

## On Vernacular Rights Cultures and the Political Imaginaries of *Haq*<sup>1</sup>

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### Abstract

In this article, I track the deployment of rights in the vernacular across different subaltern citizen mobilizations in Southern Asia. In order to conceptually capture the ethical dynamism, ideational energy and intellectual innovativeness of this language of rights, I argue that we need yet more complex and different kinds of thinking. I propose the framework of vernacular rights cultures to theories and empirically document the rights politics in ‘most of the world’. A critical aspect of vernacular rights cultures, as a framework of analysis, is its attention to the languages—both literal and conceptual—of rights/human rights and also to the political imaginaries that these languages embody and make available. An important way of documenting and analyzing rights languages and

political imaginaries is to examine the justificatory premises that underpin the political struggles around claim making. In this article, I draw attention to three different justificatory premises that underpin the deployment of rights within contemporary subaltern rights struggles in India and Pakistan. By attending to the justificatory premises that animate and activate rights in the region, I am insisting not only on a scrupulous politics of location but also a refusal of ordinary discourses that dominate human rights politics thinking and politics.

## **On Vernacular Rights Cultures and the Political Imaginaries of *Haq***

Around the globe, one is witnessing multitudinous struggles over rights. Several of these are collective struggles by marginal and dispossessed groups over what Walter Mignolo has termed ‘life rights’ (2014), with some resisting precarity and dispossession heralded in by neoliberal developmentalism and its championing of privatization of natural resources: mountains, minerals, forests, rivers and streams; while others are struggling to redefine the substantive content of existing formal constitutional guarantees. The key question this paper asks is: How do we conceptually capture these rights struggles? In South Asia, and particularly in India, many of these rights struggles have not been without policy and legislative successes and several pioneering and innovative legislative acts are now in place guaranteeing citizen entitlements to information, food, and employment and land rights, and there now exists a growing and sophisticated scholarship analyzing the functioning, shortfalls as well as the impact of these newly introduced acts and policy measures (Dreze 2004; Shah 2007; Khera 2008, 2011; Bannerjee and Saha 2010). Within this burgeoning scholarship and more generally, however, there is less attention paid to the conceptual and epistemic languages of rights underpinning these struggles by marginal groups or of the nature of subjectivities and subjection these mobilizations engender, or indeed to the forms of rights politics these generate. To put it more specifically, we are yet to know of the justificatory premises of rights that informs and activates demands for expanded entitlements, or of the nature of rights languages underpinning ‘self making’ exercises mobilized in becoming a subject of formal rights, or of the traversal of rights and human rights, or indeed of the ways by which statecraft,

governmentalities and the market intersect and facilitate the dissemination of particular rights subjectivities. In short, we know altogether very little of how the rights languages are constituted and articulated by marginal subjects. In this article, I shall argue not only that these questions spearhead the study of the emergence and operation of rights cultures in marginal contexts in ‘most of the world’ (Chatterjee 2004), but also that their study requires a different conceptual lens - one that is able to capture their dynamism but also their difference - and one, which I shall term vernacular rights cultures. Viewing rights politics through the framework of vernacular rights cultures offers a lens through which the complexity and dynamism of rights-based mobilisations might be analytically captured, not simply as ones engaged in the translation and enacting of ‘global human rights’, but as those which have their own languages of rights and entitlements grounded in specific political imaginaries, justificatory premises and subjectivities. In short, vernacular rights cultures generate both a distinct set of rights and distinct practices through which rights are delivered, but also transform the rights that are inscribed in constitutions and political imaginaries.

My aim in this article is threefold: To briefly introduce the framework of vernacular rights cultures, to document the literal and conceptual languages of rights that animate contemporary citizen mobilizations in Southern Asia, and to draw attention to the political imaginaries, subjectivities, and claims for subject status that underpin the latter. The predominant word signifying a right in South Asia is the Urdu/Arabic Urdu literal term *haq* and in this article, I will focus on the justificatory premises that underpin the deployment of *haq* within grassroots citizen struggles in the region. Here, I will bring “notes from the field” into conversation with three existing literatures: an ethnographic scholarship on *haq on the one hand and on the other*, anthropological research on and the

political theory of a "global" phenomena called human rights. The vernacular rights cultures I shall describe are essentially those of subaltern groups; groups who are not in Spivakian terms 'outside all lines of social mobility' but who are in fact, actively involved in the struggle for expanding the terms of their representation through taking up rights discourses. I draw on my rights ethnographies of grassroots groups in Rajasthan mobilizing under the umbrella network of the 'right to food' movement in India and of Punjabi peasants demanding land rights in Pakistan in order to offer an analysis of the rights language that underpins vernacular rights cultures.

### **A short note on vernacular rights cultures and on *haq***

In a capsule form, the study of vernacular rights cultures is the study of the forms that rights politics takes in the 'most of the world' and of the ways it disrupts hegemonic human rights talk. It insists on the specificity of rights talk and on a multiperspectival and critical politics of location. It attends not only to the distinct spatio-temporal histories and languages of claim making, but also to the transformations, enablements as well as the limits to claim making in the neoliberal present. It tracks the distinct trajectories, formulations and intersections of languages of rights and human rights in marginal contexts and in so doing disrupts overarching narratives of epistemic progress, linearity, historical continuity or their radical separateness that underpin contemporary discussions of human rights. As a conceptual intervention, the lens of vernacular rights cultures sidesteps the theoretical foreclosures and binary deadlock of mainstream discussions on human rights to argue that vernacular rights cultures are not wholly derivative from or entirely oppositional to western notions and conventions of human rights or indeed, entirely discrete in form, in that one would be hard pressed to find hermetically sealed or

‘pure’ indigenous rights traditions but they are instead, interlocked into relations that are historically productively, intimately, and coercively produced and experienced. In exploring the different sites where formulation, translation and transposition of rights takes place, it is a key intervention aimed at tracking not only the etymological histories of the literal language of rights outside of the western world but also for focusing on the particular forms of conceptual development in rights/human rights resulting from the colonial encounter and anti colonial nationalism, the setting up of the postcolonial state and its distinct forms of developmentalism and bureaucratization and more recently, through the impact of the increased ‘destatization’ and the proliferation of the non state organizations advocating ‘human rights’. Finally, the term ‘vernacular’ here is strategic: it crucially flags up the fact that the exercise of ethical political agency accompanying demands for rights and entitlements is not only always sovereign, individualist, discrete or indeed privately articulated one but that it is predominantly expressed collectively and in religious, gendered and caste terms, and even as this demand for expanded entitlements in the vernacular arises out of the failure of democratic representative politics and state developmentalism or indeed draws support from international rights covenants, the nation state continues to be the principal addressee of these rights claims.

A critical aspect of vernacular rights cultures, as a framework of analysis is an attention to the languages—both literal and conceptual—of rights/human rights and also to the political imaginaries that these languages make available. An important way of documenting and analyzing rights languages and political imaginaries is to examine the justificatory premises that underpin the political struggles around claim making. Since 1999, I have been tracking the etymological roots, conceptual travel and contemporary deployment of the Urdu/Arabic word *haq* in grassroots people’s movements in India and

Pakistan. *Haq or Hukk* appears in Hindustani/Urdu lexicon through the influence of Persian in the subcontinent where it cuts across geographical, religious and linguistic boundaries to become the principal word deployed to make a right claim in Northern India and Pakistan.

