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Using the Concept of Genocide as a Tool for Resistance: Legal Pluralities in Civic Action Against Son Preference in Tirupati, India

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In this paper based on original fieldwork, I seek to contribute to our understanding of the concept of genocide by examining how civil society actors draw from some aspects of it when seeking to bring about social change in relation to son preference primarily in Tirupati, India. Drawing from Nordic "critical" legal scholarship, I argue that the turn to the international criminal law concept of genocide could be theorized as a case of legal pluralism. Based on empirical material, I posit that even so to say formally "wrong" uses of legal concepts appear to be politically powerful. I suggest that the use of the international legal order in Tirupati's civil society could be seen as an emancipatory strategy that follows an "instrumental" interpretation of international law. I conclude by arguing that the empirical material implies that we may need to rethink some of the underlying assumptions of the concept of genocide by highlighting its potential of serving as a tool for resistance for actors in civil society.

Keywords: genocide, pluralism, son preference, resistance, critical theory

Introduction

During the last decades, international legal scholarship has been increasingly focused on how law emerges as a space for political struggle (see Kennedy 2016, 254). An important part of the literature has been directed at the use of legal strategies in challenging existing power structures for social change (Andreassen and Crawford 2013; Baaz and Lilja 2016; Gustafsson, Vinthagen and Oskarsson 2013). Today, there is a rich body of research activities spearheaded by many different legal scholars addressing such queries, including the work of feminist, queer, and Third World approaches to international law (Andreassen and Crawford 2013; Anghie and Chimni 2003; Baaz, Lilja and Östlund 2017). Many of the contemporary debates have been placed in the nexus to activities of non-governmental organizations (NGOs) and other actors within civil society (see Rajagopal 2003; Hellum and Katsande 2017). It is in this context and discussion the paper is situated.

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In this paper based on original fieldwork, I seek to contribute to our understanding of the concept of genocide by examining how civil society actors draw from some aspects of it when seeking to bring about social change in relation to son preference primarily in Tirupati, India. The issue of son preference is much wider than merely an attitude and pertains to more than fertility behavior. Rather, as Liu Shuang (2006, as quoted in Eklund 2011, 30) suggests, it is an organizing principle for social, economic, and cultural aspects of everyday life. A respondent described the complex situation in India as affecting women "from womb to tomb" (Interview with NGO director, 2 October 2020). The struggles of civil society actors against this issue raise many important questions. The context of Tirupati illustrates how civic actors attempt to deal with structural inequalities by turning to concepts derived from the international legal order. As one respondent put it: "the missing women and the son preference in India is a genocide, happening now" (interview with Sabu Mathew George, 20 November 2021). However, from a formal position, the concept of genocide is inapplicable to groups defined by gender (Strandberg Hassellind 2020, 60). In this light, a crucial query is how international legal norms are socially and culturally constructed in local contexts of power and meaning (Goodale and Engle Merry 2007, 3–4; Engle Merry 2006, 1). Put differently, how should we theoretically understand civic action inspired by the international legal order?

Using this question as a point of departure, drawing from Nordic "critical" legal scholarship, I argue that the turn to the international criminal law concept of genocide within Tirupati's civil society in working against son preference should be theorized as a case of legal pluralism. Based on empirical material, I posit that even so to say formally "wrong" uses of legal concepts appear to be politically powerful. I suggest that the use of the international legal order in Tirupati's civil society could be seen as an emancipatory strategy that follows an "instrumental" interpretation of the concept of genocide. From this perspective, by using pluralist terminology, civil society actors in Tirupati are able to legitimize their involvement in the struggles against son preference in relation to internationally recognized legal norms. The empirical material, I will argue, implies that we may need to rethink some of the underlying assumptions of the concept of genocide by highlighting its potential of serving as a tool for resistance for actors in civil society. The question at stake in the paper does not relate to whether specific strategies of civil society actors can be evaluated as triumphs or failures – the idea is to critically theorize and reflect over socio-legal issues, rather than to "give clear-cut accounts of strict casual links of interaction" (Gustafsson, Vinthagen and Oskarsson 2013, 12). The overarching ambition with the paper is to add to and develop the existing body of Nordic critical legal research on civic action by presenting some explorative conclusions with

theoretical claims based on the empirical material gathered in the context of the combating of son preference in Tirupati's civil society.

The Context: A Cursory Historical, Social, and Political Description of Son Preference in Tirupati, India

In nearly all states in contemporary India, the preference for sons influences a wide array of behaviors (Hatti and Sekher 2007, 1–2). The preference for sons is apparent not least in the large number of "missing" girls and women as well as in the country's skewed child sex ratios (Eklund and Purewal 2017, 34; Lilja, Baaz and Strandberg Hassellind 2021; Sen 1992, 587). In a report released in June 2020 by the United Nations Population Fund, it was noted that one in three girls "missing" globally due to sex selection is from India, adding up to a total of 46 million (UNFPA 2020 as cited in Kaur and Kapoor 2021, 112). The demographic is an indicator of contemporary discriminatory social attitudes towards girls and women that call for us to better understand "the foundation of the cultural, economic, social, and ideological arguments that justify the preference for, if not the deification of, sons" (Purewal 2010, 1).

The problem of son preference is complex and multilayered. Analyzing the historical, social, and political context surrounding ideas of son preference can help us better understand civic action against it. During the mid-part of the 20th century, "Malthusian theories which framed overpopulation as a crucial inhibitor of 'development'" had a firm foundation within India's dominant political landscape (Kaur and Kapoor 2021, 113). Consequently, the exercise of population control was seen as a pressing task to tackle poverty and underdevelopment by the governing elite (Rao 2014, 199; Eklund and Purewal 2017, 34; Purewal and Eklund 2018, 724). In the early 1950s, various incentives aimed at family planning were launched, often under the Hindi slogan hum do, hamare do (us two, our two), which hailed the small family as a sign of modernity and progress (Kaur and Kapoor 2021, 113). In the 1970s, India was the first country in the Global South to legalize abortion. However, feminist scholars such as Nivedita Menon (1995, 369) have suggested that this political move was motivated rather by ambitions to decrease family sizes, whereas women's self-determination only served as pretext. During the 1980s, "wide-ranging discrepancies in budgets allocated for preventive measures (such as contraception) compared to female sterilization showed the commitment of the Indian state towards finding more long-term, irreversible 'solutions' to the overpopulation issue, which explicitly focused on the targeting of the female body as the site of intervention" (Kaur and Kapoor 2021, 113). From the 1990s and onwards, a significant facilitator in the process of fulfilling the state ambition to decrease family sizes has been the easy access to various technological advancements linked to sex-determination (Rao 2014, 205).

