

Section 5.4.3.: Frame resonance – Human rights norms across different audiences

The true value of vernacularizing gender equality norms as a facet of ‘rights in translation’ as espoused by Merry and Levitt (2020) is raised through SEWA’s multi-stakeholder partnerships and engagement with duty-bearers, rights-holders, and associated parties, such as civil society and development authorities. The existence of international norms such as CEDAW, ILO conventions, but also the SDGs are considered relevant in different extents, and specifically across different audiences. One informant even described their role as *‘translation...between SEWA’s core work and these international conversations that are happening, and have to keep happening. We want that interest for women’s economic rights, the informal economy, human rights, labour rights.’*

International guidelines such as the SDGs were even described as a ‘framing tool.’ Given their grounding in international human rights laws, comprehensive standards, and establishment of poverty linked to human rights violations, the SDGs are an attractive underlying framework for SEWA’s negotiations with development authorities. They allow SEWA organizers to frame their activities conducted on a

ground level with informal women workers through an over-arching goal (such as working towards SDG 5, Gender Equality, or SDG 8, Decent Work). SEWA informants affirmed that the concept of ‘decent work’ as central to their advocacy, as mentioned in Section 5.2.1. Similarly SDGs with gender equality components (SDG 5), as well as the right to safe public spaces (SDG 11) are also considered highly relevant.

It was not explicitly mentioned whether SEWA definitions of ‘decent work’ drew from SDG definitions, though it is unlikely. Usage of such ‘modern’ terms is a means of vernacularizing international standards of local demands among international actors. Such arguments are especially relevant when SEWA negotiates with donors and during fundraising activities, since it positions itself as supporting donors towards helping them fulfil the SDGs. In the words of an informant, *‘We stick to our rights-based work as our core model, however, it has to be palatable to them as well because they have to go back to whoever they are accountable to.’*

CEDAW standards likewise are useful for framing SEWA’s rights-based advocacy with government authorities. In the words of an informant, *‘We have trainings on CEDAW, some of our women are aware of it, but we mostly use it to design programs we know the government will pass when we partner with them especially, so we’re trying to get Local Complaint Committees (LCCs) set up. We have it in the background, but not directly.’* Given the deficits in existing protective legislation pertaining to informal women workers, SEWA leverages its influence and lobbying power to push for participation within such task forces and monitoring bodies, in order to further accountability and visibility of informal women workers’ challenges.

As a whole, however, such international standards are described as abstract. In the words of an informant, *‘Someone sitting in Washington DC or London isn’t really going to understand how challenging it is for a woman to get a (social security) card, it’s impossible, they haven’t met a woman like that, they’ve never lived a life like that. But I have, I have access to people talking to me about this.’* As such, they are not always directly useful during unionizing and organization activities with informal women workers and SEWA members. HRBA practices of operationalizing human rights standards are especially relevant here, since informal women workers are

described as seeing greater value in tangible action steps, over the existence of laws and normative standards.

Even negotiating with government authorities can be difficult with reference to abstract normative standards, particularly due to a lack of awareness of existing legislation among municipal actors and lower-level government workers, and what enacting them in practical terms might mean. As such, reference to human rights and gender equality standards protected within, say, the POSH Act, 2013 might not always be relevant or useful. In the words of an informant, *'We go and talk to the people who are part of the LCC and they don't even know that they're a part of the committee. We go to the Labour Departments in various states and districts and say there need to be ID cards, social security boards for home-based workers and domestic workers...they don't know anything. They say, yes, this card works, but we don't know what it does, we don't know where you're supposed to go.'* Similarly, when demanding accountability from local law enforcement regarding the formation of LCCs, SEWA informants described how police officers would claim an absence of any cases or complaints. In the words of an informant, *'There are no cases because street vendors, domestic workers, home workers have no idea about these laws, they don't know about POSH, they don't understand what violence is and isn't, you have to show them what counts as violence. And then there's the stigma of shame attached to it, if they go and complain about their employers, they'll lose work, they won't find anything else. It's a difficult terrain to work on.'*