Remarkably cosmopolitan and with an extensive hinterland, *haq* is the predominant word used to signify a right in South Asia, Middle East and North Africa. A pre-Islamic term also available in the older Semitic languages, *haq*'s roots are said to lie in the classical Hebrew term *hkk*<sup>2</sup> and its earliest use in Arabic can be traced to pre Islamic poetry where it means 'something right, true, just or "proper" and real'. In the Qur'an, its fundamental meaning is 'established fact', 'reality', 'justice and that which is true' (Encyclopedia of Islam, 1971:82) and these meanings are also upheld in modern Arabic and Persian dictionaries (Mashkur 1978). It also means 'the divine' and as *al-Haqq*, it is one of the names for God (Smith 1971, Rosen 1981). In early dictionaries of the Hindustani language *haq* is translated as 'right', 'due' (Gilchrist, 1790), 'equity' and 'reason' (1773), but later dictionaries record a much more expansive meaning of the term describing it as 'just, proper, right, true, correct, rectitude, right, title, privilege, claim, lot, portion, truth, true and God' (Platts 1884). It follows therefore, that the constellation of normative, ethical, moral, empirical, ontological and divine meanings that attach to *haq*, effectively signify, that *haq* in fact, embodies particular imaginaries and discourses on ways of being.

The complex and capacious imaginaries of *haq* are explored in anthropological writings on Islamic juridical languages and life worlds in different locations especially on matters of legal adjudications and disputations. Clifford Geertz in his 'Local Knowledge' (1983)

explores fact finding and rule applying in ‘adjudicative processes’ in different juridical traditions, namely the Islamic, the Indic and the Malayo-Indonesian and examines the ways in which different juristical life worlds deal with a central juridical problem: that between ‘the is/ought, what-happened/was-it-lawful distinction’ or that between fact and law. Contending that law is but one way of ‘imagining the real’ (184), Geertz writes that *haqq*, which he identifies as a key Arabic jurisprudential term, captures not only a ‘distinctive way of imagining the real’ but also whose capacious meaning bridges the fact-law divide characteristic of Western legal practices, invoking as it does a ‘deeper connection’ between the ‘normative and the ontological’<sup>3</sup> or the ‘right and the real’ (189). He uses illustrations from everyday Moroccan usage to illustrate the moral, normative, ontological, juridical and religious connotations of *haqq* and identifies different ways in which *haq* is applied, and where each ‘level of application’—religious, metaphysical, normative/moral and a jural/enforceable claim-- reveals a consistent ‘identity between the right and the real’ (189) or that between the empirical and the normative.

Lawrence Rosen (1981) also notes the normative and the ontological connections of *haq* in his ethnographic investigations of *qadi* justice in a *qadi* court<sup>4</sup> in the Moroccan city of Sefrou where he observes the role and application of *haq* in legal adjudications. Through his ethnography, Rosen examines the influence of ‘cultural assumptions’ in shaping ‘judge’s modes of reasoning, factual assessments, and choice of remedies’ (217) to argue that not only law (including in North America) is ‘suffused by culture and cultural is integral to law...’(218) but also that law is a critical site for negotiating questions of equity and discretion. In the *qadi courts* at Sefrou, questions of equity and discretion invariably involve adjudicating over the operation and validation of *haqq*. Rosen writes that Moroccan society is constructed around ‘a series of interpersonal ties, freely



negotiated and highly expedient which center on each individual every relationship implies an obligation...it is however, clearly understood that every action one takes creates an obligation in the other, and the key to the formation of network of personal ties... this sense of mutual ingratiation and indebtedness is broadly subsumed by Moroccans under the central Arabic concept of *haqq*” (221). To speak of *haqq* is, to convey that sense of mutual obligations that bind men to men, and man to God. Each of these obligations is open to negotiation and the question of whose obligation or *haqq* is valid, “true” or “real” (223) needs to be settled. And it is in the *qadi* courts that the legal validation of *haqq* is established.

Cutting across southwest from Morocco and to another Islamic legal context on the African continent, Susan F. Hirsch (1998) examines the discursive and dynamic constructions of gendered subjectivities and positionings in legal interactive speech over marital disputations in *Kadhi* courts in coastal Kenya. Unlike Rosen (1981), Hirsch’s focus is less on *Kadhi* negotiations of equity and discretion, than on the discourses available for ‘marital disputing’. A predominant literal and conceptual language of marital disputing in Hirsch’s ethnography is that of *haki*, the Swahili version of *haq* deployed by the disputants in Hirsch’s ethnography. According to Hirsch, ‘when disputants use *haki*, they produce distinct senses of the term that presuppose identifiably different discourses—one of specific, actionable laws and one of ethics or just behavior’ ... and although, ‘ in the abstract, *haki* can embody *haqq* in all three senses’ identified by Geertz: of real, reality and God, with ethics and just behaviour and with law and justice, ‘but in Swahili marital disputes, most deployments of *haki* tend either towards rights or justice...’ (86).

These ethnographic deployments of *haq* in the different Islamic contexts explore Islamic jurisprudential traditions where *haq* operates as an ‘orienting’ (Geertz 1983:187) concept of Islamic law and theology. My ethnographic tracking on *haq* in the subcontinent, on the other hand, reveals that the use of *haq* is not limited to Muslim communities in the region nor indeed to only contexts of the application and adjudication of Muslim Personal Law, which incidentally, governs Muslim communities in both India and Pakistan<sup>5</sup>. In fact, a striking aspect of its deployment in the region is its use across geographical, linguistic and religious groups. For instance, in Rajasthan, where I have been conducting fieldwork since 1999, recent census figures suggest that Muslims constitute just 9.07% of the state’s population and Urdu (usually, associated with Muslim communities in the subcontinent) as only ever spoken by 1.17% of the people.<sup>6</sup> In short, my point is that the use of *haq* in the region is not confined to Islamic jurisprudentialism but has a wider presence that includes claim making and seeking expanded citizenship entitlements from the state and its secular legal framework not always in alignment with Islamic juristical settlements of *haq*.

In what follows, I shall identify three justificatory premises of *haq* and its ‘applications’ within contemporary struggles for rights in India and Pakistan that produce vernacular rights cultures by filtering, mediating and interpreting rights through particular political imaginaries. By political imaginaries of *haq*, I refer to a set of dynamic gendered relations, ideas, practices, discourses, institutions and subjectivities, which attach to *haq* and in turn, those which it mediates, justifies, accords meaning to and upholds. By the plural imaginaries<sup>7</sup>, I am referring not to a single but to a multiplicity of mediations of *haq*, each produced within particular political contexts of struggle, and in line with the insights of Geertz, Rosen and Hirsch, stipulating a ‘sense of how things usually go

...interwoven with...how they ought to go' (Taylor 2002:106). Thus, *haq* orients proper ordering of relations among persons, contains within it an image of a gendered moral order and mediates citizenship, political discourse and political struggles.

In India, my fieldwork has over the years spread to six districts of Rajasthan<sup>8</sup> and has consisted mainly of recording narratives of development workers, grassroots political workers and participants of various citizen movements organizing under the umbrella of 'the right to food' movement. In Pakistan, I have documented the deployment of *haq* by the Anjuman Mazarain demanding land rights in the Punjab. There are at least five significant things to note about the contemporary applications of rights language or *haq* that I shall document: firstly, the deployment of a right is not through a neologism but within the vernacular and as '*haq*', and rights articulations do not occur as singular or even odd prototypes but draw upon and are negotiated through existing moral vocabularies and political grammar of norms, law, rules, entitlements, rights and identities. Secondly, vernacular rights cultures signal the overlapping and intersecting nature of the languages of rights and those of human rights, rather than insisting on either historical continuity or separation. In so doing, they resist theoretical foreclosure by sidestepping the paradox, that between the rights of man and of the citizen that characterizes much of the human rights debates in the Anglo-European world, in fact, if anything, these show that rights of man and of citizen are co-dependent, struggled for and intricately interwoven rather than paradoxical. Thirdly, these rights cultures are co-produced through and invoked within multiple and diverse encounters with developmentalism, statism, legal constitutionalism and activism and therefore, it is at the intersection of these, and not as some freestanding abstraction that *haq* as a contemporary idea operates. In fact, as the ethnographic descriptions demonstrate, these intersections are

integral to the formation of vernacular rights cultures. Fourthly, despite the extensive deployment of *haq* within citizen mobilizations, individual rights regulate neither interpersonal relations nor social life in either India or Pakistan. And, finally, demands for gender equality or *haq* for women is a question that almost invariably needs to be begged separately and seldom occurs organically within citizen mobilizations, a limitation perhaps, of the factual-normative structure of *haq*, which doesn't quite allow its easy translation into all demands for equality and rights. However, it is the case that demands of *haq* for women are not only voiced but also their enunciation brings into sharp relief not only the indivisibility and the intersectional nature of rights including imbrication of individual with collective rights but also their inherently conflictual nature. For instance, demanding the 'right to information' from elected representatives or indeed public officials about public programmes of health, education or employment in many cases involved a simultaneous claim for gender and caste equality whilst in the same breath drew attention to corruption rife in the local state bureaucracy and judiciary and to the flouting of procedural norms within the administrative, executive and legislative system itself. Perhaps, it is the indivisible nature of rights - of political and civic entitlements intersecting and interwoven with individual rights - that makes rights politics so conflictual.

