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DISTANT SILENCES AND DEFAULT JUDGMENTS: ACCESS TO JUSTICE FOR
TRANSNATIONALLY ABANDONED WOMEN

SHIKHA SILLIMAN BHATTACHARJEE

INTRODUCTION

Modern transnational mobility in the South Asian diaspora¹—when combined with traditional practices that enforce women’s dependence upon their husbands for social and economic standing—has had devastating consequences for South Asian women who marry across borders. “Contemporary global shifts” have produced “new types of consumerism in the form of escalating dowry demands,” increased transnational mobility, and fueled a desire by parents to have their daughters marry spouses living and working abroad.² Against this transnational backdrop, wives are routinely “abandoned” by their husbands across borders: left without resources, divorced without consent, and strategically denied access to forums where they can advocate for their social and economic rights. The scale of the problem is staggering. By a 2007 estimate, over 25,000 women were abandoned in one state in India alone.³ This “transnational abandonment” of South Asian women by their husbands is “a new face of violence against women.”⁴

While desertion of adult women from other communities may not significantly impact their social standing, abandonment frequently has devastating consequences for married South

¹ There are “significant populations of overseas South Asians” in countries including Australia, Canada, Malaysia, Myanmar, Saudi Arabia, South Africa, the United States, and the United Kingdom. Sharmila Lodhia, *Brides Without Borders: New Topographies of Violence and the Future of Law in an Era of Transnational Citizen-Subjects*, 19 COLUM. J. GENDER & L. 703, 714 (2010) (citing HIGH LEVEL COMMITTEE ON INDIAN DIASPORA, REPORT OF THE HIGH LEVEL COMMITTEE ON THE INDIAN DIASPORA (Dec. 2001), available at http://indiandiaspora.nic.in/dias_porapdg/part1-est.pdf).

² *Id.* at 716–17 (citing Interview with Ranjana Kumari, Director, Centre for Social Research, in Delhi, India (Jan. 27, 2005); Interview with Donna Fernandes, Founding Member, Vimochana, in Bangalore, India (Feb. 16, 2005); Interview with Asmita Basu, Project Coordinator and Legal Consultant, Lawyers Collective Women’s Rights Initiative, Delhi, India (Jan. 25, 2005)).

³ URJASI RUDRA & SHAMITA DAS DASGUPTA, MANAVI, TRANSNATIONAL ABANDONMENT OF SOUTH ASIAN WOMEN: A NEW FACE OF VIOLENCE AGAINST WOMEN, 7, 7 & 18 (2011) (reporting that the “number of transnationally abandoned women in India has reached staggering proportions. Nearly every Indian state has women deserted by nonresident Indian (NRI) husbands although not all such men are immigrants to the U.S. A significant number of men who have migrated to other countries including Canada, U.K., Europe, and the Middle East have also deserted their wives and children in India. By a 2004 estimate, approximately 12,000 women were abandoned in the state of Gujarat, and according to a 2007 study, an estimated 25,000 women have been left behind in the state of Punjab. In 2008, India’s minister for Overseas Indian Affairs, Vayalar Ravi, stated that in Punjab alone, at least 20,000 legal cases were pending against NRI husbands, presumably for abandoning their wives. In Canada, there may be as many as 10,000 runaway grooms. However, the official estimates do not necessarily tally with the non-governmental numbers. According to Government of India’s estimate, émigré husbands have abandoned at least 30,000 women in India, a number significantly less than what newspaper reports and NGOs suggest.”)

⁴ *Id.* at 7.

Asian women. These consequences are deeply rooted in the pivotal role assigned to marriage in South Asian women's lives. As is typical of traditionally patriarchal societies, men are considered instrumental in providing women with identity and social standing.⁵ A wife, therefore, is often completely dependent on her husband, which is encouraged within certain communities and "often actively imposed by disallowing her to work or even forcing her to give up a job if she has held one before marriage."⁶ Within this context, abandonment after marriage profoundly affects the financial, emotional, physical and social realities of South Asian women.⁷

Transnational abandonment takes two distinct forms: (1) abandonment by husbands who migrate after marriage, leaving their wives in their home country without any prospect of reunification; and (2) abandonment of married women who live abroad before they are deceptively or forcibly taken back to their home country and deserted.⁸ In most cases, initial abandonment is followed by the husband securing an *ex parte* divorce since women abandoned in their home country are usually unable to appear in courts abroad.⁹ By failing to appear in court, these women lose the opportunity to advocate for their economic interests.¹⁰ This "pattern of abuse,"¹¹ characterized by deliberate "endangering of a woman's welfare, safety, and future prosperity,"¹² and combined with the husband's conscious design to "thwart her access to legal recourse"¹³ and rightful financial, marital and social assets, demonstrates how the "flexible citizenship"¹⁴ of transnationally mobile diaspora communities can undermine the ability of national laws to protect vulnerable women from exploitation.¹⁵

As a lens for understanding the challenges associated with advocacy across jurisdictions, this paper will focus on the particular legal obstacles faced by women abandoned in India by men who reside in the United States. Legal advocacy on behalf of transnationally abandoned South Asian women poses significant challenges for advocates in both the U.S. and South Asia. South Asian American women's advocacy organizations estimate "that between ten and twenty percent of their work now involves women deserted transnationally."¹⁶ Challenges associated with representing transnationally abandoned women include facilitating representation during divorce proceedings in U.S. courts for clients residing overseas, navigating distinct national family law regimes that reflect divergent socio-cultural realities, and enforcing judgments across jurisdictions in cases where advocates secure court ordered economic support.

⁵ *Id.* at 12.

⁶ *Id.*

⁷ *Id.* at 7.

⁸ *Id.* at 20.

⁹ RUDRA & DAS DASGUPTA, *supra* note 3, at 7.

¹⁰ RUDRA & DAS DASGUPTA, *supra* note 3, at 7 (noting that these women "lose out" not just on their own economic interests, but on "furthering . . . their children's financial interests" as well).