Further challenges are raised by the nature of the Indian legal and political system itself, with its bureaucratic foundations and relatively slow pace of change, which decreases accountability, and can often be indifferent, if not outright hostile, to informal women workers. Coming forward with cases of domestic violence would include extensive questioning and scrutiny by local law enforcement, and word would soon spread throughout the local community, effectively ostracizing informal women workers and their families. The justice system as a whole was described as cumbersome, with excessively lengthy proceedings and delaying of action; informal women workers cannot afford to miss days of work due to time spent in filing reports or

going to the courts, which reduces their willingness to come forward with their complaints. In the words of an informant, *'...the judicial justice system, redressal and recourse mechanisms must be made (smoother). Rights don't get practiced just because they exist. Rights must be made accessible. You can't just make a law and then sit back, you have to make sure it's accessible....if it doesn't trickle down to who it's supposed to protect, what's the point?'*

How to navigate such difficult terrain when existing normative standards are abstract and lack of awareness obstructs accountability and participation? The tangible outcomes represented through development goals provided one means of overcoming these interpretive deficits. SEWA informants provided an important distinction between development authority goals, and the specific means by which informal women workers can practice advocacy for their rights within the ambit of such goals. In the words of an informant, *'Funders don't give money for rights-based work, they'd rather give money for development work. Like, "Go set five pumps up." For us, it's about empowering a woman to advocate for pumps to be set up. So with the fund money that comes in, we hire people who figure out how to put together a module teaching women how to advocate for the pump, or her rights as a resident of the community.'*

As such, while unfortunate that SEWA organizers' experience with development authorities reflects a clear distinction in priority between development goals and rights standards, SEWA itself demonstrates the efficacy of HRBAs adjusting its own goal of bridging development and human rights standards. SEWA's flexibility of praxis within the overarching necessities of donor requirements reflects their commitment towards ensuring sustainability of human rights norms and values within local communities. Using development goals as a framework enacting human rights norms is thus an effective means of operationalizing the latter as tangible action steps during capacity-building sessions with informal women workers. SEWA considers funder targets – such as a specific number of women being granted access to land rights, housing, or credit – and breaks them down further during their leadership capacity training with aagewans. They further ensure that such targets are acted upon through an informal 'pay it forward' mechanism hinging upon rights awareness. In the words of an informant,

‘...we will also focus on creating the kind of education and awareness that the aagewan can go and get it done for her neighbour, like helping her get a housing loan. And that can be part of my development goal, like 1 out of 200. But we will make sure that one woman goes on to help three others, and that the knowledge is now in the community. We create modules that enable knowledge to stay in the community.’

Such action steps greatly increase the sense of ownership and pride in one’s participation and initiative within such activities. SEWA organizers thus consider it far more useful to frame their participation in activities within the lens of such tangible action steps, as opposed to lauding their commitment to furthering existing acts of national legislation or international standards. In the words of an informant, *‘You can’t expect these women to randomly quote laws...for them to know that there exists a law, ...that they’re recognized, and the kind of harassment they face has certain recourse and redressal in the language of law, that itself is fairly effective. Maybe not enough, but successful. You know, like actions they can take to make it possible.’*

SEWA structures its leadership to ensure appropriate representation of informal women workers across levels; Secretary-General Jyoti Macwan is herself a former informal worker, and represents SEWA during negotiations with India’s Central government. Accountability mechanisms on part of the government and development actors are thus vernacularized into concepts more familiar and accessible to informal women workers, so as to effectively ensure their participation in advocating for their rights. In the words of an informant, *‘SEWA is run by women in the informal economy. They don’t even know what a human rights-based approach might mean to them, they define themselves as a collective, as a movement. That’s the only thing we only identify as on a movement level. We believe in collectives, strength in solidarity. That’s our approach.’*

Chapter 6: Conclusion

In concluding, a summary of the answers to the sub-questions, and finally to the main research question is presented firstly as follows.