### ***Haq* as a positive legal right of Citizenship**

In India and Pakistan, several strands of rights discourses circulate of which three prominent ones are legal constitutionalism, developmentalism, and religious/ethnic nationalism, the latter expressed more in the language of freedom and autonomy from the nation state than of citizen rights *per se*. Although 'divergent' (Oldenburg 2010) in their

experience of democracy and representative government and citizenship, both countries guarantee fundamental rights to citizens<sup>9</sup>, albeit, with qualifications<sup>10</sup> and with varying degrees of success and coverage. Both have superior judiciaries who've been less reticent in referencing and upholding international human rights law<sup>11</sup>, and while judicial activism is a recent phenomenon in the case of Pakistan (Newberg 2012, Waseem 2012, Shah 2014, Jaffrelot 2015), the Indian Supreme Court in the post emergency era has wrought a reputation for itself as a 'torchbearer of human rights' (Balakrishnan 2007:157) even if 'its impact on the ground is not consistent'<sup>12</sup>. Moreover, both India and Pakistan have a visible and vibrant women's movement (Shaheed 2010, Madhok 2010) and an active institutional discourse on gender equality (Basu 2005). Finally, discourses of development and human rights have a discernable presence on both sides of the border, particularly in the NGO sector (Jaffrelot 2015). In short, therefore, what I am essentially saying is this: the three justificatory premises of rights/*haq* that I document in this paper, and which span India and Pakistan, occur not in some conceptual bubble but are articulated and negotiated in contexts of sustained encounters and interactions with developmentalism, colonial/postcolonial law, militarism, statism and constitutionalism. By developmentalism, a term I prefer to development, I refer to not only a set of institutions, discourses and practices but also to a 'condition' or a way of being'. This developmentalism is normative in its aims and includes both state and non-state actors; it speaks the language of self-empowerment and individual rights and has the transformation of subjectivities as its explicit aim; it also mediates the experience and knowledge of constitutional settlement on citizenship (Madhok 2013). In India, social movements are a variegated lot comprising 'identity' and 'interest' groups who more often than not practice a 'dual level activism'; of engaging the government in order to influence public policy while also challenging societal norms and practices (Katzenstein

et al 2002, 267). Although, some social movements see the state as the main oppressor others participate in a much more 'situationally developed politics' (247) directing their campaigns at the judiciary for legal and policy reforms and for redressing injustices meted out by the state. An example of the latter is the 'Right to Food' network in India, itself imbricated within non-state developmentalism and formed in 2001 as an umbrella group by several NGOs predominantly based in Rajasthan in order to frame a people's response in the wake of the state government's apathy and inaction in the wake of successive droughts, a time which ironically also coincided with a surfeit of official stocks of food grain. The growing hunger and destitution across rural areas of the state prompted the Rajasthan branch of the People's Union for Civil liberties to submit "a writ petition accepted as a Public Interest Litigation or PIL (a form of judge led or 'juridical democracy' that became operational in India in the post emergency period for 'activating' fundamental rights and providing protection from 'excesses of state power', Baxi, 1985) to the Indian Supreme Court on April 2001, questioning whether the "right of life guaranteed under Article 32 of the Indian Constitution also included the right to food" (Banik, 2010, 265). In its response, the Supreme Court passed interim orders for the country wide implementation of the 'mid-day meals' scheme<sup>13</sup> under which a cooked meal would be provided to all children attending government aided schools. In addition to pursuing legal strategies, the right to food network also organized community action through setting up village level *akal sangharsh samiti* (ASS) or 'drought action committees' to scrutinize aspects of drought relief assistance and governance procedures and to mobilize popular support in favour of a federal law guaranteeing the right to food. In March 2013, the Indian cabinet approved the 'food security act', a scheme looking to provide subsidized nutrition to two thirds of the Indian population at an annual cost of 1.3 Trillion Rupees. Although the legislation suffers from several shortfalls, nevertheless, in

light of increased destitution and prevailing neoliberal inspired economic orthodoxies prescribing one size fits all models of self sufficiency, autonomy and entrepreneurial citizenship, it is indeed remarkable that this citizen activism has resulted in expanding the rights dispensation of the postcolonial state to secure for its most vulnerable citizens what is by all accounts, an ‘old fashioned’ social welfarist legislation.

In the narratives of the grassroots participants of the right to food movement, by far the most ubiquitous justificatory premise underpinning rights claims or *haq* was that rights accrued to one through citizenship. Perhaps, this is not entirely unsurprising given the institutional focus of the movement<sup>14</sup>. In effect, one can detect two different but related ideas of citizenship in the narratives of *haq*: the first is a discernably ‘active’ view of citizenship that regards rights as crucial for political participation and for exercising citizenship, while the second is a more or less straightforward legalist notion of citizenship that predicates rights upon legal constitutionalism. An unmistakably ‘active’ view of citizenship replete with notions of self-governance, accountability and responsibility is clearly enunciated by the political and field workers of the MKSS. The MKSS or the ‘Association for Workers and Farmers’, also a part of the right to food network, has been involved in a long drawn struggle for the right of ordinary citizens to gain access to state financial records and to state audits of development projects. It spearheaded a social movement espousing the right of public information and of the people’s right to know about the government’s economic functioning, which led to the passage of a federal ‘Right to information Act’ in June 2005. The right to information (RTI) movement began in the early 1990s to highlight the gross failures of the state to uphold minimum wage legislation particularly within drought relief programmes set up to provide stipulated employment to people in drought affected districts and to focus on the

flagrant inefficiencies and corrupt practices within the state public distribution system (PDS). The people's right to public information was seen as a key political tool with which to scrutinize reasons for endemic rural poverty and as a means of enforcing democratic accountability and transparency. However, the activities of the MKSS have not been limited to exposing the everyday forms of official corruption and focusing on procedures of governmental accountability but have also come to expose the 'multifaceted nature of corruption' within the legal and political system (Goetz and Jenkins 1999) championing innovative social techniques of mobilization and public appraisal.

The interview below is excerpted from a lengthy conversation with two prominent members of the MKSS. According to them:

As citizens, we have *haq* over this road, the road is built with our money. It is 'our' money because we pay income tax and we pay also tax on whatever we buy such as rice, *dal* and cooking oil. That is how the *sarkar* (the state/government) builds hospitals and schools. It builds these with 'our' money. The money that people think is *sarkari* or the building that is deemed to be *sarkari*, we say to them: it is not *sarkari*, it is 'our' building and it is 'our' money. 'Our' democracy must be safeguarded for that will make our rights safe. 'Our' effort should be that the constitution continues to guarantee the rights of citizens.<sup>15</sup>

In a different vein and what might appear at least initially a predominantly statist/legalist notion of citizenship, consider the following excerpted interview with Prem Bairwa, a



*dalit*<sup>16</sup> woman member of the village council in her village of Kotkhawada, Jaipur district. In addition to her role as a member of the local village council, Prem Bairwa is affiliated to a large and well funded NGO<sup>17</sup> that explicitly describes itself as a ‘facilitator in the development process’<sup>18</sup> and is also closely associated with the National Campaign for Dalit Human Rights (NCDHR), a national level advocacy organization in India.