Taken together, ideas of governing population have resulted in a huge shift in the number of children born per woman in India from 5.2 to 2.2 in a span of four

decades (Purewal 2018, 29). According to Bijaylaxmi Nanda, this development shows how the female body has become the "site for competing claims of rights" revealing "the collaborative and combinative nature of the terrain of gender discrimination" (Nanda 2019, 180). In this way, the female body has become a symbol for the broader political debate of "overpopulation", tied together with an administrative strategy of quotas and records entrenched in a neoliberal and patriarchal ideology (Purewal 2018, 32). The complexities extend deeper still. Population control strategies have through and through been gendered, using class-sensitive markers to explain the development challenges within India's society, casting poor, often Dalit, women as the key reason for them (Kaur and Kapoor 2021, 113). Even though progress within India's society is made in relation to female literacy and increasing participation of women in different areas of economic and social life, it remains a conservative and patriarchal society in which girls and women are seen as less important.

The current situation must be put in the context of colonial legacies. In the end of the nineteenth century, British administrators in colonial India "discovered" that female infanticide (the killing of new-born baby girls) was a problem requiring intervention through "civilizing missions" (Grewal 1996, 19). The administrators decided that the killing of infant girls was rooted not in individual deviance but in the culture of the *zenana*, or the women's quarters of the Indian home (Sen 2002, 53). Such perceptions shaped countermeasures that sought to identify infanticidal communities and restructure the power relations within the infanticidal household. The colonial understanding of the problem was shaped by ideas of collective criminality, with the campaign against infanticide being inseparable from the British effort to colonize the *zenana*. In that, gender has been utilized for wider colonial objectives of social control through social reform. Various socio-economic aspects combined with the lack of personal autonomy of women due to unequal power structures between men and women have been proposed as contributing factors to the lower status ascribed to girls and women (Patel 2007, 33). Other practices with a religious or cultural background, such as dowry and the lighting of the funeral pyre by the male heir have also been put forward as factors undermining the relative worth of girls and women in comparison to boys and men (Robitaille and Chatterjee 2018; Guo, Das Gupta and Li 2016). In turn, there is a perception for some parents that having a girl child would be equivalent to be "watering the neighbor's garden", which is a well-known Tamil proverb (Attané and Guilmoto 2007, 2). As such, due to prevailing gender biases, girls in various contexts in India are currently at risk of being eliminated as soon as their gender is determined (Aravamudan 2007, 39).

It is clear that son preference is a part of a complex situation. The representation of the problem is moreover intimately linked to colonialism. Bearing in mind the complex character of the social issue, I agree with Navtej Purewal, who argues that the issue of son preference and the "missing" girls in

India needs to be discussed and debated more within a "panoramic lens which would allow for a fuller and more critical analysis and discussion" (Purewal 2010, 2). More importantly, Purewal also notes:

> The orthodoxies around how sex selection and feticide are commonly discussed as a 'social evil' reflect the narrowness within which the issue has come to be framed. It avoids the bigger picture of son preference as a foundational ideology of social relations and social reproduction. Moreover, it ignores the more sinister, mundane expressions of son preference that exist within people's everyday lived realities, the images that are transmitted and the gendered values, expectations and aspirations that circulate in society (Purewal 2010, vi).

Being inspired by Purewal's intervention into the field, the discussion will not be limited to female infanticide, but rather to include the many social processes and institutions that surround and construct the desire for sons. Such parameters, ultimately, shape the context in which the civic action is carried out. In a time of general improvement of welfare and deep economic and social changes, but also growing inequalities, the relative importance of sons has increased rather than decreased in certain contexts in India (Larsen, 2011; Sekher and Hatti, 2010). The pan-Indian census in 2011 showed a sharp decline in the child sex ratio in many, if not most, states in India. In response, there has been a lot of scholarship done from many different angles on the causes, ramifications, and responses to the "missing" women and girls in India (Milazzo 2018, 467). Furthermore, numerous measures have been taken, targeting the root causes of son preference (Kumar and Sinha 2020, 87). Similarly, further education and employment opportunities for women have been documented to positively up the status of girls. However, taking further steps to create and solidify efforts to evaluate relevant interventions should be seen as important, which further warrants this scholarly intervention (Guo, Das Gupta and Li 2016; Luke and Munshi 2011).

India is one of the most socially, culturally, and linguistically diversified countries in the world. Moreover, as with other parts of South Asia, women's growing access to education and their increasing presence in the workforce has begun to mute or reshape some of these societal pressures and stereotypes. As a way of mitigating the risk of conceptualizing India in singular terms, I have chosen Tirupati as the site of study. Tirupati is a semi-rural, semi-urban city located in Andhra Pradesh in southeast India, near the Pālkonda Hills. In Hindu mythology, Tirupati is known as the home of the Hindu god Venkateshvara, Lord of Seven Hills, something that attracts many religious pilgrims. For this reason, it is sometimes referred to as the spiritual capital of Andhra Pradesh. Tirupati has undergone profound change in a relatively short time, both in terms of population growth and infrastructure development. The rapid development of the city, combined with its mix between rural and urban, makes it an interesting

setting to consider. Tirupati is moreover chosen in part because it is situated close to what sometimes has been called the "female infanticide belt" in India, coupled with the circumstance that "the highest rate of prevalence is found in the states of Maharashtra, followed by Madhya Pradesh, Andhra Pradesh, Rajasthan, Haryana, Bihar and the Union Territory of Delhi" (Lata Tandon and Sharma 2006, 4). The rationale for the selection of the interview material will be further detailed below.