6.1.: Summary of answers to research questions

Sub-question 1: *What human rights standards are most relevant in SEWA's advocacy for state accountability for the rights of informal women workers?*

The primary human rights standards most relevant for SEWA's advocacy for informal women workers when negotiating with government authorities pertain to the right to work, and thereafter the right to just and favourable conditions of work. Their primary foundation as a labour movement frames their interpretation of women's rights concerns such as gender-based violence and workplace sexual harassment as forms of discrimination that impede women's productive potential and contributions to the wider society and economy. Importantly, economic and social rights, such as the right to work, are non-justiciable in India, but SEWA reframes the relatively disadvantaged identities of informal women workers as empowered citizens and rights-holders through reference to their civil and political rights, such as their right to vote, participate in public life, and freedom of association and assembly. Thus the HRBA principle of non-discrimination and equality is an important enabler for framing claims for accountability in ways that might resonate with duty-bearers.

Sub-question 2: *What rights and entitlements are the topic of SEWA's participatory training interventions among communities of informal women workers?*

Much of SEWA's efforts focus on building recognition within informal women workers that their labour activities constitute 'work', and empowering them towards participating and collectively advocating for their rights. This means reframing their identities as rights-holders, and overcoming harmful traditional beliefs legitimizing their subordinated position in society due to being women. SEWA's collective leadership model focuses on organizing informal women workers into unions, where knowledge of their economic, social and political rights as union members are disseminated, as well as

efforts towards overcoming internal discriminatory practices. SEWA also specifically provides institutional support for assisting informal women workers in accessing public benefits through existing welfare schemes, as well as learning to negotiate with municipal and government authorities. Thus HRBA principles of empowerment directly and positively impact participation.

Sub-question 3: *To what extent have the protective provisions pertaining to employment within CEDAW been valuable for SEWA's advocacy?*

Article 11(a) CEDAW defines the 'right to work' as an inalienable human right entitled to all human beings, across genders. Along with CEDAW General Recommendation no. 19, it has specifically formed the basis of a number of legislative documents crucial to SEWA's projects addressing violence against women, such as the Vishaka Guidelines, and subsequently, the POSH Act, 2013. CEDAW definitions of discrimination and fundamental grounding as an international normative standard for the protection of women's rights is considered important to SEWA's advocacy as well. Reference to CEDAW standards comes up when SEWA negotiates with government authorities for the extension of existing legislation to informal women workers as well, and is considered a useful framing tool in general. However, when unionizing and organizing informal women workers directly, ILO standards (especially C177, C189, and C190) are considered more relevant, due to their more explicit grounding in labour rights and being specifically designed keeping in mind informal women workers.

Main question: *In what ways are HRBA principles of accountability and participation practiced in locally meaningful ways through SEWA's work with informal women workers?*

As shown above in the presentation of the answers to the sub-questions, SEWA's strategies for accountability are two-fold in terms of who is being addressed. With government authorities, they must often advocate for rights that have not been codified within Indian legislation yet. Drawing from Indian jurisprudence extending justiciable civil and political rights towards the protection of economic and social rights, SEWA positions informal women workers as voting citizens and contributing workers

to Indian society and economy, with a focus on drawing visibility to their labour activities and numbers. They also involve themselves in the planning and development of labour legislation by bringing in the ‘informal sector lens’, and advocate for the extension of existing legislation to informal women workers. SEWA also pushes for strengthening the legal ‘teeth’ of protective provisions pertaining to employment, such as vesting greater powers within local accountability mechanism, such as LCCs, so as to shift the government perspective from a welfare approach to an agency approach. Lastly, when action at the national level fails to gain traction, SEWA exercises its tremendous influence and lobbying power within international circles to generate pressure upon the national government.

When working directly with informal women workers, SEWA’s strategies blend accountability and participation alike. Eliciting the participation of community leaders as a starting point, they focus strongly on both organization as well as mobilization of informal women workers towards assessing their situation, understand what rights they are entitled to as workers, and providing institutional support for the action steps they collectively agree upon. This effectively prevents their grassroots activism from following a top-down, welfare-oriented approach where they intercede on behalf of informal women workers and effectively prevent any sustainable change to their situation. Rather, informal women workers must develop the capacity to stand up for themselves as workers entitled to rights, and actively participate in advocating for their own rights and entitlements. Participation in collectives and unions can empower them to protect themselves from mistreatment by law enforcement, overcoming their internal prejudices against fellow informal women workers of different castes and religions, and experiencing a sense of accomplishment and ownership from understanding that change is possible through persistence, courage, and collective effort.