According to her:

As a council member, I have a *haq* in the panchayat (village council) to get development done in the village. Do only men have the right to speak and conduct political business; are not women to enjoy these rights equally? It is a fight for my *haq* and a fight I have to fight myself. The government has given these rights to women; Indira Gandhi started the *mahila raj* of women. Before her, there were no women’s rights. In case the government changes ‘our’ rights then we have to fight the government. After all, it is ‘us’ who make the government.

At the outset, these two views of citizenship appear to resonate with liberal citizenship (subjects with rights) and also with those of civic republicanism and its ideas of self-governance, rights and public service. They also seem to uphold the ‘umbilical relationship’ (Moyn 2010) between rights and the state. Yet, all these would be quick conclusions for at least two reasons: firstly, liberal citizenship is based on a contractual arrangement between individuals and the state on the basis of negative liberty, and civic republicanism with its valorization of political participation takes homogenous political communities as self-evident. Neither liberal selfhood nor assumption of single axial

political identities inform the justificatory premise of *haq* as citizenship, not least, since the rights subjectivities engaged by *haq* are not always individuated and also because citizenship's common unitary identity fractures only too easily by the actual practice of rights and citizenship especially by marginal subjects. Secondly, although, while it would seem that these deployments of *haq* conflate legal rights with entitlements, a widespread academic tendency that cuts across disciplinary divides<sup>19</sup>, where rights and entitlements are mainly (and interchangeably) understood as positive legal rights attached to corresponding obligations, liabilities, addressees and duties. However, paying close attention to the narratives above shows that claims of *haq* exceed this predominant and legalist understanding of rights and entitlements. If anything, the deployments of *haq* in my ethnographies embrace legal rights but also draw attention to entitlements or to extra-jural claims. Within analytical philosophy, the distinction between rights and entitlements is not only one between legal and moral rights but concerns the more general question of the structure of rights, the relationship between rights and obligations and the justifications of rights itself. Consequently, the relationship between rights, claims, and entitlements has engaged philosophical discussions and many philosophers make some careful and intricate distinctions between these (Hohfeld 1978, Feinberg 1970, McCloskey 1976, Nickel 2007, Raz 1986, Sen 1986, Wasserstrom 1964). While some view rights not as claims or powers (McCloskey 1976, 99) but rather as essentially "entitlements to do, have, enjoy or have done" and consequently, independent of a corresponding duty holder in place from who rights can be claimed *against*. Others however, envisage rights as 'valid claims' backed by mandatory positive legal sanctions with a corresponding duty holder and/ or addressee in place and/ or, where there might (as in the case of moral rights) a claim for recognition based on existing moral principles. Joel Feinberg (1970) who is most closely associated with the above view regards rights as

‘valid claims’ which are always ‘correlated with another’s duty’ (255) but he also makes allowances for a ‘manifesto’ sense of rights in some contexts, which are entitlements without corresponding duty holders in place. As is evident, the chief distinction between valid and manifesto claims is over where to place the burden of obligation but also that the relationship between rights and obligations or duties is more often than not overdetermined by the question of law: rights are judged ‘valid’ or ‘weak’ depending on their relation to law. In other words, where there is no strong link between the two, there is unlikely to be a right, at least in the strictest sense (Hohfeld 1978). The activist narratives in my ethnographies deploy *haq* to denote ‘valid claims’ in so far as they claim *haq* over clearly identified sets of legal obligations and a stipulated addressee, i.e. the state, but often, demanding *haq* is also to claim recognition for an altogether new or a different set of rights or for an expanded set of rights. So, for instance, the political activism of the right to food movement and of the MKSS for the right to public information were raised in the first instance as qualified versions of ‘manifesto’ demands which were subsequently successfully converted into ‘valid claims’ with the passage of federal laws on the same; these were qualified manifesto rights in the first instance, because unlike Feinberg’s (1970) definition of manifesto rights, these were directed towards a specified addressee, i.e. the state and were therefore not unspecified claims. While it follows here that deployments of *haq* certainly coincide with legal rights, albeit with certain qualifications, but what does this legal coincidence lead us to infer about the nature of the justification underpinning *haq* here? In other words, does *haq* only ever hold in the presence of legal rights? Or to put it another way, does *haq* depend on declared legal rights to sustain its meaning and authority? At first reading, the above narratives appear to uphold a correlative link between rights and legal constitutionalism, in the sense that *haq* or rights are premised upon, depend on and are justified by legal constitutional

citizenship. However, if were to examine how *haq* mediates citizenship in these narratives more carefully, we would find that *haq* doesn't quite posit a symmetric and correlative relations between itself and the positivist legal order of the state. In fact, upon close inspection, one will note a peculiar conceptual insight and it is this: whether these narratives rest their justificatory premise of rights on law or the state or on the constitutional rights and obligations of citizens, they retain with the people the right to change both the law/government or the constitution, in the final instance, if these fail to uphold the rights of citizens. For instance, in advocating constant vigilance over the state on citizen rights, both Prem Bairwa and the MKSS activists align *haq* with legal constitutionalism but crucially also withhold its subsumption into the latter. In other words, although the justificatory premise of rights in the two narratives draw on law/constitution and on legal citizenship, in both cases, there is a clear enunciation that even though law/constitution is required to these rights, *haq* has an independent justificatory premise separate from the formal legal regime of rights and lies in what Brett (2003:98) has termed a "zone of non coincidence between individuals and the positive legal order of the state". *Haq*, therefore, refers to and is thereby based on an ethical, normative, moral and an empirical idea, which exists independent of the law and has a moral authority of its own<sup>20</sup>.

### **A Cosmological Justification for *Haq***

I now turn to a justificatory premise for *haq* predominantly embedded in ideas of the 'ancestral', the 'historical', the 'prior' and the cosmological. Importantly, and as before, this justification too is not articulated in a discrete or an ahistorical way but as before, emerges in particular political, institutional and historical contexts of developmentalism,

citizen activism and legal constitutionalism.

In my ethnography, the ancestral or cosmological premise for rights is mainly articulated by the indigenous peoples' activists who are part of a large umbrella movement for rights to forest land claimed as ancient and sacred, which in Southern Rajasthan is known as the *Jungle Zameen Jan Andolan (JZJA)*<sup>21</sup>. The *Jungle Zameen Jan Andolan (JZJA)* came into existence in 1995 and now covers seven southern districts of Rajasthan. It was formed as a response to the forcible evictions of Rajasthan's aboriginal communities or *adivasis* from their lands and traditional homes deep within the forests. India is not a signatory to the ILO Convention 169 on the rights of the indigenous peoples but it does provide special constitutional safeguards for indigenous peoples or the Scheduled Tribes<sup>22</sup>. The history of forest dispossessions however, predates the postcolonial state and is more than a century old (Guha 1989). It became systematized with the enactment of the Indian Forest Act in 1865 by the colonial state and its subsequent amendments in 1878 and 1927, which reserved a fifth of land area as 'government forest' primarily for increasing revenue and for 'marketable timber' (Rangarajan and Shahabuddin 2006:368), resulting in the removal of forest communities from designated 'government forests'. In postcolonial Rajasthan, the dispossession and eviction of aboriginal peoples from their land is a fallout of the passage of the Rajasthan Forest Act of 1953 that converted tribal forest rights into 'concessions' and required aboriginal dwellers to show 'proof' in the form of documentary evidence in support of their land or dwelling rights over the forest land. In the absence of correct procedural documentation, the land belonging to the *adivasis* was suddenly transferred to the state forest department and they became known in official speak as 'tribal tillers' and thereby 'encroachers' upon forestland. Over the years, the state government has sought to address the conditions of 'tribal tillers' by ensuing notifications

in 1978 and 1991 to regularise forest land possession, but these governmental circulars were not publicized among the beneficiary populations and even less implemented. In 2002, the arbitrary, violent and coercive evictions of the aboriginal forest communities and other non-tribal forest dwellers from their homes and lands were carried out at scale ‘unprecedented in recent history’<sup>23</sup>. In October 2006, as a direct outcome of a nation wide displaced forest dwellers campaign, the federal Parliament passed legislation decreeing a bill of rights of forest tribes or the ‘Scheduled Tribes and other Traditional Forest Dwellers (recognition of Forest Rights) Act to address the ‘historical injustices’ suffered by India’s forest communities.