¹¹ Lohdia, *supra* note 1, at 720.

¹² RUDRA & DAS DASGUPTA, *supra* note 3, at 12.

¹³ RUDRA & DAS DASGUPTA, *supra* note 3, at 12.

¹⁴ Lohdia, *supra* note 1, at 720 (citing AIHWA ONG, FLEXIBLE CITIZENSHIP: THE CULTURAL LOGICS OF TRANSNATIONALITY 6 (1999)).

¹⁵ See Lohdia, *supra* note 1, 720 ("This pattern of abuse demonstrates how the 'flexible citizenship' of certain cosmopolitan subjects negates the efficacy of law and legal advocacy efforts conceived within the limited boundaries of the nation-state.").

¹⁶ RUDRA & DAS DASGUPTA, *supra* note 3, at 19.

Overcoming these challenges requires cross-border collaboration. The domestic violence advocacy community in India, the U.S., UK, Canada, Bangladesh, Nepal, and Pakistan have begun to develop networks of women's organizations focused on providing access to legal counsel and other support for transnationally abandoned women.¹⁷ The aim of this paper is to consider mechanisms for strengthening existing transnational advocacy networks in order to implement cross-border strategies that increase access to justice for abandoned women.

The first section of this paper discusses challenges advocates face in developing pathways to justice for deserted wives. These barriers include a lack of access to legal representation during U.S. divorce proceedings and fundamental distinctions between family law in India and the U.S. that arise out of very different social realities.

The second section of this paper roots the discussion of strategies for strengthening transnational collaboration in the context of literature on transnational advocacy involving non-governmental organizations.¹⁸ These conversations take place at the intersection of international relations and social movement theory.¹⁹ Drawing upon this vocabulary, I identify lessons applicable to advocacy on behalf of transnationally abandoned women with the objective of advancing transnational strategies. These strategies span distinct but overlapping methods for action: frame-shifting, education, legal advocacy, policy change, and institution-building.

I. LOST BETWEEN FORUMS: BARRIERS TO JUSTICE FOR TRANSNATIONALLY ABANDONED WOMEN

Marriage and divorce are “influenced by gender, personal and sociocultural factors” and also by “nationality, geographical location,” and the “nation-state(s) and transnational spaces to which women are subject and within which they creatively maneuver.”²⁰ In the case of transnationally abandoned women, a woman's agency to creatively maneuver between transnational spaces is strategically undermined by men who deliberately obstruct access to legal forums where women can assert their rights. This section considers the jurisdictional and socio-cultural factors that conspire to undermine women's agency and ability to access legal relief.

A. *Distant Silence and Default Judgments*

For women who have been abandoned in India by spouses who return to the U.S., the most fundamental barrier to justice is their inability to defend their rights during U.S. divorce proceedings. By strategically abandoning their wives in their home countries and then filing for divorce in U.S. courts, transnationally mobile South Asian immigrant men “privilege their own interests” by opting for conditions that make it nearly impossible for their wives to participate in

¹⁷ RUDRA & DAS DASGUPTA, *supra* note 3, at 48.

¹⁸ This area of study is part of broader social science conversations on the role of non-state actors in the international arena, but focuses on the role of nongovernmental organizations and social movements. See Sanjeev Khagram, James V. Riker & Kathryn Sikkink, *From Santiago to Seattle: Transnational Advocacy Groups Restructuring World Politics*, in RESTRUCTURING WORLD POLITICS: TRANSNATIONAL SOCIAL MOVEMENTS, NETWORKS, AND NORMS 3, 3 (Sanjeev Khagram et al., eds., 2002).

¹⁹ *Id.* at 3-4.

²⁰ Nicole Constable, *A Transnational Perspective on Divorce and Marriage: Filipina Wives and Workers*, in 10 IDENTITIES: GLOBAL STUD. IN CULTURE & POWER 163, 164 (2003).

judicial proceedings.²¹

The threshold challenge for facilitating legal representation for abandoned women is ensuring that they are informed when their husbands file for divorce in U.S. courts. Although U.S. courts require service of process—legal notice of a court proceeding so a person can respond accordingly—the requirements for satisfying service of process are minimal and, in many cases, women never receive any notification that a case has been filed.²² Reasons for this failure to notify women range from mistake to malevolence: improper service can result in lost notifications, and failure to serve divorce notices personally provides opportunities for men’s families to suppress notices or forge a woman’s signature to indicate her assent to the divorce.²³

Even when a woman is notified of proceedings, barriers to representation can remain insurmountable. “Most women tend to be ignorant of U.S. laws and often do not have easy access to legal advice in their home countries.”²⁴ The challenge of finding local attorneys in India who are familiar with U.S. family law heightens barriers to representation. Distinctions between U.S. and Indian family law also lead to incorrect assumptions and misinformation. For instance, in India, “where family law allows one party of a married couple to contest divorce petitions, even after receiving the divorce,” a woman “may not comprehend that by refusing to receive or respond to a divorce notice from the U.S. court, she allows the divorce to be concluded by default and ex-parte” after the requisite time elapses.²⁵

In those cases where women do receive notice of service and respond within the required time frame, they frequently lack financial resources to travel to the U.S., have no means of getting a travel visa, have had their passports stolen or destroyed, and have “little chance of responding to court notice of appearance in person.”²⁶ Receiving an ex-parte divorce in this way is not uncommon. In fact, “ex-parte divorce is a rule for women abandoned outside the U.S., rather than an exception.”²⁷ By failing to appear in U.S. courts, women forfeit spousal support, equitable property settlement, and child support.²⁸ The impact of abandonment, moreover, extends beyond economic disenfranchisement. The stigma associated with divorce for women in India places a woman’s entire social standing at risk.²⁹

B. Cultural Realities and Family Law

Family law in the U.S. and in India corresponds to very different social realities. As previously explained, the economic and social consequences of divorce and abandonment in India are severe. Divorce in India economically burdens not just the woman, but often times her parents as well. This is because “[t]he parents of the abandoned women may have given substantial amounts of dowry in cash and kind to grooms and their families during the marriage with the cul-

²¹ RUDRA & DAS DASGUPTA, *supra* note 3, at 22.