Thus both duty-bearers and rights-holders must exercise accountability, the former to the latter, and the latter to themselves, as well as the former. Thus HRBA principles of accountability and participation have a reciprocal, mutually reinforcing relationship, and are strengthened through other principles such as empowerment, non-

discrimination and equality, and linkage to human rights norms, reflecting their interrelated nature.

The mutually reinforcing nature of HRBAs in bringing to actionable steps both state obligations as well as development targets, when mediated by local contextual factors, is depicted below. Some considerations for HRBA practices arise from the study's findings.

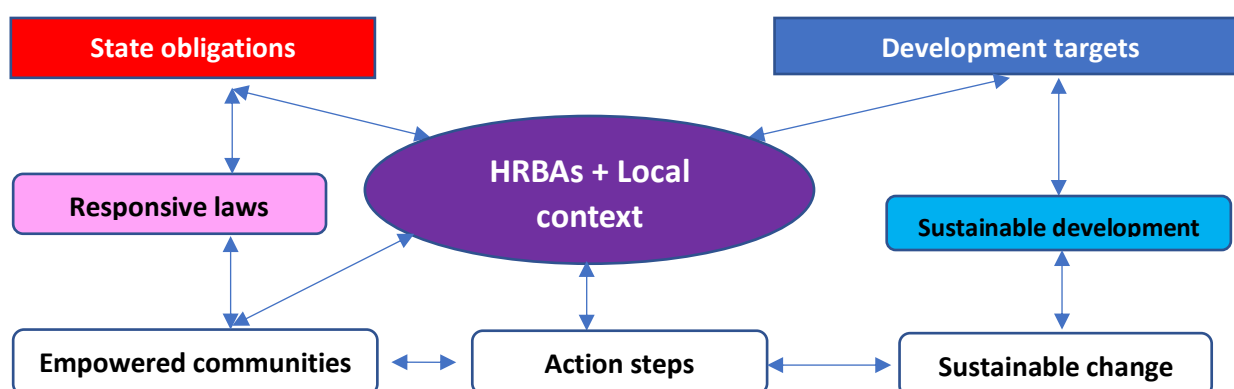


Diagram 2: A summary of factors influencing HRBA practices

Author: Pallavi Chatterjee

6.2.: Empowering local actors towards organic, bottom-up change

SEWA's own leadership capacity building sessions among individual grassroots community leaders, who are thereafter tasked with engaging in such capacity-building within their own communities, is a positive example of localized, sustainable practices of rights-awareness and action. Aagewans positionality in comparison to their fellow informal women workers occurs on far more equalized grounds, which naturally lends itself to resonant localized translations of human rights and gender equality norms.

The importance of such localized translations of human rights and gender equality norms underlies the suggestion at the 'L' of the PANEL principles stand for 'Localization' instead. Informal women workers are keenly aware that their practical needs are not being met. Highly effective in inspiring within them the desire to participate in advocating for their own right is the knowledge that their claims are protected within law, and that there exist systems of redressal and a means of expressing

their needs as ‘rights’. Linkage to human rights norms is thus already implicit in such practice. However, in order for such change to be sustainable, HRBA practitioners must meet the community at their level of preparedness. The form and essence of universal human rights norms must necessarily be framed, disseminated and practiced in locally meaningful and relevant ways in order to truly resonate within communities of practice.

6.3.: The importance of rights-awareness across different stakeholders

As demonstrated through the interviews, the mere existence of protective laws and standards does not automatically translate into action at a ground level, if not appropriately budgeted for, practiced, and prioritized. A lack of awareness of such laws is not simply present among the local populace, but even among government officials and law enforcement across various levels. This can effectively neuter their protective potential when marginalized communities refuse to come forward with their complaints, law enforcement refuses to involve itself in enacting justice, and government authorities claim a lack of data regarding rights violations.

The ‘E’ of the PANEL principles stands for ‘empowerment’, referring to capacity-building towards exercising choice and agency in one’s life, particularly for advocating for the protection of their rights. However, this arguably places responsibility of rights awareness and action more so on rights-holders to be ‘empowered’, over duty-bearers to fulfil their own responsibilities. As has been demonstrated in the present study, not only government authorities, but informal women workers themselves must exercise accountability. The latter especially must develop the self-efficacy to claim their rights and entitlements within relatively inaccessible government spaces, and effectively learn to stand up for themselves through the power of collective strength. Surely government authorities, who are already vested with greater ‘power’ in terms of relative positionality, can meet rights-holders halfway in the exercise of their duties within their office. They are thus as much responsible to be aware of how existing laws work, and acting to ensure their protection and fulfillment.