The Forest Act 2006 provides for individual rights and also collective community governance over forest land; in its implementation however, the act has preferred to deal with individual claims over forest land and paid “little attention to provisions to facilitate community control of state-owned forest areas” (Kumar and Kerr 2012: 758). In Southern Rajasthan, there are several locally based organizations affiliated to the JIZA that mobilize people on issues of collective governance over forest land and produce and also against state led eviction and violence on development projects inside forest land. One of these local groups is based in Kotra Block in Udaipur district and is known as the *Kotra Adivasi Vikas Manch* (Kotra Aboriginal Development Group), who are specifically concerned with the fallout from the ‘Phulwari Ki Naal’ wildlife sanctuary, which was declared as a sanctuary in 1983 and encompasses one hundred and thirty four villages in the area<sup>24</sup>. In the interview I represent below, one of my interviewees, Harmi Bai, a former secretary of the *Adivasi Vikas Manch Kotra*, and belonging to the Bhil tribe, describes the aboriginal peoples’ resistance to the declaration of the ‘Phulwari Ki Naal’ sanctuary and of the difficulties that this has caused. The designation of ‘Phulwari Ki

Naal' as a sanctuary has led to a series of restrictions on people's access to the forest and on their collection and consumption of forest produce such as honey, firewood, wood, fruits, medicinal herbs, tree bark and leaves, which the aboriginal villagers depend upon for their everyday survival. The ban also has a commercial sting: the villagers used to collect *tendu* leaves (local tobacco substitute) from the forest, made these into bundles and then sold them off to the contractors who came from the cities for manufacture as *beedis*. The sale of *tendu* leaves is a seasonal activity and even a two-week collection could earn a medium sized household cash in hand for the whole season<sup>25</sup>. The ban on forest produce have led to a substantial loss of earnings for aboriginal households with the result that a majority of these are now forced to undertake 'seasonal migration', mainly to work on the large landholdings in neighboring states as agricultural sharecroppers or laborers. In an excerpted conversation Harmi Bai reflects on some of these difficulties:

Earlier, we used to take the produce openly from the jungles and without any restriction and then suddenly, we were told that there was a prohibition on the forest produce as this was now a sanctuary for wild animals. We were told that we could not build homes or rear our animals or sow the field inside the jungle. We were told that this was now protected land and a sanctuary and that they were now going to develop a park inside it and that tourists were going to come from abroad to visit the sanctuary. ....

We continue to take the produce from the forests. We only take what we need. We are the owners of this jungle and the lands therein; we have a *haq* over these. Wherever there are *adivasis* there are jungles, in

the cities there are no jungles. We have protected the jungles. The *haq* over these forests and water comes from our ancestors. These are our sacred lands- our ancestral spirits reside here- we have ancestral rights over these lands. Our forefathers have used this land for centuries. We tell the state forest officials, you do your job and stay here and that together we can stop the jungle mafia who go into the jungles in their lorries illegally and for commercial purposes. But you cannot stop us from taking the produce for our own use from these jungles or force us off our land.

Harmi Bai and her fellow activists of the *Kotra Adivasi Vikas Manch* spoke to me mostly in the Bhili/Bhilodi language making the presence of *haq* in their vocabulary, a word whose intellectual provenance and trajectory is vastly different from Bhili/Bhilodi, appear quite arresting. In the narratives of the Bhil activists, *haq* has very specific applications: It is hardly ever used to claim gender rights and equality and where it does, it draws on legal constitutionalism and not on prior entitlements. It is more often than not deployed to claim ‘*qudrati haq*’, or those rights justified by and/or in alignment with what nature or the cosmos intended. It is also used to signify ‘*nazar qabza*’ or community recognition, a possessive claim to untitled land and property not recognized in legal/state documents but one that is upheld by a council of community chiefs known as *Bhanjgarhiya*<sup>26</sup>.

Thus the deployments of *haq* encompass individual and collective claims but also legal, moral and cosmological ones. In demanding their *haq* to their forests, the Bhil aboriginal activists are staking a ‘valid or justified claim’ (Feinberg 1970) over ancestral forests lands - these claims are recognized under the ‘forest rights act, 2006’, which also



identifies the state as the obligation bearer - even though their justification of these rights claims is independent of the state and its constitutional legalism framed primarily around liberty and welfare. In deploying *haq* to invoke ancestral entitlements that are non derivative from the state but require the latter's legal protection and implementation, the Bhil activists open up a discursive space that seeks an expanded rights dispensation from the state. In seeking 'non derivative' rights from the state, the Bhil activists underline the point that rights are not creations of the state or of the government but that they are 'dynamic' (Gewirth 2001:332) and have independent justifications. Let me make two further remarks about the distinctions between the discursive deployments of *haq* in the above narrative and the category of a positive legal right in Anglo-American rights theorizing. Unlike the moral individualism espoused by several dominant rights theories, *haq* is not the moral property of self-regarding individuals and thereby, does not only engage in establishing jural "correlatives" and "opposites (Hohfeld, 1978) between 'pairs of individuals' (Simmonds, 142), i.e. in establishing what rights individuals have in relation to others and to which the latter are obligated. Propelling the analytical debate on rights is the existence of 'dichotomies', not least between abstract freedom and the context of choice or the one between individual autonomy and the public good (Simmonds, 129) However, the deployment of *haq* doesn't suggest or uphold dichotomous relationships between individuals and the public good, rather, it signifies a cosmic *inseparability* and *indivisibility* of individuals from the collective good. And secondly, even if rights theorists do not premise rights on a commitment to individualism or when they refuse a rights based morality, they continue to insist that rights provide grounds 'for action in the interest of other beings'. In other words, rights are envisaged to serve interests only of individuals as human beings whether as individuals or in collectives; rights whether individual or collective have to be 'consistent with humanism'

(Raz 1986, 208). Therein lies the rub. Neither humanism or moral sovereignty of the individual or their interests, whether collective or individual, provide the justification for the *haq* claimed by the Bhil activists over their ancestral forests and against their dispossession. In their narratives, *haq* operates to uphold a cosmological and a normative order with its prescribed set of ethical relations and responsibilities, which include duties to (protect) nature<sup>27</sup>. It has a normative, non-humanist, cosmic-ontological quality and its normative and ethical remit extends beyond self regarding individuals and their acts of claim making to invoke a social and political imaginary of living in the world alongside other species beings.

Now, although, Harmi Bai and her group along with the IJZA have been unsuccessful in their bid to get the sanctuary notification quashed in the courts, they have been able to use the rights under the forest rights act especially those empowering elected village councils to decide on the use of forest lands for ‘non-forestry’ purposes and for ‘mega industrial projects’ to stop the relocation of four villages to facilitate progress of the Phulwari Ki Naal sanctuary<sup>28</sup>. The act has clearly released democratic energies and strengthened *gram sabhas* (village assemblies), which have organized popular refusals of large capital take over in the name of development such as by the global mining giant Vedanta Aluminum (Jena 2013) while also leading to increased coercion and state violence on aboriginal communities withholding consent to these. In the face of increasing resistance on the ground and mounting pressure by international capital, on 28 October, 2014, the Ministry of Environment and Forests issued a directive which ‘exempts’ any land use proposal for industrial purposes from the requirement of seeking the consent of the *gram sabhas*, thereby bringing the democratic gains of the forest act under severe erasure<sup>29</sup>.