²² RUDRA & DAS DASGUPTA, *supra* note 3, at 22.

²³ RUDRA & DAS DASGUPTA, *supra* note 3, at 22.

²⁴ RUDRA & DAS DASGUPTA, *supra* note 3, at 22.

²⁵ RUDRA & DAS DASGUPTA, *supra* note 3, at 22.

²⁶ RUDRA & DAS DASGUPTA, *supra* note 3, at 22.

²⁷ RUDRA & DAS DASGUPTA, *supra* note 3, at 22.

²⁸ RUDRA & DAS DASGUPTA, *supra* note 3, at 22.

²⁹ RUDRA & DAS DASGUPTA, *supra* note 3, at 22-23.

tural expectation that they would henceforth be free of their daughters' responsibilities."³⁰ Furthermore, while this is changing to some degree in upwardly mobile communities, women frequently give up careers and higher education to fulfill marital duties.³¹ Reflecting these social conditions, Indian courts "are usually responsive to the needs of abandoned wives who request legal intervention to obtain maintenance from their reneging husbands."³²

In contrast, U.S. courts grant support based upon "age, the length of marital cohabitation, and women making a case for their needs."³³ Wives abandoned in their home countries, often after very short periods of marriage, are unlikely to receive significant maintenance or compensation awards in U.S. courts.³⁴ While rehabilitative alimony, alimony that is paid to a spouse for a limited amount of time until they are able to support themselves independently, is available for short-term marriages in most U.S. states, this support is difficult to secure and likely remains out of reach for women who are unable to appear in court.³⁵

These distinct systems of allocating compensation to divorced women result in vastly different outcomes in U.S. and Indian courts. Favorable maintenance decisions made in Indian courts "are nearly impossible to execute in the U.S., often because the men have disappeared without a trace and also because the U.S. legal system tends to ignore decisions of Indian courts."³⁶

Surmounting these barriers and facilitating access to justice for abandoned women requires coordinated action across continents. For instance, ensuring that women residing in India are informed of when their husbands file for a divorce in the United States requires systemic changes to transnational information delivery requirements. Reformation of these basic legal pathways must include redefining what constitutes adequate delivery of process in transnational divorce cases and providing effective channels for challenging *ex parte* orders issued when an abandoned woman has not had access to a legal forum to defend her rights.

As prescribed by Rudra and Das Dasgupta, providing effective representation in transnational abandonment cases will require lawyers to form "strong regional [and] international networks of agencies that can collaboratively provide referrals, share information across national borders, and improve access to legal resources."³⁷ Institutionalization of effective cross-border representation strategies will require these networks to develop international norms that protect transnationally abandoned women. The second section of this paper will consider strategies for strengthening transnational collaboration in the context of transnational advocacy networks.

II. TRANSNATIONAL ADVOCACY: SHARED, PRINCIPLED DISCOURSE AND COLLECTIVE ACTION

Transnational advocacy "to create, strengthen, implement, and monitor international norms" is integral to defending human rights when violations take place across national jurisdic-

³⁰ RUDRA & DAS DASGUPTA, *supra* note 3, at 29.

³¹ RUDRA & DAS DASGUPTA, *supra* note 3, at 29.

³² RUDRA & DAS DASGUPTA, *supra* note 3, at 29.

³³ RUDRA & DAS DASGUPTA, *supra* note 3, at 29.

³⁴ RUDRA & DAS DASGUPTA, *supra* note 3, at 29.

³⁵ RUDRA & DAS DASGUPTA, *supra* note 3, at 29..

³⁶ RUDRA & DAS DASGUPTA, *supra* note 3, at 29.

³⁷ RUDRA & DAS DASGUPTA, *supra* note 3, at 48.

tions.³⁸ This process involves social justice activists and organizations “expanding their activities across state borders through such means as networking with activists in other states, utilizing transnational institutions and invoking international norms to advance their political agenda[s].”³⁹ Transnational advocacy has two “deeply interwoven” dimensions: the formation of transnational advocacy networks and the “emergence of new arenas for international advocacy.”⁴⁰

This section will first consider the potential for transnational networks to facilitate communication, identify emerging issues, build coalitions, and advance a shared, principled discourse. Next, it will apply these concepts to the problem of transnational abandonment, evaluating the strategic benefits associated with framing transnational abandonment as violence against women. Finally, the section concludes with a discussion of the potential role of international human rights law in advocacy on behalf of transnationally abandoned women.

A. Transnational Advocacy Networks and Emerging Issues

Transnational advocacy networks—“voluntary, reciprocal, and horizontal patterns of communication and exchange . . . motivated by shared, principled discourse and aiming to affect political behavior through moral argument”⁴¹—are a powerful force in transforming global practices.⁴² Such networks are characterized “by shared values, dense exchanges of information and services, and common discourses.”⁴³

As network activity expands beyond informal information sharing and achieves a greater level of transnational coordination around tactics to influence social change, these formations are referred to as “transnational coalitions.”⁴⁴ For instance, the transnational network of advocates working to end violence against women became a transnational coalition when women’s groups coordinated transnational tactics, culminating in an international petition drive and a sixteen day campaign of coordinated activism that took place in diverse countries.⁴⁵ These shared strategies or tactics are commonly referred to as “transnational campaigns.”⁴⁶ Examples of such campaigns include the transnational campaign against slavery, transnational labor organizing, and coordinated campaigns for women’s suffrage.⁴⁷

³⁸ Khagram, *supra* note 18, at 4.