In Andhra Pradesh, the child sex ratio dipped from 961 in 2001 to 925 in 2021, which is among the lowest child sex ratios in India (MoHFW 2021; cf. MoHFW 2016, 136). As such, in Andhra Pradesh, there has been a significant worsening of an already problematic child sex ratio. This is a reflection of a continued preference for the boy child and the relatively much lower status of the girl child. Many respondents reported that a lot of work has been done against son preference in civil society, including in Tirupati. In Andhra Pradesh, feminist movements are not at all outside the normal (Vindhya and Lingam 2019, 263). The presence of feminist movements in this area is another reason for choosing Tirupati as the site of study, as it is likely to have had an impact on the ways in which gendered issues are tackled locally.

The account on the phenomenon of son preference and the "missing" girls above does not in any way claim to be exhaustive, nor should it be seen as an authoritative statement on the matter. There are many issues intersecting with respect to broader gender discrimination patterns in the context. That is not to say that they should be clubbed together bluntly. However, the ambition is to underline the complexity that is attached to the problems engaged with in this paper. There is not one but several ways of approaching and understanding these issues. Reflection and carefulness are warranted when discussing the situation of son preference in India. On a broad level, my claim in this paper is that the case of son preference illustrates how gendered norms, underlined by colonial and structural factors discussed above, influence the everyday social life of families and individuals. When seen in the setting of Tirupati, taking into account the historical context of population control and colonialism, the notion of son preference can be seen as a part of a long political debate with strong patriarchal and imperial undertones.

The Method(ology): Nordic "Critical" Legal Scholarship

The overall theoretical inspiration in this paper comes from the "critical" turn in Nordic legal scholarship. The reason for explicitly acknowledging the Nordic location relates to making visible the geographical, political, and social context in which claims are made (Strandberg Hassellind 2021, 14). I would like to argue that Nordic critical legal scholars, by positioning themselves as such, are able to, at least theoretically, provincialize Europe and European voices (cf. Chakrabarty

2000, 1). It seems suitable to unpack and challenge Western universalism to enact resistance against the colonializing voice by making visible a Nordic one.

At the same time, a large portion of the contemporary discussion on Nordic legal scholarship remain somewhat limited by focusing on gathering arguments from the inside practices of a closed system, often limited to a domestic jurisdiction. Traditional Nordic legal scholarship is not only legalistic but also primarily "problem-solving", in the sense that it takes the world order as it finds it for granted and accepts it as the given framework for action. The general objective is to facilitate this order by dealing effectively with various problems (see Baaz and Lilja 2016, 161). It is not such thinking I am inspired by. Legal critique from a Nordic location is not non-existent, but there is reason to call for an increased substantive engagement with various blind-spots and correlations between formal and informal law and issues such as ideology, imperialism, exclusion, and social injustices (Baaz and Lilja 2016, 161). In that, there is reason to believe that drawing from "multi-sited" ethnography could be one way of increasing such engagement. Today, it is perhaps not controversial to claim that the internal coherence of the legal system must be questioned. However, this has not always been the case. As Eva-Maria Svensson argues, "the academic discipline has more or less been seen as analogous to its object, the law", firmly entrenched in non-contextual epistemologies such as rationalism (Svensson 2007, 18). In the new millennium, Nordic legal scholarship has taken a turn to include a proliferation of perspectives that recognizes the importance of the social context (Svensson 2007, 17). Following this development, the umbrella term "critical" scholarship experienced a significant moment within the Nordic legal scholarship context (Strandberg Hassellind 2021, 11). Critical theory and, by extension, Nordic critical legal scholarship are "critical" in a more concentrated manner than what I choose to denote as traditional legal scholarship. At the same time, Nordic "critical" legal scholarship is not a monolithic field of research. It covers diverse theoretical frameworks and political debates (Svensson 2007, 15–20). Even though Nordic critical approaches to legal scholarship are not uniform in nature, it does not mean that anything goes. The lowest common denominator for critical perspectives, broadly speaking, is that they reject the inequalities manifest in the existing world order, seek to expose power relations and to produce knowledge geared toward creating conditions for social change (see Schwöbel-Patel 2014, 2). The objective therefore being to focus on the ways in which this order materializes, particularly by problematizing and questioning existing institutions and/or power relations, asking not only about their origins, but also whose interests they serve (Baaz 2015, 675). Scholars inspired by critical scholarship suggest that liberal international law should be understood as ideology and argue that the motivation of all critical research is "emancipatory" (Minkkinen 2013, 119). An extension of this logic is to perceive theory and method as integrated (Okafor 2008, 371).

The Theoretical Building Block: Legal Pluralism

An emerging facet of the Nordic critical turn in legal scholarship has been to understand how law becomes translated into local terms and situated within local contexts of power and meaning (see Burman 2017). In this section, I will further elaborate on some theoretical considerations that will enable me to do so in the current research context by focusing on the notion of legal pluralism. At its most fundamental level, Brian Tamanaha (2008, 375) describes "legal pluralism" as a "multiplicity of legal orders." Legal pluralism has been observed in various societal contexts, such as in industrialized countries of Europe and the United States (classic legal pluralism), and in post-colonial societies (new legal pluralism). New legal pluralism focuses on the confluence of customary and externally imposed norms in colonial and transitional societies. In the Global South, components of legal plurality sometimes originate from colonial institutions or practices that are imported from, for example, regulatory development assistance or the intervention of international organizations (Adler and So 2012; Pimentel 2011; Baaz, Lilja and Östlund 2017). New legal pluralism, then, describes how new and democratic constitutional regimes are cross-fertilized by the norms of cultural heritage and customary institutions (Baaz, Lilja and Östlund 2017, 200).