## **An Islamic justification of *Haq***

Tracking *haq* further northwest and into Pakistan, the mobilizations of the Anjuman Mazarain (Peasants association of Punjab) in rural Punjab demanding the restoration of their ownership and sharecropping rights to the land taken over by the Pakistani military provide us with yet another insight into the specific political imaginaries which produce particular vernacular rights cultures. The struggles of the Mazarain must be seen in the context of the dominance of military in Pakistan which is also among the largest landowners in Pakistan; a position it has achieved through organizing ‘land transfers’ to itself and the wider ‘military fraternity’, not by illegal or extra-institutional means but through legal and institutional manipulations with some aid from systematic acts of state violence (Siddiqa 2007). Recent scholarship on Pakistan has documented the nature and extent of the military’s ‘economic predatoriness’ (Siddiqa 2007:5, Khan et al 2014) and traced its roots to the ‘unique colonial social contract’ (Khan et al 2014) that produced loyal colonial subjects through operating land distribution/transfers; a mode of patronage that the military in Pakistan has carried over into the postcolonial state with great effectivity. In fact, a striking commonality in the struggles of both the JIZA and the Anjuman Mazarain is that they both bring into sharp relief the continuing colonial haunting of legal arrangements and the social and economic arrangements these instituted. In the case of Pakistan, the carry over of colonial legal arrangements has helped forge together a postcolonial ‘state-society consensus’ based on the ‘guardianship of the military’ (Khan et al 2014). For not only do these ‘land transfers’ to the Pakistani military owe their legal and institutional legitimacy to various colonial era laws such as the ‘Land Acquisition Act of 1894’ and ‘The Colonization of Land Act 1912’ (later updated by the

Government of Pakistan in 1965), but also the management of these lands by the military in postcolonial Pakistan is based on ‘Cantonment Land Administration Rules 1937’ used by the colonial military (Siddiq 2007: 177). Yet, it is also the case that it is over the question of land that the ‘state-society consensus’ in Pakistan suffers its first ‘public fracture’ (Khan et al 2014) with the struggles of the peasant sharecroppers at Okara and Khanewal mounting a ‘resistance to the post-colonial state dominated by the army’ (Akhtar 2006).

Essentially, the Anjuman Mazarain are demanding ownership over the land they’ve been tilling ever since the colonial transfers of population to people vast irrigation projects which began in 1885. Under the 1894 ‘Land Acquisition Act’, the colonial state transferred populations to its newly built ‘canal colonies’ and irrigation projects promising to bequeath ownership rights to resettled populations over these lands. But this promise was never upheld, either in colonial period or by the postcolonial state. As a result, these peasants continued cultivating only on the basis of usufruct rights over the land and as sharecroppers rather than landowning peasants. Except for a short period between 1957-60, when ownership of some of this land was transferred to the Mazarain, an order that was subsequently rescinded, the peasant populations on these lands have more or less continued to till the land according to the sharecropping and tenancy rights established under the 1884 Act. In the early half of 2000, the military administrators of these farms introduced changes to the original terms of the contract and revised the basis of the prevailing peasant sharecropping arrangement concluded over a century ago, which regulated the share of the agricultural produce and occupancy rights.. The revised terms of the contract replaced sharecropping with its proportional division of crop yields to requiring cash rentals<sup>30</sup>. Fearing economic destitution and eviction, the peasant

sharecropper farmers organized themselves as the 'Anjuman Mazarain' adopting the slogan '*maalki ya maut*' ('ownership or death') in order to oppose the new terms of the contract and, in so doing, openly challenged Pakistani military rule.

On 7 October 2000, five thousand peasant farmers organized a peaceful protest against the new tenancy laws proposed by the military; two days later, armed police along with the Frontier Constabulary entered the village and started a campaign of violence against the village sharecroppers. Thus began four years of intimidation and siege of the Okara farms by the military leading to arbitrary imprisonments without trial, intimidations, beatings and fatalities. In the course of the agitation and in aftermath, various legal challenges were mounted by the Anjuman Mazarain against the Military in Pakistani courts which, in turn, placed the military ownership of the farm lands under legal scrutiny, thus making the very claim of ownership of these lands a legal and even a political question. The court proceedings established that the Pakistani military was, in fact, not in any legal position to introduce changes to the peasant contract and even less able to establish, through documentary evidence, its proprietary status as the landowner<sup>31</sup>. As a consequence of the legal pronouncements, the tenants of Okara and Khanewal military farms have not surrendered any share of their crop yields to the military, Pakistan's most powerful institution and have continued to retain control over the land.

Perhaps, not unsurprisingly given that activists of the Anjuman Mazarain belong predominantly to the religious and linguistic groups most identified with Urdu in the subcontinent, i.e. Muslims and native Urdu speakers, they also deploy the term *haq* to demand their land rights. The justificatory premise of their deployment of *haq* is neither cosmological nor tied to demands for citizenship, instead, it is embedded in and derives

its justification from Islamic jurisprudentialism and Qur'anic meanings and is consequently tied very strongly to the idea of 'right conduct. However, not unlike the demands of the activist groups in Rajasthan that I described before, the Islamic premise deployed by the Mazzarein also exceeds the legal category of rights, and in contrast to the Islamic accounts of *haq* presented by Rosen, (1980) Hirsch (1998) and Geertz (1993), are claims against the state for the restitution of laws of ownership under secular legal arrangements and not against particular persons under Islamic personal law. The following narrative of an activist of the Anjuman Mazarain at Khanewal allows us to document *haq* that derives its mainstay from a popular Islamic understanding but one used outside of a strictly religious context and towards what might be seen as secular ends.

This word (*haq*) comes from Islam because Islam clearly marks out a very clear definition of the practices and conduct that constitutive of right behaviour. Islam invokes *haq* in two separate ways: a) as *Haqooq ul Allah* which is to do with right conduct in the discharge of religious obligations such as offering prayers five times a day, fasting during Ramzan and fulfilling all those religious that make me a good Muslim and b) *Haqooq – ul- abad* which relates to right conduct in respect of other human beings including towards my government and my family...

The right to cultivate and possess ownership is prescribed in the Holy Qur'an. For instance, in the Qur'an on paragraph 3, it says very clearly: if some one who cultivated the land for five years, he then becomes the owner of the land. Therefore, the Mazarain have a right over the land which is justified by Islam itself<sup>32</sup>.

In this particular narrative, I am less interested in questions of ‘purity’ or the faithful recalling of the Qu’ranic passage and more in the marshaling of Qur’anic texts by peasant activists in their struggle for land rights. Furthermore, I am not suggesting that this narrative reflects a definitive version of Islamic *haq* but only that it is *a* notion of *haq* that traces its normative underpinnings to Islamic texts and to mystical Islam (Schimmel 1975). However, as pointed out in the narrative, it is indeed correct that within Islamic scholarly heritage, the notion of *haq* is often evoked as right conduct. In Islamic texts for instance, *haq* or *haqq* is referred to as ‘right things’ and contrasted with *batil* or wrong things. “*Haq* is the doing of right things like the acts of obedience, the doing of which God has not forbidden” and *batil* or ‘wrong things’ is “associated with injustice, *Kufr*, and the acts of disobedience. Both are equally God’s creation. But the one is right and the other is wrong” (Isutzu 1965). This interpretation of something being morally right and or ‘morally straight’ is quite distinct from having a right over something or possessing something. The ‘morally right’ sense of rights finds clear elucidation in early western political philosophical texts and consequently, the history of western political concepts is replete with an intense speculation as to when rights as we know today came to acquire their possessive meaning as opposed to their earlier meaning, which evoked ‘moral rectitude’. Very quickly, I want to add here that *haq* as ‘right conduct’ must not be viewed as a gender neutral term nor should its intellectual justification invoking Islamic heritage be regarded as ‘non political’<sup>33</sup>. Although, the Anjuman Mazarain protests has seen large mobilizations of women peasants, supported by a range of women’s rights activists, the question of gender equality has needed to be clearly begged separately and has not emerged organically as part of the demands made by the movement. And even if women’s

participation and demands for landownership rights alongside the male activists has 'indicated a shift (even if only in symbolic terms) in the existing thinking from community rights to women's rights especially when due share in inheritance and property were until very recently not subjects of public debate' (Mumtaz and Mumtaz 2012:148), any consolidation of this 'shift', will require building up 'long term linkages' across the women's movement in Pakistan (Shaheed 2010), including alliances of solidarity between peasant women in rural Pakistan and urban women activists campaigning for women's rights in the cities of Lahore and Karachi.