³⁹ Jonathan Graubart, “Politicizing” a New Breed of “Legalized” Transnational Political Opportunity Structures: Labor Activists Uses of NAFTA’s Citizen-Petition Mechanism, 26 BERKELEY J. EMP. & LAB. L. 97, 101-02 (2005).

⁴⁰ Ruth Buchanan & Rusby Chaparro, *International Institutions and Transnational Advocacy: The Case of the North American Agreement on Labor Cooperation*, 13 UCLA J. INT’L L. & FOREIGN AFF. 129, 132 (2008).

⁴¹ R. Charli Carpenter, *Setting the Advocacy Agenda: Theorizing Issue Emergence and Nonemergence in Transnational Advocacy Networks*, 51 INT’L STUD. Q. 99, 101 (2007).

⁴² See Khagram, *supra* note 18, at 4 (citing numerous scholars and policy makers who now assert that international nongovernmental organizations and transnational social movements are emerging as a powerful new force in global politics).

⁴³ *Id.* at 7.

⁴⁴ *Id.*

⁴⁵ *Id.* at 7-8 (citing Karen Brown Thompson, *Women’s Rights Are Human Rights*, in RESTRUCTURING WORLD POLITICS: TRANSNATIONAL SOCIAL MOVEMENTS, NETWORKS, AND NORMS, *supra* note 18, at 96).

⁴⁶ *Id.* at 7.

⁴⁷ See Kathryn Sikkink & Jackie Smith, *Infrastructures for Change: Transnational Organizations, 1953-93*, in RESTRUCTURING WORLD POLITICS: TRANSNATIONAL SOCIAL MOVEMENTS, NETWORKS, AND NORMS, *supra* note 18, at 24.

If transnational networks and transnational coalitions are viewed as “ascending levels of transnational collective action,” then transnational social movements—“sets of actors with common purposes . . . that have the capacity to generate coordinated and sustained social mobilization in more than one country to publicly influence social change”—represent the highest level of transnational collective action.⁴⁸ How do networks launch campaigns as coalitions, mobilizing actors across borders to disrupt prevailing social orders?

In mapping networks and collective action strategies, it is helpful to distinguish between problems, issues, and arenas for change. “Problems are preexisting grievances that may not yet have been defined as issues.”⁴⁹ For instance, this paper is concerned with the problem of obstruction of justice for transnationally abandoned women. Issues emerge when advocates name a problem as a rights violation.⁵⁰ “Campaigns involve concerted efforts by multiple organizations lobbying for a specific outcome around a certain issue.”⁵¹ Transnational advocacy networks define issues and build campaigns.

Issue definition has been widely reflected upon by advocates, activists, and theorists. These insights delineate practical considerations for strengthening transnational advocacy on behalf of transnationally abandoned women. “[I]ssue emergence is the conceptual link between the myriad bad things out there and the persuasive machinery of advocacy politics in world affairs.”⁵² Defining an issue, or naming a rights violation, “requires a set of clear, compelling normative ideas combined with an equally clear causal logic connecting normative evaluation to the possibility of action.”⁵³

In the international human rights arena, strategic framing requires articulating a cause and the relevant desired policy changes according to accepted international values and norms.⁵⁴ Deliberate framing that includes the perspectives of transnational advocates from distinct regional contexts, especially when issues span multiple advocacy networks, is fundamental to building coalitions for action that are capable of working in a manner that is simultaneously coordinated and decentralized.⁵⁵

Certain features of problems have been particularly conducive to linking ideas, causal logic, and mechanisms for action in the international human rights arena. These include problems that are the outcome of deliberate actions by identifiable individuals, issues involving physical harm to vulnerable individuals “when there is a short and clear causal chain assigning responsibility,” issues involving equality of legal access and opportunity, and “the extent to which advocates can link a new set of intersubjective understandings to preexisting moral standards.”⁵⁶ The ability

⁴⁸ Khagram, *supra* note 18, at 8-9 (noting that “transnational social movements are also the most difficult and rare forms of transnational collective action” and defining “truly transnational social movements” as groups in at least three countries exercising their capacity to “engage in joint and sustained mobilization”).

⁴⁹ Carpenter, *supra* note 41, at 102.

⁵⁰ Carpenter, *supra* note 41, at 102.

⁵¹ Carpenter, *supra* note 41, at 102.

⁵² Carpenter, *supra* note 41, at 102.

⁵³ Mark Anner & Peter Evans, *Building Bridges Across a Double Divide: Alliances Between US and Latin American Labour and NGOs*, 14 DEV. IN PRAC. 34, 36 (2004).

⁵⁴ Graubart, *supra* note 39, at 103.

⁵⁵ *Cf.* Graubart, *supra* note 39, at 116 (arguing that “an issue that spans multiple networks’ advocacy space may invite different interpretations of the problem, contributing to frame disputes and inhibiting coalition building”).

⁵⁶ Graubart, *supra* note 39, at 103.

of transnational networks of advocates to exert influence is rooted in the ability to use “information, persuasion and moral pressure” to demand changes from international governments and institutions.⁵⁷ In other words, their power is rooted in the “creation, institutionalization and monitoring of norms.”⁵⁸

B. *Women’s Rights are Human Rights: Defining Transnational Abandonment as Violence against Women*

Rudra and Das Dasgupta’s report—*Transnational Abandonment of South Asian Women: A New Face of Violence against Women*—frames the problem of transnational abandonment as a rights violation identified by a network of transnational advocates committed to addressing violence against women. This articulation is linked to identifiable international norms and preexisting moral standards, and demonstrates a clear causal chain that assigns responsibility for the harm caused to vulnerable women who are strategically denied access to legal forums. The process of expanding the scope of existing norms to encompass new domains can be referred to as “frame bridging.”⁵⁹