Classic legal pluralism, on the other hand, is defined by John Griffiths (1986, 7) as "the messy compromise [that] the ideology of legal centralism feels itself obliged to make with recalcitrant social reality". This definition could be seen as an acknowledgement of the existence of a legal messiness in general. Community members or officials are, for example, "rule shopping"; that is, choosing law that is based on the implementers' personal perceptions of its content or expected result (Adler and So 2012; Pimentel 2011; Baaz, Lilja and Östlund 2017). This implies that parallel legal systems do not need to be different legal systems. In addition, if embracing a broader understanding of "law", different legal practices prevail as part of the legal pluralism. As argued by Håkan Gustafsson, Stellan Vinthagen and Patrik Oskarsson (2013, 87), "law is […] made when we talk about the law, adjust our behavior according to (our understanding of) the law, and threaten to use law against each other". In line with this, I would like to expand the notion of legal pluralism to encompass social uses of concepts in which they take on different meanings from the original legal formulation, moving beyond the control of traditional legal institutions.

The legal pluralism literature, particularly the works of Sally Engle Merry (1988; 1992), has for some time demonstrated the ways in which international legal orders can pierce local situations, stressing the hybridity of legal culture. This paper adds to this discourse by investigating the role of legal pluralism in the setting of civil society-based resistance, contextualized in Tirupati. To conclude, in this paper, I use legal pluralism as an entry point to probe how

formal norms are supplemented by other legal strategies that are deployed even if this is done without much reflection. Thus, when investigating the legal pluralism that is being played out in relation to the combating of son preference in Tirupati, I employ a broad take, including both legal discourses and legal practices.

The Material: The Design of the Interview Study

The empirical investigation of this paper has been aimed at understanding how and why civil society actors draw on the concept of genocide in their struggles against son preference. The empirical investigation has been carried out in Tirupati, India. In Tirupati, perhaps in India generally, there are many actors working against the issue of son preference in different ways. To deal with this complexity, the selection of interviewees has had to be strategic. The present paper is a qualitative study. The selection is not intended to be statistically representative. Instead, there has been an interest in reaching heterogeneity in the material within a relatively limited geographical context. I have been interested in reaching data saturation based on the interviews, which is for me indicated by the same themes coming out, repeatedly. Formal rationales alone cannot provide the full picture in analyzing how and why actors in civil society turn to the concept of genocide in their struggles. To explore the picture in full, I would suggest that there is a need to go beyond the verbatim, to peer beneath the façade. It has been possible to examine in some depth the perspectives and ideas held by key actors in civil society by talking with them about how they work. The empirical investigation is constituted by interviews with key actors in Tirupati's civil society. It provides a frame against which the broader theoretical claims will be relayed.

For the purposes of this paper, a total of 30 interviews were conducted during a three-year research period. The data collection process was initially carried out amidst the COVID-19 pandemic. Consequently, 14 interviews were conducted digitally via various online applications. During a research trip in January 2022, 16 representatives from civil society were interviewed. The respondents are diverse, including various representatives of NGOs, scholars, religious leaders, police officers, reporters, activists, and judges from the Supreme Court in India who all work against son preference in many ways. The interviews have been open-ended and semi-structured. There has been much space for the respondents to raise questions and reflections of relevance to them (Alvesson and Deetz 2000; Alvesson and Sköldberg 2017). The questions asked of the respondents relate to their struggles against son preference, focusing on their use of the concept of genocide in that context. The interviews have informed the reading and analysis of other secondary sources, such as civil society reports, statements, and journalistic writings. The matter of each interview has been changing, as my knowledge of the subject has changed

gradually. The interview material provides insights into how the actors in the study view their role in this struggle, and their relationship to genocide. It is not intended to give universal answers, but rather perspectives coming from a specific setting.

While not being an ethnographic study through and through, the paper has been inspired by "the legal-ethnographic method currently being applied explicitly in international sites and artefacts such as international courtrooms or international NGOs" (Eslava and Pahuja 2011, 126). This is the reason why the empirical material is given quite a lot of space in this paper (Spivak 1988, 296). Drawing from ethnographic approaches in legal research is not groundbreaking in itself. Ethnographic research is a method of study deployed by social scientists, generally understood as the study of people in "naturally occurring settings or 'fields' by methods of data collection which capture their social meanings and ordinary activities, involving the researcher participating directly in the setting" (Brewer 2000, 6). While Nordic critical legal scholarship is anchored locally but "global" when turning to the Global South, it seems appropriate for Nordic critical legal scholars to draw from a logic which seeks to follow the thread of a process in which cultural meanings circulates rather than giving a holistic representation of the world system as a totality (Marcus 1995, 97–99). The inspiration of a "multi-sited" ethnography leads to a methodological reorientation to involve more and different sites and to depict the connections between these. The idea would be that we must follow people, connections, associations, and relationships across various spaces (Falzon 2009, 2). One way of drawing from multi-sited ethnography is by doing what George Marcus describes as "following". Following a certain object or subject allows researchers to naturally move from one site to another as developments unfold.

In this paper, I "follow" actors in civil society in Tirupati working against son preference, both in place in India but also from the Nordic location over a period of three years. The ways of following have been impacted by travel restrictions in the wake of the pandemic, as the contact initially has been digital. The reason why multi-sited ethnography is an appropriate inspiration is that it opens the possibility to explore different localities as well as the connections between these. It is in such connections the touching points between law and the society it operates in is brought to the fore. As with any other methodological influence, there are promises as well as pitfalls. One pitfall is that multi-sited ethnographic work is complicated. When theorizing issues that emerge in the Global South, we must be entangled with the complications that stand in the nexus of this mode of research. There is a need to engage in this type of scholarship with a commitment to the politics permeating the different levels of society. In turn, we must be committed to the grounding of theory in everyday life and accept the challenge and dilemmas of taking sides when producing knowledge that we deem to be relevant.