The findings of the study suggest that perhaps the ‘E’ of ‘empowerment’ could be replaced with ‘Education’ instead, pertaining to a holistic, multi-stakeholder involvement within such awareness-raising efforts, over concentrating knowledge of

one's rights within one group (i.e. rights-holders) alone. Duty-bearers and rights-holders alike are thus responsible for acting upon knowledge of rights and entitlements upon being educated as such, and the goal is to work together for their protection and fulfillment, rather than simply unilateral demands from one group to another.

6.4.: The instrumentalized reality of human rights practice

As demonstrated by SEWA's experience working with development authorities, development targets and allocation of funds can sometimes be formulated without keeping in mind sustainability of practices, or community involvement. These are unlikely to persist once the development authority ceases its operations due to having ostensibly met their targets. There is, thus, some credence to Wandenhole and Cready's (2014) argument regarding the difficulties in bridging the gap between development and human rights actors' goals, given the results-based perspective of the former, as well as their reluctance to position themselves in any way against government authorities.

SEWA's approach to such realities has been remarkably pragmatic. They represent an expression of how HRBAs bring together multiple stakeholders rather than position themselves against any, particularly government authorities. They have simply reframed development targets as actionable human rights goals instead, making use of informal mechanisms based on community values (such as paying help forward), or creating training modules focusing on capacity-building (such as training women to advocate for the building of a water pump through reference to their rights as residents). Such approaches ensure sustainability of practices within local communities, even when different stakeholders have highly different goals and might even instrumentalize 'human rights' or 'gender equality' as framing tools for essentially profit-based targets.

In the end, however, both human rights and development actors benefit from a focus on sustainability to their operations over time. An empowered community is more likely to positively engage in its own development, which can spur sustainable growth towards towards their empowerment. The reciprocal and mutually reinforcing relationship between HRBAs and development goals on the basis of sustainable practices underlies the suggestion of a new HRBA principle – 'S' for 'Sustainability'. As has been demonstrated with SEWA's legal victories and enactment of protective

legislation, the mere existence of laws and standards are not enough. Many such protective standards have existed for decades, and have yielded little change. As such, they must be constantly followed up on, adapted, and disseminated within local communities in ways fostering the sustainability of their provisions over time.

6.5.: Final statement

A quick comparison of the traditional PANEL principles as compared to those proposed by the present study is summarized as follows.

Table 14: Comparison of PANEL principles

| | Traditional definition | New proposed definition |
|----------|---------------------------------|------------------------------------|
| P | Participation | Participation |
| A | Accountability | Accountability |
| N | Non-discrimination and Equality | Non-discrimination and Equality |
| E | Empowerment | Education |
| L | Linkage to human rights norms | Localization of human rights norms |
| S | - | Sustainability |

Author: Pallavi Chatterjee, adapted from W.Suntinger¹⁷²

The study began with an exploration of how HRBA principles are practiced, and emerged with a deeper understanding of their interrelatedness. The study thus demonstrates the tremendous importance of localized approaches to human rights translation, and the relevance of framing claims appropriately to different audiences, as well as connecting organizational ideologies across different stakeholders, movements, and organizations. It provides credence to a number of theoretical conceptualizations of human rights practice, such as the interrelatedness of grassroots and positivist rights advocacy, gendered perspectives to development practice, and Third World Feminist Analysis (TWFA) approaches to analyzing international normative standards. All such theories hold well when applied to a ground level scenario in practical terms, and have significant implications for effective HRBA practices.

¹⁷² W. Suntinger (2020), ‘Human rights-based approach’, p. 3

Within the present study, SEWA's experiences demonstrate the importance of rights-based approaches having to consider the exigencies of local contexts and adjusting their advocacy accordingly – rather than enacting a unilateral practice of how international norms should be according to one perspective of reality. Instead, human rights and gender equality norms are actively engaged with, understood, and practiced in different ways across communities, represent multiple perspectives of reality, and how such realities can be framed towards sustainable outcomes over time. The interrelatedness of first, second, and third generations of human rights frameworks are thus all crucial to successful rights-based advocacy, particularly in the absence of distinct legal standards.