Rudra and Das Dasgupta present targeted analysis to support the contention that transnational abandonment is a form of violence against women. They argue that transnational abandonment of wives is a deliberate, deceptive infraction of women’s legal rights, orchestrated to deny access to financial resources.⁶⁰ In fact, “South Asian immigrant men tend to abandon their wives in [their] home countries specifically to thwart the women’s efforts to find justice and assert their economic rights.”⁶¹ As a result, “South Asian wives abandoned by their immigrant husbands rarely have the opportunity to protect their interests.”⁶² They are forced into the role of passive recipients, bound by the decisions their husbands extract from the U.S. legal system.⁶³

Transnational desertion of South Asian married women, moreover, shares roots and contexts with two recognized forms of violence against women: domestic violence and dowry extortion.⁶⁴

South Asian women are often abandoned in the contexts of domestic violence and dowry extortion. The threat or the act of abandonment itself may be means to extort dowry from the bride’s parents. Often the amounts of dowry demanded are exorbitant and never ending. Many husbands abscond after extorting dowries repeatedly and leave their wives in their home countries to search for them in vain.⁶⁵

⁵⁷ Khagram, *supra* note 18, at 11.

⁵⁸ Khagram, *supra* note 18, at 12.

⁵⁹ Khagram, *supra* note 18, at 16 (citing D.A. Snow and R.D. Benford, *Ideology, Frame Resonance, and Participant Mobilization*, 1 INT’L SOC. MOVEMENT RES. 197, 197 (1988)).

⁶⁰ RUDRA & DAS DASGUPTA, *supra* note 3, at 12.

⁶¹ RUDRA & DAS DASGUPTA, *supra* note 3, at 12.

⁶² RUDRA & DAS DASGUPTA, *supra* note 3, at 12.

⁶³ RUDRA & DAS DASGUPTA, *supra* note 3, at 12.

⁶⁴ RUDRA & DAS DASGUPTA, *supra* note 3, at 22.

⁶⁵ RUDRA & DAS DASGUPTA, *supra* note 3, at 22.

These characteristics definitively mark transnational abandonment as another type of violence against women. Linking this form of violence against women with the objectives of a well-developed advocacy network, Rudra and Das Dasgupta call upon the domestic violence advocacy community to “expand the definition of violence against women to accommodate the reality of abandonment.”⁶⁶

The systematic denial of a woman’s right to advocate for her social and economic interests upon dissolution of marriage is also a violation of her civil and political rights. Article 23(4) of the International Covenant on Civil and Political Rights requires that State Parties to the Covenant “shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.”⁶⁷ This framing, presenting State Parties with an affirmative obligation to ensure the equal rights of spouses during a divorce, provides further grounds for advocacy. Specific demands might include calling upon the U.S. and India to ensure that women are informed when their husbands file for divorce, redefine what constitutes adequate delivery of process in transnational divorce cases, and create effective channels for challenging ex parte orders issued when an abandoned woman has not had access to a legal forum to defend her rights.

Framing transnational abandonment in the context of established international normative commitments to ending violence against women and securing civil and political rights draws this practice within the purview of international human rights values and mechanisms for action. Human rights framing counteracts the argument that “abuse of women, while regrettable, is a cultural, private or individual issue and not a political matter requiring state action.”⁶⁸ Since promotion of human rights is a widely accepted goal, this conceptualization provides a useful framework for seeking redress of gender abuse.⁶⁹ Furthermore, positioning advocacy to address transnational abandonment within international human rights frameworks implicitly reinforces the link between the issue of transnational abandonment and mechanisms for action in the international human rights arena.⁷⁰

While women’s organizations have demanded accountability for gendered human rights violations—especially in the last twenty-five years—using a human rights framework is far from universally accepted among women’s organizations worldwide.⁷¹ Critiques of this framework “often reflect disparities in terms of power and resources that influence whether and how women participate in transnational women’s rights activism.”⁷² The legalistic nature of human rights discourse, and the corresponding emphasis on a rights based approach that reflects affinity with Western liberal politics, lies at the root of some critiques.⁷³ Within the women’s movement, the

⁶⁶ RUDRA & DAS DASGUPTA, *supra* note 3, at 13.

⁶⁷ International Covenant on Civil and Political Rights, art. 23(4), Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

⁶⁸ Charlotte Bunch, *Women’s Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 HUM. RTS. Q. 486, 488 (1990).

⁶⁹ *Id.* at 486-87.

⁷⁰ *Cf. id.* at 487 (stating that human rights “is one of the few concepts that speaks to the need for transnational activism and concern about the lives of people globally”); Thompson, *supra* note 45, at 115 (arguing that the “view of women’s rights as a global political issue implies particular kinds of political strategies and global commonalities” and that “many of the common issues faced by women must be addressed in terms of the global structures underlying them”).

⁷¹ *See* Thompson, *supra* note 45, at 116.

⁷² Thompson, *supra* note 45, at 115.

⁷³ *See* Thompson, *supra* note 45, at 115-17.

choice to focus on human rights had the effect of “privileging lawyers within the movement, because international human rights is a highly legalized terrain in which to negotiate.”⁷⁴

With these considerations in mind, it is my position that in advocacy on behalf of transnationally abandoned women—women who are deliberately stripped of their legal rights and entitlements—the legal dimensions of human rights framing provide a particularly resonant call to action. This analysis does not sidestep the importance of building campaigns sensitive to overcoming traditional lines of privilege. In developing legal strategies for transnational human rights advocacy, advocates must consider “how decisions to bring forward particular complaints are made, how evidence is gathered, how differences in language and legal systems are negotiated, how complaints are drafted and by whom, and how the legal complaints are coordinated with political struggles in several countries.”⁷⁵ These are just some of the many challenges associated with building transnational networks and coalitions committed to promoting equality of access to the political arena.