The Strategies: The Role of Civil Society in the Mobilization of International Legal Concepts

In the new millennium, civil society has acquired a central place in studies of international human rights mobilization and struggles for rights (Andreassen and Crawford 2013, 13). In many cases, civil society is "seen as an important grassroots promoter of democracy and development in post-conflict societies" (Schultz and Suleiman 2020, 435). Even though actors in civil society are important agents for social action, they are at the same time embedded in the historical, ideological, and political structures they are acting in response to. Adding to this, civil society has become somewhat of a buzzword, often having different and ambiguous meanings. It therefore becomes important to establish a definition of what we are talking about.

In this paper, civil society is defined as "a political space where associations of citizens seek, from outside political parties, to shape the rules that govern society" (Aart Scholte 2004, 214). The definition is used to point to how a key role of civil society is to provide a platform for civic action. In the way I see it, civil society should be conceptualized as a multi-dimensional political term and an ideologically contingent phenomenon. From this perspective, actors based in civil society can, at least to a certain degree, produce political pressure toward different social contexts and issues outside the divide between the state and the market via civic action. To nuance further, Antonio Gramsci conceptualizes civil society in the framework of hegemony, the institutionalized cultural elements, or complex sets of political, social, and cultural powers, which are necessary for the functionality of the societal whole. Peter Thomas (2009, 137) explains that civil society, drawing from Gramsci, is "the terrain upon which social classes compete for social and political leadership or hegemony over other social classes". What is included in this definition, is "not all material relationships, but all [ideological] relations; not the whole of commercial and industrial life, but the whole of spiritual and intellectual life" (Bobbio 1988, 83). When actors in Tirupati's civil society are working against son preference, they are not necessarily in tension with the state in its visible governmental forms and policies, but instead "invisible" forms of power, such as patriarchal ideals.

To provide an outlook, actors in civil society "are not just agents of change or means of positive development" (Andreassen and Crawford 2013, 14). I would instead like to argue that all actors within civil society are part of normative and legal contexts, their actions are influenced by and works within domestic and international legal orders. There is more to the work of civil society-based agents, as Henry Steiner, Philip Alston and Ryan Goodman argue, than just to "provoke and energize […] and spread the message of human rights and mobilize the people to realize that message" (Steiner, Alston, and Goodman 2008, 1421). Actors within civil society are social constructs rooted in social and political settings that restrain, underpin, or propel their activity. They are also "driven by their institutional needs to survive, with internal dynamics of struggles over

strategies and institutional power and position" (Andreassen and Crawford 2013, 14).

In Tirupati, there are many actors in civil society – such as NGOs, journalists, monks, teachers, student collectives, priests, and more – who work against issues of son preference. Civil society activity and outreach, not seldom inspired by feminist ideals, have been prevalent in Tirupati's society for a long time. Based on observational data, it has functioned as a social network but has also come to serve as a safety net by providing various social services for many locals, comparable to extended family structures that often fulfil similar purposes, or by providing services the government is not able to provide. I would like to argue that many of these movements are not interested in the law or the legal system in their day-to-day operations, at least not at face value. However, they understand that they cannot isolate themselves completely from the legal sphere, both on a domestic and an international level.

The Case: Considering the Experiences of Civil Society Actors Working Against Son Preference

In this section, I seek to present some reflections on the strategies and measures pursued by the respondents to achieve results in their struggles against son preference. The reflections are based on the experiences of the respondents of engaging with and mobilizing the international legal concept of genocide to bypass nation state politics by pointing to an exogenous body of norms. When asked specifically about the role the international legal order plays in the struggle against son preference in civil society, the founder of an NGO called *Abhaya Kshethram* (meaning Helping Hand in Telugu), a shelter for abandoned girls, destitute women, survivors of acid attacks, survivors of domestic violence, but also for physically and mentally challenged orphans, noted the following:

> I think that the international legal system can provide us with the words for imagining a better society in the future. That would be a very optimistic outlook, but I think it can create strategies and political ideas for creating a more inclusive society. Just take the convention on the rights of the child, convention against discrimination of women… Even if we do not go to the police about these things, they make things happen in our minds, they help regulate what we think is right or wrong. That would be something worthwhile. But I think it cannot be just international law. The political thought needs to be there. We must combine the both (interview with NGO founder, 3 January 2022).

The reflections, I would suggest, point to a perceived tactical usefulness of the international legal order. At the same time, the respondent implicitly deconstructs and denaturalizes international law, pointing to gaps existing in it. During the same interview, when asked to further expand on the complex

political situation, the respondent remarked on some of the ways in which the international legal order can be usefully applied to circumvent polarized nation state politics, arguing that

> for us in the civil society, talking about rights and referring to international legal frameworks give what we say a certain impartiality towards the state and other people in society. This is important for us, since we live in a political situation that is marked by polarization. Besides, we need all the tools we can get. Even if international law can bring change for just a few people, that would be going in a positive direction (interview with NGO founder, 3 January 2022).

The points made in the context above relate to an abstract leverage power of international law. In the discussion, there seems to be slippage between international law, international human rights law, and international criminal law. The slippage is likely due to a strategic outlook on the legal concept of genocide. There are, however, also more practical uses of international legal norms for some in civil society. In another interview, an activist explained how they used litigation in India's Supreme Court as a strategy to raise awareness of the issue of female feticide:

> Public interest litigation in the Supreme Court was a way for me to get the country at large aware. The Government initiated the implementation of the original law, enacted in 1994, in 2001, following the first major judgment in May 2001. The civil society, including the media, began seeing sex selection as a crime. Parliament amended the PNDT law in 2002, following a Supreme Court direction. Therefore, sex selection before and after conception was also included; the original law only covered fetal sex determination. The state of Jammu and Kashmir enacted the law following this litigation. Thus, the entire country had a specific law, and initiation of implementation also resulted in disappearance of public advertisements promoting sex selection (interview with Sabu Mathew George, 20 November 2021).