### **Vernacular Rights Cultures, Rights and Human Rights**

At this point, you might ask as to why should we frame these rights mobilizations and deployments of *haq* in terms of vernacular rights cultures and not simply as yet more growing evidence of the globalization and expansion of human rights? For is it not now commonplace to argue that the last two hundred and fifty years have witnessed the 'global diffusion of a culture of rights' (Ignatieff 2001)? Or at times more warily, that human rights 'have become the 'most globalized values of our times' (Wilson 1997)? While the celebrators and detractors of human rights link the causes of this spread of rights variously to the impact of western colonialism, immigration, international legal instruments and global communication, the originary assumption informing these arguments is an orientalist one: that the conceptual, philosophical and empirical experience of rights can be traced to the revolutions of the modern west and are in fact, a testament to the incontrovertible march of progress and civilization heralded by them. In recent years, however, scholars have produced precise histories detailing the 'invention' of human rights (Hunt 2007) and to disrupt the originary impulse (Madhok 2015) to



aggregate a variety of 'western' rights talk in different historical periods with that of the international human rights one (Moyn 2010). They have written of the 'indeterminacy' and paradoxical nature of rights (McCann 2014; Merry 2014, Deakin 2014; Brown 2000) and pointed to the contradictory, alienating, exclusionary and politically conservative effects of a universalizing and homogenizing human rights politics (Asad 2000; Brown 2000, 1995; Menon 2004; Crenshaw 2000; Spivak 2002). In many critical accounts, human rights are seen as constituting a 'central' element of US led globalization, capitalism and world trade (Mignolo 2000), and thereby, implicated and invested in upholding existing global power relations and hierarchies of representation. Characterized as a 'global secular religion' (Meister 2002), they are also critiqued as a form of 'transnational governmentality' (Grewal 2005) and also as a form of 'biopower', (Cheah 2013, 2014). Within recent human rights scholarship, one can discern at least two distinct strands of critical disciplinary based scholarship on human rights: the first which is mainly that of political philosophy/theory concerns itself mostly with the logics of equality, democracy and citizenship and in particular with the 'right to have rights' (Rancierre 1999; 2009; Balibar 2002; Agamben 1998; Cheah 2013, 2014; Douzinas and Gearty 2014) and the second, mainly anthropological work (Biehl 2013; Wilson 1997; Merry and Goodale 2006; Visweswaran 2010; Comaroff and Comaroff 2012; Cowen and Wilson 2001; Abu Lughod 2013; Povinelli 2011) has engaged thoughtfully on the limits of liberalism and legal constitutionalism in the post colony (Povinelli 2011, Comaroff and Comaroff 2012), on the 'active life' of rights (Abu Lughod 2010), of their 'vernacularization on the ground' (Merry and Levitt 2009) and on the intersection of biopolitical technologies, law and the market (Biehl 2013). While both sets of scholarly debates inform thinking on vernacular rights cultures they are by themselves insufficient and we require yet more complexity. For instance, recent debates on the relation between

rights and citizenship have focused on the ‘logic of equality’ (Rojas, 2013) or on acts of citizenship through which non-citizens seek the right to have rights that have already been declared (Ranciere 1999; Balibar 2002). However, paying attention to the production of vernacular rights cultures reveals that mobilizations of marginal and dispossessed groups does not just involve a logic of equality and inclusion through which dispossessed groups demand already existing rights. Rather, these mobilizations not only seek to alter the means through which rights are delivered (Dunford and Madhok 2015) but also to transform the content and meaning of the rights that are already in place while also demanding that new rights are brought into being, as the right to food movement and also those to forest lands described here make clear. And furthermore, although, the recent efforts to study ‘vernacularization on the ground’ (Merry 2006; 2009), where vernacularization refers to the ‘process of appropriation and local adoption of globally generated ideas and strategies of vernacularization’ (Merry and Levitt 2009: 441), is an important intervention into studying the ‘local uses of global women’s rights’ in different sites, ultimately though, it suffers from a significant conceptual difficulty: It operates within and actively reproduces the binaries of the epistemic - authorial global *versus* the non-epistemic--translating local, and thereby, forecloses agentival activity and authorship of rights from elsewhere and not least from the margins. A key component of vernacularization of human rights according to Merry and Levitt, (2009) is their ‘translation’ which is done by a ‘chain’ of ‘vernacularizers’ from the global to the national and all the way to the local. While Levitt and Merry are careful to point out the differential power relations and vulnerabilities of vernacularizers that impact their effectiveness in different contexts and allow vernacularizers to ‘talk back’ to the ‘global values packages’, it is unclear from the examples they provide, how this ‘talking back’ displaces either the epistemic center of human rights which they identify as the ‘West’

and from where they travel to other places and are vernacularized, or indeed their content or forms and modes of expression. In other words, vernacularization or indeed vernacularizers leave epistemic hierarchies intact. To think in terms of vernacular rights cultures, on the other hand, is to insist on a non-linear, historical and a transnational analysis of rights/human rights discourses without refusing the power dynamics in which these operate. As I have illustrated through the rights ethnographies in this paper, vernacular rights cultures inhabit particular political imaginaries and arise as movements make demands for rights that are inflected with the particular cultures, histories and contexts of political mobilisations. And although, they can be transnational in nature -- in terms of shared legal and political histories, resonances and even active linkages with similar forms of oppression and related historical cultural contexts such as the newly developing links between the right to food movement in India and the *via campesina* in Latin America<sup>34</sup>—they are rooted in an insistence that we don't lose sight of the cultural, historical, linguistic and political specificity of rights claims and also of the political imaginaries these inhabit. Furthermore, while, I think it is important and interesting to track how 'global rights' transfer and 'translate' into different settings, it is but only one strand/aspect of rights activism and must be accompanied by analyses of how not only certain rights became global/universal but also how these in turn are undergoing expansion and change under pressure from collective struggles. In other words, we need to see rights and human rights activism beyond prisms of discrete agent based activism, even though individual agents play important roles in 'transferring and translating' rights, to examine the ways in which transnational principles, practices and imaginaries of rights are sutured with the multiple histories, imaginaries, subjectivities and contexts in which they are formed and reflect a history of struggles that is both local and transnational. To sum up, arguments here have been making this essential point that: rather than suggesting

that a relatively unchanging, universal set of abstract principles or an authoritative set of rights are filled out with particular ‘localized’ content in diverse contexts, vernacular rights cultures suggest that transnational rights principles, imaginaries and practices are shaped and transformed through the diverse and multiple contexts in which rights are demanded and exercised.