C. Transnational Arenas, Human Rights and Political Opportunity Structures

In considering the role of international law in advocacy on behalf of transnationally abandoned women, Rudra and Das Dasgupta discuss the potential role of private international law in providing guidance on the choice of law issues governing transnational divorce cases.⁷⁶ As defined by the American Society of International Law (ASIL), private international law is “the body of conventions, model laws, national laws, legal guides and other documents and instruments that regulate private relationships across national borders.”⁷⁷ Reviewing numerous multilateral conventions that govern international family law disputes,⁷⁸ Rudra and Das Dasgupta identify mechanisms for addressing issues of split jurisdiction and transnational enforcement of legal decisions concerning divorce, support and maintenance. They conclude this discussion by recommending that “affected states should consider ratifying bilateral or multilateral agreements that address the

⁷⁴ Kathryn Sikkink, *Restructuring World Politics: The Limits and Asymmetries of Soft Power*, in *RESTRUCTURING WORLD POLITICS: TRANSNATIONAL SOCIAL MOVEMENTS, NETWORKS, AND NORMS*, *supra* note 18, at 310.

⁷⁵ Buchanan & Chaparro, *supra* note 40, at 141-42.

⁷⁶ RUDRA & DAS DASGUPTA, *supra* note 3, at 30-31.

⁷⁷ RUDRA & DAS DASGUPTA, *supra* note 3, at 30-31 (citing *Electronic Resource Guide: Private International Law*, AM. SOC’Y INT’L L., <http://www.asil.org/pil1.cfm> (last updated June 21, 2011)).

⁷⁸ RUDRA & DAS DASGUPTA, *supra* note 3, at 30-38 (discussing the Convention on the Recovery Abroad of Maintenance, June 20, 1956, 1268 U.N.T.S. 349; Hague Conference on Private International Law, Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents, Hague XII, *available at* <http://www.hcch.net/upload/conventions/txt12en.pdf>; Hague Conference on Private International Law, Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Hague XIV, *available at* <http://www.hcch.net/upload/conventions/txt14en.pdf>; Hague Conference on Private International Law, Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, Hague XVIII, *available at* <http://www.hcch.net/upload/conventions/txt18en.pdf>; Convention on the Law Applicable to Maintenance Obligations, Oct. 2, 1973, 1056 U.N.T.S. 204; Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, Oct. 2, 1973, 1021 U.N.T.S. 217; Hague Conference on Private International Law, Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, Hague XXXIX, *available at* <http://www.hcch.net/upload/conventions/txt39en.pdf>; and Hague Conference on Private International Law, Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, Hague XXXVIII, *available at* <http://www.hcch.net/upload/conventions/txt38en.pdf>).

issue of transnational abandonment.”⁷⁹

Beyond private international law, Rudra and Das Dasgupta note the importance of considering advocacy strategies that incorporate international human rights treaties and mechanisms.⁸⁰ International private and human rights legal strategies may be effectively pursued in tandem. For instance, a call for the U.S. to sign the Hague Convention on the Recognition of Divorces and Legal Separations⁸¹ may be linked to a campaign that frames transnational abandonment as a denial of civil and political rights for vulnerable women.

Acknowledging the importance of integrating private international and human rights legal strategies, the remainder of this paper will consider advocacy on behalf of transnationally abandoned women from a human rights perspective by exploring a limited number of human rights mechanisms and political opportunity structures relevant to the legal challenges faced by transnationally abandoned women. This discussion is by no means an exhaustive brief on international human rights options. Instead, it is intended as a starting point for further dialogue among activists and advocates working across borders to defend the rights of abandoned women. Consistent with the focus on obstacles faced by women who are abandoned in India by men who reside in the United States, the political opportunity structures delineated below are chosen for their applicability in the U.S. and Indian national contexts.

“International human rights law is derived from a variety of sources and involves many kinds of instruments, both international and national.”⁸² These sources include multilateral treaties that create legally binding obligations for states that are a party to them; non-binding “international declarations, resolutions and recommendations relevant to international human rights;” actions taken by U.N. organs and international bodies; and “national laws, regulations, court and administrative decisions and policy pronouncements relevant to implementing international human rights objectives.”⁸³

Approaching advocacy on behalf of transnationally abandoned women from a human rights perspective provides access to international institutions and forums with the potential to facilitate successful transnational advocacy. Human rights institutions frequently bring together “a confluence of elements that enable activists to gain greater material and normative support for their cause.”⁸⁴ Features of such political opportunity structures typically include attention to cause-based norms, access to state actors and the media, and a means for gaining allies.⁸⁵ “Transnational quasi-judicial mechanisms for reviewing compliance with value-based norms,” moreover, “incorporat[e] the particular legitimating power of law in encouraging norm-based behavior.”⁸⁶ This legitimating power “derives from legal discourse and process.”⁸⁷ By “referencing terms of the treaty, invoking legal authorities, and reasoning by careful analogy to other principles

⁷⁹ RUDRA & DAS DASGUPTA, *supra* note 3, at 51.

⁸⁰ RUDRA & DAS DASGUPTA, *supra* note 3, at 38.

⁸¹ Hague Conference on Private International Law, Convention of 1 June 1970 on the Recognition of Divorce and Legal Separations, available at http://www.hcch.net/index_en.php?act=conventions.text&cid=80.

⁸² Richard B. Bilder, *An Overview of International Human Rights Law*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 6, 6 (Hurst Hannum ed., 2004).

⁸³ *Id.* at 7-8.

⁸⁴ Graubart, *supra* note 39, at 102.

⁸⁵ Graubart, *supra* note 39, at 102.

⁸⁶ Graubart, *supra* note 39, at 103.