The international legal order has been useful, both in abstract and in practical terms. There has moreover been a cross-fertilization between the international legal concept of genocide and social responses to son preference. Actors in Tirupati's civil society have appropriated the term of "genocide" and used a derivate of it, namely "gendercide" to create rhetorical force for their struggles, or as a potential eye-opener for the issue of son preference. The concept, which is known and used within Tirupati's civil society in response to son preference, is not created in this context but is embedded in a rich history of interventions (Jones 2009; Warren 1985, 40). When the concept of gendercide is referred to, it is used to signify both behavior that is (or maybe should be) criminalized as well as a human rights transgression in a broader, vaguer, way. A founder of an

NGO reflects on their perspective concerning the social dynamics of the concept of gendercide:

> Because the thing is, people have the answers. They have the questions too. But we need to put them together. They know it is wrong to kill a baby girl. They know it, but they don't reflect about it. We can start the thinking, this is what we must do. Those who do it aren't bad or evil, they do it because they don't put the questions together with the answers. To see, am I really doing this to my girl child? And to answer, this is not what I want to do. I think that we must raise awareness. This is the key. Maybe [the word] "gendercide" can do that. […] It is a social task, it is communication (interview with NGO founder, 2 October 2020).

The question would then become, what makes the adjustment of a legal term useful? An anonymous local scholar/activist offered some interesting reflections regarding the uses of the international vocabulary within the local context, and ties these reflections to the term "gendercide":

> By having something externally to point to, some pressure can be created. I believe international law can provide a platform for political recognition, using the language of the international society to create a better role for themselves within the public. When you say gendercide, yes, I have heard about this. I think it can be useful. But it is important that it is not used to create shame and stigma. That is not what we need to create change (interview with anonymous local scholar/activist, 11 January 2022).

Even though there is an undertone of optimism in the quote, the respondent calls for moderation with ambitions and to be aware of the limitations of law. The limit of law is a theme explored further by the founder of *Abhaya Kshethram*:

> Sometimes, the law is not enough. Both international and national law has limits. We must identify the gaps of the law and, as members of the community, step in and take responsibility for filling in the blanks (interview with NGO founder based in Tirupati, 4 January 2022).

Taken together, we can interpret the quotes above through the theoretical notions of legal pluralism and Nordic critical legal scholarship. The respondents have relatively different perceptions of how the concept of "law" should be understood. However, I would argue that there is a unifying perception of law in broad, social terms, more in the style of an activity and not only as the black letter law tied to the power of the nation state. The concept of genocide, together with its "offspring" concept gendercide, can from this perspective be understood as umbrella notions that incorporate complex webs of social properties. I would argue that what is generally given "legal" status is a part of many narratives,

actors, and practices. The definition would, ultimately, depend on context and shifting understandings of power. The empirical material provides support for how the concepts of genocide and gendercide are recognized as possible eye-openers that might raise awareness concerning the multitude of issues connected to son preference. The concept of gendercide, as it is used by the respondents, can be seen as a construct where different signs are manifested in unexpected ways (gender- and -cide) and thereby shake the existing knowledge repositories to open for other ways of thinking. This is likely due in part to, drawing from Elizabeth Warren who coined the term of gendercide, that the concept "calls attention to the fact that gender roles have often had lethal consequences, and that these are in important respects analogous to the lethal consequences of racial, religious, and class prejudice" (Warren 1985, 22). Thus, given that the concept of gendercide is a rephrasing of genocide, in which both "gender" and "cide" are merged into one, it has an impact on our political imagination.

At the same time, only a few respondents explicitly claim that they are using the law. As an important point of analysis, however, I would suggest the strategies are parasitic of a specific legal discourse connected to international criminal law. For instance, the concept of gendercide's linguistic similarities with the concept of genocide implies that the practices described as a gendercide should be seen as a pressing political issue. The concept of gendercide gets its value with the associations it provokes (Lilja, Baaz and Strandberg Hassellind 2021, 2). The respondents do not attempt to overtake the juridical function of genocide, but rather strive to call attention to certain practices that are similar to what is commonly treated as genocide within the international criminal law discourse and, by extension, create or produce normative understandings connected to such practices. I would therefore label the approaches of the actors above as "pluralist" in the sense that they are using legal pluralist arguments, trying to mobilize the power of international law to bolster normative beliefs connected to their institutional logics. They are also "critical" as they seek to push for an emancipatory agenda. In that, I believe the approach of the actors interviewed underlines the tension between formalism and instrumentalism in legal discourse. Instrumentalism and formalism signal two cultures of practice in the international legal sphere, which relate to the question of whether legal philosophy should assimilate ethical standards or confine itself to an analysis of black letter law (Koskenniemi 2011a, 255). The schism is important in answering what the concept of genocide, and more broadly international law, is for. In this regard, Martti Koskenniemi notes,

> [f]rom the instrumental perspective, international law exists to realize objectives of some dominant part of the [international society]; from the formalist perspective, it provides a platform to evaluate behavior, including the behavior of those in dominant positions. The instrumental

> perspective highlights the role of law as social engineering; formalism views it as an interpretative scheme (Koskenniemi 2011a, 255).

Considering Koskenniemi's argument, I would like to suggest that the pluralist approach of actors in Tirupati's civil society is reminiscent of an instrumental logic. From this perspective, the concept of genocide can be understood as a lever, open to be utilized for various agendas. The respondents' use of the concepts of genocide and gendercide enable for them to create new formulations, having the concept take on different meanings from the original legal formulation that moves their strategies beyond the control of traditional legal institutions. The concept of genocide therefore seems to be understood and applied differently in different places, depending on the interests of the actors involved (see Baaz 2016, 262). By drawing from international law, complementing with local laws against discrimination in general, the concept of gendercide can be understood through the notions of legal pluralism. Pluralism may originate from transnational institutions or practices that are imported from, for example, regulatory development assistance or international law (Pimentel 2011; Adler and So 2012; Baaz, Lilja and Östlund 2017). This can be illustrated well by the following quote by another respondent, a director of an NGO that works against various issues connected to son preference, while cherishing the usage of the concept of gendercide as a "semi-legal" concept, they also picture the other legal practices in the toolbox:

> For women victims of violence, we have a whole system of counselling and support which starts from looking at helping women in homes to taking the cases up to the court. So, informing the police, going to the court, so we do a lot of handholding (interview with NGO Director, 2 December 2020).