### **Conclusion:**

The movements for *haq* I am tracking in this paper are precariously positioned live struggles. The Anjuman Mazarain continue to protest in the face of heavy securitisation of their lands; the right to food movement is seeing its legislative gains eroded with the ruling right wing BJP led government threatening to cut back food security entitlements; and JIZA and India’s forest communities face the impending threat of a dilution of the forest act 2006 and increased state violence, coercion and dispossession in order to make way for easier land acquisition for private investment and also further restrictions on forest land through converting them into national parks. Even as I write this, news is rolling in of an ‘executive order’, the first of its kind, cancelling the rights of tribal communities under the ‘Forest Rights Act’ in order to ‘facilitate coal mining’ by a syndicate of transnational and national capital, in Eastern India<sup>35</sup>.

To conclude then, the three different political imaginaries of *haq* that I document in this paper: constitutional/legal citizenship, entitlements of the prior and those based on Islam, are all produced, articulated and negotiated within live political contexts of struggle and precarity and provide insights into how vernacular rights cultures are mobilized. A focus on vernacular rights cultures I have argued enables a conceptual optic into the ‘active’ conceptual, empirical, epistemic and political life of rights and into the specific stakes and

struggles for rights in different locations while refusing straightforward ordinary and binary descriptions of these as either merely local variants of global rights talk or radically and incomprehensibly different.

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<sup>2</sup> Its root in classical Hebrew is: “ (a) “to cut in, engrave,” in wood, stone or metal, (b) “to inscribe, write, portray”... (c) “to prescribe, fix by decree”, (d) “due to God or man, right privilege”...”

(Encyclopedia of Islam p 82).

<sup>3</sup> Geertz doesn't explicate how he deploys 'ontological' and I'm reading him here as alluding to *haq* as consisting of a discourse on nature of being. See David Graeber (2015) on some of the ambiguities surrounding the use of the term in anthropology.

<sup>4</sup> The jurisdiction of the *qadi* courts in Morocco are limited to matters pertaining to personal law governed by its 1958 Code of Personal Status and thereby, only to those of marriage, divorce, filiation, inheritance and child custody.

<sup>5</sup> The Pakistan legal context is more complex with the setting up in 1980 of the Federal Shariah Court, which has the authority to determine 'as to whether or not a certain provision of law is repugnant to the injunctions of Islam' (Hussain, 2011:15).

<sup>6</sup> Linguistic Survey of India, Rajasthan (Part 1), 2011. Ministry of Home Affairs, Government of India. [http://www.censusindia.gov.in/2011-documents/lsi/lsi\\_Rajasthan/4\\_introduction.pdf](http://www.censusindia.gov.in/2011-documents/lsi/lsi_Rajasthan/4_introduction.pdf)

Accessed 03 September 2015. For census data on Muslim population in Rajasthan, see <http://www.censusindia.gov.in/2011census/C-01.html>

<sup>7</sup> I'm drawing on Taylor for whom social imaginaries are 'ways people imagine ...how they fit together with others, the expectations that are normally met, and the deeper normative notions and images that underlie these expectations' (23).

<sup>8</sup> A British Academy Grant (SG-39747) made fieldwork in Rajasthan (2005-07) and research assistance in Okara and Khanewal in Pakistan between 2007-08 possible.

<sup>9</sup> India's constitution adopted in 1950 sets out Fundamental rights in Part III of the document, and while Pakistan's constitutional history is more chequered having gone through three enacted constitutions but it too guarantees fundamental rights in Part II of the 1973 constitutional arrangement.

<sup>10</sup> In the case of Pakistan, the establishment of Shariah federal courts qualifies the nature of remedies available to citizens. The operation of Muslim Personal Law in India similarly qualifies aspects of state civil law in relation to Muslims.

<sup>11</sup> Pronouncing on gender equality, the Indian Supreme Court famously referenced CEDAW in *Vishakha vs State of Rajasthan* to lay down legal guidelines for the prevention sexual harassment of women in the workplace. (*All India Reporter of the Supreme Court* 1997:3011] More recently, the Delhi High Court in

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Laxmi Mandal vs the Deen Dayal Harinagar Hospital [W.P.C.C 8853/2008] drew on India's commitments to various international rights protocols in order to pronounce a legal basis for the protection of reproductive rights of women. In Pakistan's plural legal system, writes Shaheen Sardar Ali (2012, 22), 'human rights treaties appear to be invoked by the judiciary as effortlessly as customary and Islamic norms as well as constitutional provisions of equality and non-discrimination'.

<sup>12</sup> Rajagopal points out that this is due to the "ideological character of the Court's particular approach to human rights' and its biases... in favor of the state and development, in favor of the rich and against workers, in favor of the urban middle-class and against rural farmers, and in favor of a globalitarian class and against the distributive ethos of the Indian Constitution" (2007:158).

<sup>14</sup> The movement has focused on legislation and schemes, including the national rural employment guarantee act, the integrated child development services, mid-day meals scheme, and the public distribution system.

<sup>15</sup> Interview with Sarpanch Tej Singh and Sarpanch Narayan, Rajsamand, 2004.

<sup>16</sup> *Dalit* refers to those belonging to formerly the untouchable castes.

<sup>17</sup> Cecoedecon noted by many to be one of the largest recipients of foreign funds. Interview with Sunny Sebastian, Rajasthan correspondent for the 'The Hindu', February 2004, Jaipur.

<sup>18</sup> <http://www.cecoedecon.org.in/orgprofile.html>

<sup>19</sup> For this conflation within legal theory, see (Hirschl 2000, Morris 1992); for occurrence in philosophy, see for instance, the Stanford Encyclopaedia of Philosophy; and in policy documents, see in particular UNRISD or indeed its various background papers on migration, gender equality.

<sup>20</sup> On *haq*'s particular quality of legal 'non-coincidence' as well as its moral authority, see Madhok (2013).

<sup>21</sup> For accounts of cosmic tales and traditions detailing aboriginal originating myths and status see Verrier Elwin (1937)

<sup>22</sup> The terms 'tribe' and 'tribal' are not uncontested but they continue to be used as 'policy terms'

<sup>23</sup> See 'Campaign for Survival and Dignity' 2003.

<sup>24</sup> The sanctuary covers a total area of 511.41 sq. km out of which 365.92 sq. km hectares are designated as 'Reserved Forest'. See Forest Department Rajasthan (2014).

<sup>25</sup> Interview with Napi Bai, Medhi Panchayat, Kotra, 06 August 2015.

<sup>26</sup> Interview with Dharamchand Kher, Rajasthan Adivasi Rights Organisation, 09 August, Udaipur 2015.

<sup>27</sup> Interview with Rapli Bai, Medhi Panchayat, Kotara, Udaipur, 06 August 2015.

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<sup>28</sup> Interview with Rapli Bai ( also known as Napi Bai), 2015.

<sup>29</sup> <http://www.dnaindia.com/india/report-activist-up-against-fra-act-dilution-2030760>.

<sup>30</sup> Human Rights Watch (2004)

<sup>31</sup> It emerged that the Pakistani Military at the time of gaining independence in 1947 had the lands transferred from the British Military to them, but had in effect, paid no rent to the Punjab Revenue Department which was the lessee of the land and hence, as a result of renegeing on its contractual agreement with the Revenue department had very little legal authority to administer these agricultural farms in the first place.

<sup>32</sup> Interview with Mustafa, Khanewal, Pakistan 2008.

<sup>33</sup> For feminist interpretations of Islamic heritage and religious texts see Mernissi, 1991, and Ouedghiri 2002.

<sup>34</sup> Interview with Kavita Srivastava, General Secretary, People's Union of Civil Liberties, Jaipur April 2015.

<sup>35</sup> The tribal lands have been 'allocated' to a state enterprise, Rajasthan Vidyut Utpadan Nigam Limited (RVUNL) and to Adani Minerals Private Limited. [http://www.business-standard.com/article/current-affairs/chhattisgarh-govt-cancels-tribal-rights-over-forest-lands-116021601327\\_1.html](http://www.business-standard.com/article/current-affairs/chhattisgarh-govt-cancels-tribal-rights-over-forest-lands-116021601327_1.html)