⁸⁷ Graubart, *supra* note 39, at 104.

and fact patterns” within “an administrative or quasi-judicial setting,” the “effect of legal process is to draw attention to the normative disputes and build authority for normative-based resolutions.”⁸⁸

1. International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR), which seeks to promote “the inherent dignity and . . . equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world,” has majority support around the world.⁸⁹ On December 16, 1966, the United Nations General Assembly unanimously adopted the ICCPR, and less than ten years later the Covenant entered into force. Among the enumerated rights are the right to self-determination,⁹⁰ the right to life,⁹¹ the right to individual liberty and security,⁹² the right to compensation for unlawful detention,⁹³ the right to “freedom of thought, conscience and religion,”⁹⁴ the right to freedom of opinion,⁹⁵ the right to peacefully assemble,⁹⁶ the right to freedom of association,⁹⁷ the rights of the family,⁹⁸ the right to participate in the public process,⁹⁹ and the right to equal protection under the law.¹⁰⁰

Article 23(4) of the ICCPR specifically requires that parties to the Covenant “take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution,”¹⁰¹ presenting state parties with an affirmative obligation to ensure equal rights of spouses during a divorce. In the case of transnationally abandoned women, the systematic denial of a woman’s right to advocate for her social and economic interests upon dissolution of marriage is arguably a violation of her civil and political rights.

The Optional Protocol to the ICCPR allows individuals to petition the Human Rights Committee—eighteen experts “of high moral character and recognized competence in the field of human rights, elected from among nationals of the state parties”—to allege violations of the Covenant.¹⁰² Despite widespread ratification of the Optional Protocol, neither India nor the U.S. has

⁸⁸ Graubart, *supra* note 39, at 104.

⁸⁹ ICCPR, *supra* note 67, at Pmb1; William A. Schabas, *Invalid Reservations to the International Covenant on Civil and Political Rights: Is the United States Still a Party?*, 21 BROOK. J. INT’L L. 277, 277 (1995) (stating that 114 states signed the International Covenant on Civil and Political Rights before the U.S. became a party to it).

⁹⁰ ICCPR, *supra* note 67, at art. 1.

⁹¹ ICCPR, *supra* note 67, at art. 6.

⁹² ICCPR, *supra* note 67, at art. 9-11.

⁹³ ICCPR, *supra* note 67, at art. 9.

⁹⁴ ICCPR, *supra* note 67, at art. 18.

⁹⁵ ICCPR, *supra* note 67, at art. 19.

⁹⁶ ICCPR, *supra* note 67, at art. 21.

⁹⁷ ICCPR, *supra* note 67, at art. 22.

⁹⁸ ICCPR, *supra* note 67, at art. 23-24.

⁹⁹ ICCPR, *supra* note 67, at art. 25.

¹⁰⁰ ICCPR, *supra* note 67, at art. 26.

¹⁰¹ ICCPR, *supra* note 67, at art. 23(4).

¹⁰² Sian Lewis-Anthony & Martin Scheinin, *Treaty-based Procedures for Making Human Rights Complaints Within the UN System*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE, *supra* note 82, at 43-44 (quoting ICCPR, *supra* note 67, at art. 28).

ratified this integral component of the ICCPR.¹⁰³ Since only states that have ratified the Optional Protocol may be the subject of a complaint to the Human Rights Committee, advocates in both the U.S. and India are barred from bringing individual petitions on behalf of transnationally abandoned women.

Although the U.S. and India's failure to ratify the Optional Protocol forecloses the opportunity to petition the Human Rights Committee on an individual basis, the ICCPR's reporting procedure may offer a process for pressuring both states to insure that transnationally abandoned women are empowered to defend their interests during divorce proceedings. Already, NGOs have "influenced the work of the treaty bodies and have helped bring about changes in state law and practice" by using the reporting mechanism.¹⁰⁴

The Human Rights Committee monitors implementation of the ICCPR.¹⁰⁵ The approach used in monitoring compliance is non-adversarial. "The committee do[es] not act as [a] judicial bod[y] or issue decisions on whether a state is in violation of its treaty obligations," but rather, seeks to establish and maintain a constructive dialogue with states parties to assist states in fulfilling their obligations.¹⁰⁶ A report published by the Human Rights Committee after reviewing state submissions can be used to advocate for compliance in the following ways: "to create publicity to try to shame a state regarding a human rights situation, to build public pressure both at the national level and with local government authorities, to increase international scrutiny and potential pressure from other states, and to provide benchmarks for use by courts and administrative bodies."¹⁰⁷ Using these reports as a platform for influencing judges and local governmental authorities is likely to be a particularly effective strategy for educating key players about systematic rights violations faced by women abandoned by their husbands across borders.

2. Convention for the Elimination of All forms of Discrimination Against Women (CEDAW)

The Convention for the Elimination of All forms of Discrimination Against Women (CEDAW), "the world's primary legal document on women's equality," was adopted on December 18, 1979 and entered into force on September 3, 1981.¹⁰⁸ CEDAW's provisions cover all aspects of women's rights to equality, providing a "clear definition of discrimination and equality, and spelling out state obligations with regard to guaranteeing women's enjoyment of their human rights on an equal footing with men."¹⁰⁹ Through ratification, states commit to participation in a periodic review of their record on CEDAW provisions by a committee of independent experts, and to revise laws, policies, and programs that may impede real equality for women. Countries who have ratified CEDAW have demonstrated "that the democratic dialogue ensuing from these

¹⁰³ ICCPR *supra* note 67, at art. 5(4).

¹⁰⁴ Stephanie Farrow, *International Reporting Procedures*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE, *supra* note 82, at 189.

¹⁰⁵ ICCPR, *supra* note 67, at art. 40.

¹⁰⁶ Stephanie Farrow, *International Reporting Procedures*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE, *supra* note 82, at 190.

¹⁰⁷ Stephanie Farrow, *International Reporting Procedures*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE, *supra* note 82, at 190.

¹⁰⁸ HUMAN RIGHTS WATCH, UNITED STATES RATIFICATION OF INTERNATIONAL HUMAN RIGHTS TREATIES 3 (2009), available at <http://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties>.