The respondent continued by reflecting upon the tension between law as formal rules that belong to the political superstructure, and law as informal norms that emanate from the social base of society, as well as the need for a language that is able to bridge this gap:

> Implementation dilemma has always been there in India. We have a huge, you know, very progressive constitution […] but when you look at the implementation, there is a lot to be said. […] All the laws are in place. There is a big gap between what is our legal system or support or laws and their implementation (interview with NGO Director, 2 December 2020).

In the context, actors in civil society play an interesting role in using international criminal law as a political tool for resistance. They are not the formal addressees for the concepts. It is difficult to imagine the drafters of the

Genocide Convention would have had actors in Tirupati's civil society in mind when drawing up the treaty. Nonetheless, as the empirical material shows, it is a connection currently being made. Adding to this, attempts to use existing legislation to combat the elimination of female bodies, can be seen as different co-existing legal practices. The legal pluralities also involve different reinterpretations and shifting practices that emerge in the implementation of the hierarchical jurisprudence of the hegemonic state. From this perspective, it appears appropriate to argue that the state appears to be one norm generating social system among others, which in turn would mean that the law is not localized exclusively to governmental formal legislation but is a pluralist phenomenon (Gustafsson and Vinthagen 2010, 646). The point I would like to make here is that the international legal order can pierce local situations, which further underscores the hybridity of legal culture. Addressing the strategies of civil society actors against the backdrop of legal pluralism allow new perspectives to emerge. Not only does the analysis in this regard display how several legal systems and semi-legal norms co-exist or compete in contemporary efforts to challenge son preference, but it also illuminates how the reinterpretations of different laws result in a messiness of a multitude of frictional legal practices. For example, the friction that is created between the practices of drawing up laws, laying down laws and implementing laws. The engagement with legal pluralities could therefore potentially be a resource for actors in Tirupati's civil society in challenging son preference and gender discriminatory norms.

The Lessons: Rethinking the Concept of Genocide in Terms of Resistance and the Role of Pluralism

The question of how the international legal system can be usefully applied on a local level in the process of creating social change has recently been at the forefront in the scholarship of David Kennedy who calls for seeing "law's role in the ubiquitous struggles of global political and economic life and the injustice that results" (Kennedy 2016, 254). From this perspective, "law is not a supporter of social consensus but a participant in its conflicts, giving form to social adversity in order to support some values against others, to affirm or contest prevailing distributionary structures" (Koskenniemi 2011b, 19–20). This rationale is intimately linked to a broader question relating to what international law and its key concepts are for. When providing an answer to the inquiry ideology and competing visions of the "utopian" international society stand at the forefront. The story is old, the debate perennial: "for every Hans Kelsen, a Carl Schmitt has been waiting around the corner" as Koskenniemi (2016a, 575) puts it. According to Martti Koskenniemi, however, one important *raison d'être* is that international law "gives voice to those who have been excluded from decision-making positions and are regularly treated as the

objects of other peoples' policies; it provides a platform on which claims about violence, and social deprivation may be made even against the dominant elements" (Koskenniemi 2011a, 266).

I suggest that Koskenniemi's metaphorical platform can be conceptualized as a space for resistance. As I understand it, resistance is a response to power from "below," a subaltern practice that can challenge, negotiate, and undermine power (Lilja and Baaz 2016, 101). Power is not easily defined but is rather attached to different layers of meaning. In line with this, Michel Foucault (1977, 195) argues that power should not be seen as solely repressive but also as productive. An important dilemma to recognize in this regard is that both the domestic as well as the international legal system is an extension of the established social order. It could be argued that civil society actors only can achieve minor, if any, impacts in the long run by taking recourse to the law. The underlying logic of the argument, as Håkan Gustafsson and Stellan Vinthagen suggests, is that the law, as a part of the superstructure, cannot change the base to a meaningful extent, a rather pessimistic outlook on civic action and legal activism that rests on the assumption that the state is the primary, perhaps singular, power apparatus that generates legal norms and is the only background against which legal strategies must be assessed (Gustafsson and Vinthagen 2010, 646). Such a perception is problematic since it conceptualizes power, law, and the state in essentially homogenous terms (Brown 2015, 201). The empirical material provides support for the claim that the idea of a distinct sphere of power that all acts of resistance must be made against ought to be contested. Similarly, it casts doubt over the notion that concepts of law must emanate from formal governmental legislation. Legal concepts, such as genocide, are a much more complex and nuanced phenomenon that should not be understood in simplistic terms. Using a terminology derived from Foucault, the empirical material in this paper also enables us to conceptualize power as not only localized to the state, but instead "disseminated" by a plethora of actors (Gustafsson and Vinthagen 2010, 646). I believe the following quote from the NGO founder cited above captures this logic: "law is what you make it" (interview with NGO founder based in Tirupati 4 January 2022).

There may be reason to nuance such a constructivist claim, perhaps by pointing to the existence of discursive limits. Generally, however, civil society-based actors have contributed to a situation in which they carry out resistance on a local level by using a pluralist international criminal law terminology for advancing normative claims. For some, there is a genuine sense of conceptual connection. For others, the concept of genocide enables rhetorical strategies to deploy a discourse that is powerful in one context to bolster campaigning in another. The motives may not be all too important. The outcome is the same for both rationalities, namely that the international criminal law vocabulary provides the respondents with argumentative tools. The tools later become the basis for reflections and localized actions towards discriminatory gendered

discourses. It is, at the same time, easy to imagine the concept becoming used to describe a wide variety of ideologically difficult subjects. A waking appreciation of the political undertones attached to each circumstance international legal concepts are utilized instrumentally is therefore needed. This logic gives us some direction relating to the legal pluralism's role in the context of Tirupati and son preference. Based on the empirical material, I make the analysis that the international criminal law concept of genocide has functioned constructively in the day-to-day operations of actors in civil society, legitimizing involvement in struggles against son preference. Even more, it has done so by creating feelings of empowerment and unity, a situation that is aptly understood with a foundation in legal pluralism as it is conceptualized above. By viewing the international criminal law system in terms of resistance, as suggested above, it is possible to unfold how legal ideas may provide momentum in power struggles on a local level.