Informal women workers continue to struggle for the fulfillment and protection of their rights in India. Existing systems of marginalization and discrimination continue to worsen with the depredations of the COVID-19 pandemic. However, SEWA's persistence and engagement has lent itself to a deeply-held recognition of themselves as empowered rights-holders and agents of change. Theirs continues to remain possibly the most holistic, comprehensive, and flexible model of rights-based advocacy and capacity-building which actively involves informal women workers in every step of the long, interminable journey ahead towards full employment, and full human rights protection and fulfillment.

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Legislation

- Protection of Street Vendors Livelihoods and Regulation of Street Vending Act, 2014
- Sexual Harassment at the Workplace (Prevention, Prohibition, and Redressal) Act, 2013
- The Criminal Amendment Act, 2013

Interviews

- SEWA informant 1
- SEWA informant 2
- SEWA informant 3

Appendix A:

Consent Form for Participation in Interview Research

Individual ☐ / Academic Expert ☐ / NGO ☐ / Media ☐ / State Organization ☐

Research Project Title: Bringing in the informal sector lens: Human rights-based approaches in the advocacy strategies of India's Self-Employed Women's Association.

Research Investigator: Pallavi Chatterjee

Research Participant's Name:

Research Organization Name:

Contact Information

If you have any further questions or concerns about this study, please contact:

| | | |
|---------------------|-------------------------------|--------------------------------------|
| Researcher Name | Pallavi Chatterjee | Dr. Brigitte Holzner (Supervisor) |
| <u>Phone Number</u> | +43 6603873863 | |
| <u>E-mail:</u> | pallavichatterjee92@gmail.com | brigitte.holzner@chello.at |

I would like to express my most sincere gratitude for agreeing to be interviewed as part of the above research project. This consent form is necessary to ensure that you understand the purpose of your involvement and that you agree to the conditions of your participation.

The interview will take approximately, 30 minutes to 60 minutes. There is no risk associated with your participation, however, you have the right to stop the interview or withdraw from the research at any time, prior to publication.

Therefore, I kindly ask you to sign this form to certify that you approve the following:

- The interview will be recorded, and a transcript will be produced.
- You will be sent the transcript and given the opportunity to correct any factual errors.

- The transcript of the interview will be analysed by me, Pallavi Chatterjee, as research investigator.
- Access to the interview transcript will be limited to Pallavi Chatterjee, and Dr. Brigitte Holzner, the research project supervisor.
- The actual recording will be safely stored, for the purpose of research only.
- Any variation of the conditions above will only occur with your further explicit approval.
- Any summary interview content, or direct quotations from the interview, that are made available through this academic publication or other academic outlets will use the quotation agreement below.

Quotation Agreement:

With regards to being quoted, please put a X next to any of the statements that you agree with:

- I wish to review the notes, transcripts, or other data collected during the research pertaining to my participation. ☐
- I wish to be quoted under my organization's name. ☐
- I wish to be quoted under my own name, when expressing personal opinions, or informing about my work ☐
- I agree to be quoted directly. ☐
- I agree to be quoted directly if my name is not published and a made-up name (pseudonym) is used. ☐
- I wish full anonymity ☐
- I agree that the researcher may publish documents that contain quotations by me. ☐

All or part of the content of your interview may be used;

- In academic papers, and/or policy papers ☐
- On academic feedback events ☐
- In an archive of the project as noted above ☐

By signing this form, I agree that;

1. I am voluntarily taking part in this project. I understand that I don't have to take part, and I can stop the interview at any time.
2. The transcribed interview or extracts from it may be used as described above.
4. I don't expect to receive any benefit or payment for my participation.
5. I can request a copy of the transcript of my interview and may make edits I feel necessary to ensure the effectiveness of any agreement made about confidentiality.
6. I have been able to ask any questions I might have, and I understand that I am free to contact the researcher with any questions I may have in the future.