¹⁰⁹ *Id.*

procedural commitments is very beneficial, leading, for example, to the creation of national equality action plans, renewed and nuanced public debate on equality issues, and constructive engagement from all parts of society in achieving women's equality."¹¹⁰

The CEDAW Optional Protocol permitting individual complaints was adopted in 1999 and entered into force in 2000.¹¹¹ The Optional Protocol establishes a committee of twenty-three experts—nationals of State Parties serving in their capacity as individuals and recognized for their competence in the field of human rights—that meets twice per year to consider communications submitted on behalf of individuals or groups of individuals.¹¹² Afterwards, the committee conveys “its views on the communication, together with any recommendations, to the parties concerned.”¹¹³

CEDAW has been ratified by India, but not by the U.S. Neither state has ratified the Optional Protocol.¹¹⁴ Therefore, as with the ICCPR, strategic use of the CEDAW state reporting procedure provides the only currently available CEDAW mechanism for demanding that India take action to address transnational abandonment as a form of violence against women. The Committee on the Elimination of Discrimination against Women monitors implementation of CEDAW. As with the ICCPR, the approach used in monitoring compliance is not adversarial and seeks to establish constructive dialogue on critical human rights issues.

3. Thematic Mechanisms

In the last twenty-five years, the U.N. has also developed “thematic machinery to deal with violations of specific types of human rights.”¹¹⁵ In contrast to broader procedures, such mechanisms are able to “deal with individual cases of human rights violations or threatened violations, particularly in countries in which a specific type of violation seems to be widespread.”¹¹⁶

On March 4, 1994, the United Nations Commission on Human Rights appointed a Special Rapporteur on violence against women, including its causes and consequences.¹¹⁷ The duties of the Special Rapporteur are as follows:

- (a) Seek and receive information on violence against women, its causes and consequences from governments, treaty bodies, specialized agencies, other spe-

¹¹⁰ *Id.* at 4.

¹¹¹ Lewis-Anthony & Scheinin, *supra* note 102, at 59.

¹¹² Lewis-Anthony & Scheinin, *supra* note 102, at 59.

¹¹³ Lewis-Anthony & Scheinin, *supra* note 102, at 60.

¹¹⁴ The Convention for the Elimination of All forms of Discrimination Against Women, art. 8(4), Dec. 18 1979, 1245 U.N.T.S. 13, available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (revealing that India ratified CEDAW on July 9, 1993, and that while the United States signed on to CEDAW on July 17, 1980, it has yet to ratify it); Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, art. 8.b(4), Oct. 6 1999, 2131 U.N.T.S. 83, available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en (revealing that neither India nor the United States is one of the eighty signatories to the Optional Protocol).

¹¹⁵ Nigel S. Rodley & David Weissbrodt, *United Nations Nontreaty Procedures for Dealing with Human Rights Violation*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE, *supra* note 82, at 75.

¹¹⁶ Nigel S. Rodley & David Weissbrodt, *United Nations Nontreaty Procedures for Dealing with Human Rights Violation*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE, *supra* note 82, at 75.

¹¹⁷ Comm'n on Human Rights Res. 1994/45, U.N. CHR, 50th Sess. U.N. Doc. E/CN.4/RES/1994/45.

cial rapporteurs responsible for various human rights questions and intergovernmental and non-governmental organizations, including women's organizations, and to respond effectively to such information;

(b) Recommend measures, ways and means at the local, national, regional and international levels to eliminate all forms of violence against women and its causes, and to remedy its consequences;

(c) Work closely with all special procedures and other human rights mechanisms of the Human Rights Council and with the treaty bodies, taking into account the request of the Council that they regularly and systematically integrate the human rights of women and a gender perspective into their work, and cooperate closely with the Commission on the Status of Women in the discharge of its functions;

(d) Continue to adopt a comprehensive and universal approach to the elimination of violence against women, its causes and consequences, including causes of violence against women relating to the civil, cultural, economic, political and social spheres.¹¹⁸

These guidelines provide an avenue for women's organizations to present information on transnational abandonment as a new face of violence against women, and for the Special Rapporteur to make national and international level recommendations to eliminate this form of violence. The mandate to work with other human rights mechanisms to integrate gender perspectives provides an opportunity for collaboration at the intersection of women's rights and transnational migration. Finally, the commitment to alleviate violence against women in economic and social spheres resonates with the expanded definition of domestic violence that includes social and economic violence.¹¹⁹

Thematic mechanisms, such as those included in the mandate of the Special Rapporteur on violence against women, provide a promising path for advocacy. This is largely because "these mechanisms have been genuinely impartial," resulting in "cases and problems [being] taken up regardless of the identity of the state whose behavior is called into question."¹²⁰ Moreover, the willingness of Special Rapporteurs to accept information from an array of NGO sources facilitates advocacy by transnational networks by enabling coordination and decentralization of fact finding among network stakeholders.¹²¹

¹¹⁸ G.A. Res. 16/7, ¶ 3, U.N. Doc. A/HCR/RES/16/7 (Apr. 8, 2011).

¹¹⁹ See *supra* discussion at Part 2.2.

¹²⁰ Nigel S. Rodley & David Weissbrodt, *United Nations Nontreaty Procedures for Dealing with Human Rights Violation*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE, *supra* note 82, at 75.

¹²¹ Nigel S. Rodley & David Weissbrodt, *United Nations Nontreaty Procedures for Dealing with Human Rights Violation*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE, *supra* note 82, at 77 (explaining that "[i]nitially the relevant resolutions defined permitted NGO sources with varying degrees of precision," but today "the thematic mechanisms seek and receive information from individuals, domestic and international NGOs (whether or not they have consultative status with the UN), governments and intergovernmental organizations").

III. CONCLUSION

Modern transnational mobility, when combined with deeply rooted traditions of gender inequality, creates a new terrain for rights abuses. Overcoming these transnational challenges requires cross-border collaboration. The aim of this paper has been to situate the responses of networks of women's organizations within broader conversations on features of transnational advocacy, and to use this vantage to consider possibilities for coordinated action using international human rights mechanisms. It is also my hope that bringing this conversation within the legal-academic discourse will increase attention to this form of violence against women and alert lawyers and courts to the high stakes associated with *ex parte* divorces granted across cultural contexts.