There may be reason to question the legal appropriateness of the labelling of the issue of son preference as a "genocide" or "gendercide". As we know, from a formal position, the concept of genocide is inapplicable to groups defined by gender. This would underscore that even so to say formally "wrong" uses of legal concepts appear to be politically powerful in some contexts. It is noteworthy that international criminal law has had an argumentative impact for many civil society actors in Tirupati – echoing the notion that "law is what you make it". The concept of "gendercide" is a new social construction that uses the logics of equivalence to create a new term akin to genocide, and then use it as a resource for claims of power, for resistance. Human rights discourse in general should be thought of as a power resource. However, the tools do not come ready made. The term genocide has a lot of authority and purchase. To create new authoritative resources, civil society actors construct new signifiers which may have purchase on the actions of others. The rhetorically powerful word genocide, those who are attempting to change social relations create an equivalence to by socially constructing the term "gendercide". Those who resist the status quo have to be creative, creating equivalences between recognized signifiers which already carry a lot of authority, and newly socially constructed ones, such as the concept of gendercide. Let us not forget, in historical terms, genocide as a word itself is also relatively newly socially constructed, in the aftermath of the Holocaust. What made it effective as a power resource, or given authority, was the fact of the systematic industrial killing of Jews. Let us not forget human rights are not really "natural", they are social constructions, which are sometimes perceived to be "natural", and that claim is a strategy to make the signifier more convincing, or to give them more authority. In this way, the findings in my research provide an example for Paul Nelson's and Ellen Dorsey's claim that NGOs use international legal terminology, which the concept of genocide is an integral part of,

> in critical circumstances as a source of power, as a way of reframing a debate, a tool for gaining legal and political leverage for resisting neo-liberal economic norms […] and as a source of empowering concepts and language at the individual level (Nelson and Dorsey 2008, 169).

In the introduction of the paper, I posed the question of how international legal norms are socially and culturally constructed in local contexts of power and meaning. I would like to sketch out a possible answer to that question in the context of civil society activism in Tirupati against son preference. In that context, civic actors have created a space for undertakings that address girls' and women's place in the community, as well as prevailing power allocations. The overarching goal has been to challenge son preference, to reclaim the *zenana*. A strategy in achieving the overarching goal has been to draw from the concept of genocide, adjusting it by creating a neologism – gendercide. The empirical material in this regard details how movements inspired by feminism can be promoted by using critical international criminal law and legal pluralism as an analytical, political, and legal maneuver, drawing from an instrumental logic. The lesson to draw, I would suggest, is that key concepts in the international criminal law system have the potential to function as a tool for civil society-based resistance. At the same time, it may be that the political and social context in Tirupati is more susceptible for this logic, since civil society organizations have played a large part in contemporary politics ever since the Anti-Arrack movement in the mid-1990s, and where the third wave feminist movement in India has had a rather strong hold for a long time (Patel and Khajuria 2016, 12).

Concluding Remarks

In this paper, I have investigated strategies of civil society actors in Tirupati against son preference that are inspired by the international criminal law concept of genocide. The investigation is done from a plural perspective, drawing from Nordic critical legal scholarship. Emphasis is placed on the interaction between international law, state law, and other normative orders that emerge outside the divide between the state and the market. I suggest that the engagement with legal pluralities should be seen as a resource for Tirupati's civil society. More specifically, it has enabled an instrumental, as opposed to formalist, approach that has informed the claims-making of some actors. The instrumental approach has made space for undertakings that address women's place in the community, the *zenana*, as well as the prevailing power allocations with the overarching goal of challenging prior gendered preconceptions, in this case son preference. Not only that, but it also addresses and challenges the logic of protecting human groups in international law. The empirical material reveals how movements inspired by notions of gender equality can be promoted by using the international legal order as an analytical, political, and legal resource. The viability of the strategies is arguably, however, made possible by the

political context in Tirupati in which there is a history of feminist civil society initiatives.

There is much creativity and innovation of the civil society-based actors when trying to challenge patriarchal norms through the concept of genocide and gendercide, although it might be through small or symbolic ways. This is a key point of the paper, to expand our idea of what the concept of genocide is, and the creativity it entails. There is a tendency to believe that the concept of genocide is only relevant to discuss when tied to a formal, legal definition. Often, we ignore the importance of the more creative cultural forms it might take. I would suggest expanding our view, to let it be less preoccupied with the formal understanding of genocide. The context of Tirupati demonstrates the need to rethink some of the underlying assumptions of the international legal order by thinking about its potential of opening up as a space for resistance. In addition to this, the paper underlines the need for a meaningful engagement with legal pluralism together with the understanding of law as parts of a dynamic social process, in which various actors play parts in disseminating claims of power, in ever-changing social, political, and legal contexts.

The paper admittedly leaves many stones unturned. One important lacuna concerns a more rigid systematization of the ways in which various civil society-based agents work against son preference and what ideological values they harbor. Another gap concerns the political appropriateness attached to mobilizing the concept of genocide in an instrumental manner. I have brushed upon the methods and rationales. Further study is needed to fully understand how a legal pluralist language becomes operationalized on the ground. The paper has pointed to some general theoretical findings, contextualized by empirical material, that could be used to build a more nuanced framework of the use of the concepts of genocide and gendercide as forms of resistance. I do not claim to provide the final picture, but I hope that by suggesting various patterns, I can contribute to further research and discussion for the future.

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