Full Name of Research Participant

| | |
|-------------------------|-------|
| <hr/> | <hr/> |
| Participant's Signature | Date |

| | |
|------------------------|-------|
| <hr/> | <hr/> |
| Researcher's Signature | Date |

Appendix B: Interview question guide

- What human rights standards are most relevant in SEWA's **advocacy for state accountability** for the rights of informal women workers?
 - Would you have in mind examples of any key events that might have influenced SEWA's history of mobilizing women workers towards recognition for formal employment?
 - On what protective standards (such as national law, legislative decisions etc.) does SEWA base its advocacy for informal women workers?
 - In your opinion, are international human rights standards pertaining to work and economic rights sufficiently present within Indian law?
- What rights and entitlements are the topics of SEWA's **participatory training interventions** among communities of informal women workers?
 - How does SEWA understand 'participation' for informal women workers? How is 'participation' understood by the informal women workers during training sessions?
 - What participatory methods are used by SEWA for organizing informal women workers? Are there any such methods which have been especially effective?
 - Does SEWA see participation linked to mobilization of informal women workers? Is increased participation linked to leadership?
 - How are the trainees encouraged to view 'work' as a right? How are they encouraged to define 'full' or 'formal' employment?
- To what extent have the protective **provisions pertaining to employment within CEDAW** been valuable for SEWA's advocacy?
 - Has India's obligation to protect CEDAW standards influenced SEWA's negotiations with state authorities? If yes, how?
 - Since CEDAW protects equality in employment opportunities across genders, would you consider CEDAW standards effective in protecting the rights of informal women workers?
 - Would you consider CEDAW an effective standard in protecting women's rights as a whole? If yes, in what ways?

Appendix C: Abstract

Human rights-based approaches to development emerging from the 1990s have great relevance for furthering gender equality norms within global South contexts, particularly in the realm of women's economic rights. In a national political and legal landscape indifferent to the concerns of informal economy workers, how can human rights standards within advocacy frame informal women workers' rights as state obligations to be implemented? The Indian Self-Employed Women's Association (SEWA) has addressed such challenges, advocating for recognizing the socioeconomic contributions of informal women workers, and their right to just and favourable conditions of work. The present study contextualizes their practice within the human rights-based approach through the principles of accountability and participation, as well as linkage to international human rights norms. The main results demonstrate the importance of interrelatedness of first, second, and third generations of human rights. Some suggestions for new directions of HRBA practices are presented.

Keywords: human rights based approach, gender, informal economy, informal women workers, accountability, participation, CEDAW, ILO, framing

Menschenrechtsbasierte Entwicklungsansätze aus den 1990er Jahren haben große Relevanz für die Förderung von Geschlechtergleichstellungsnormen im Kontext des globalen Südens, insbesondere im Bereich der wirtschaftlichen Rechte von Frauen. Wie können in einer nationalen politischen und rechtlichen Landschaft, die den Belangen der Beschäftigten in der informellen Wirtschaft gleichgültig ist, Menschenrechtsstandards im Rahmen der Interessenvertretung die Rechte informeller Arbeitnehmerinnen als staatliche Verpflichtungen zur Umsetzung einrahmen? Die indische Vereinigung für selbstständige Frauen (SEWA) hat sich solchen Herausforderungen angenommen und sich für die Anerkennung der sozioökonomischen Beiträge informeller Arbeitnehmerinnen und ihres Rechts auf gerechte und günstige Arbeitsbedingungen eingesetzt. Die vorliegende Studie kontextualisiert ihre Praxis innerhalb des menschenrechtsbasierten Ansatzes durch die Prinzipien der Rechenschaftspflicht und Partizipation sowie der Verknüpfung mit internationalen Menschenrechtsnormen. Die wichtigsten Ergebnisse zeigen die Bedeutung der Wechselbeziehungen zwischen der ersten, zweiten und dritten Generation von Menschenrechten. Einige neue Richtungen für HRBA-Praxis werden vorgeschlagen.

Schlüsselwörter: menschenrechtsbasierter Ansatz, Gender, informelle Wirtschaft, informelle Arbeiterinnen, Rechenschaftspflicht, Partizipation, CEDAW, ILO „Framing“ Ansatz