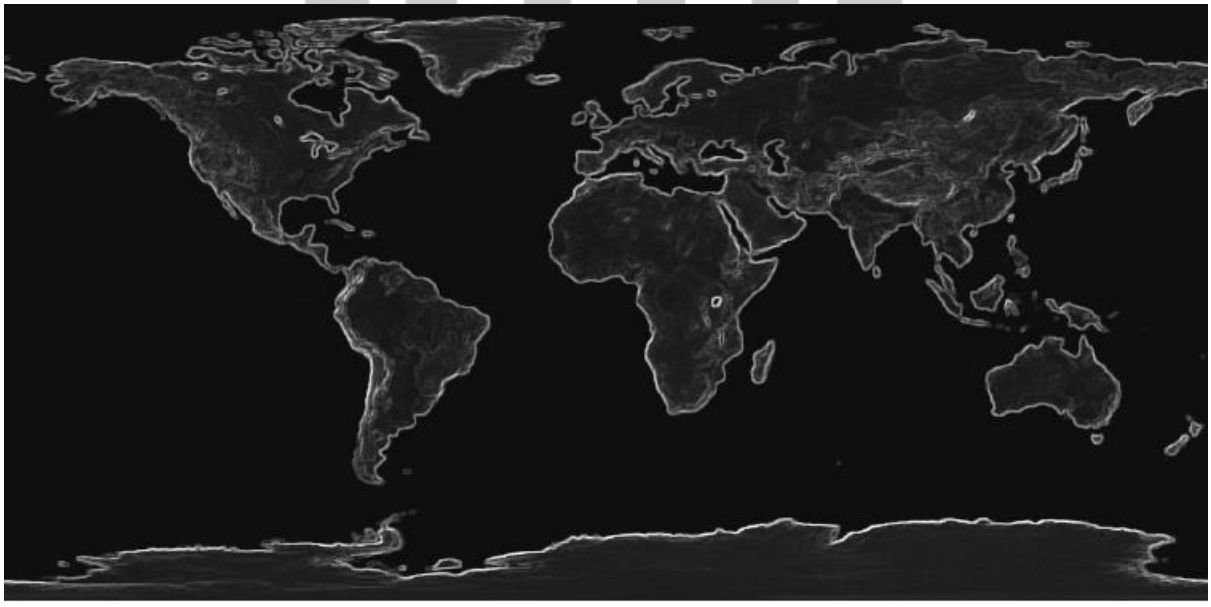
A FEMINIST PERSPECTIVE OF INTERNATIONAL HUMAN RIGHTS: WHAT, HOW AND WHY?

Veritas et Aequitas



AUGUST 9, 2020

PROJECT STATECRAFT

Introduction

The codification of human rights and its acceptance by a significant number of states has enabled the human race to experience new-found security with respect to their civil rights. But, today, decades later, the caveats in the formulation and the implementation of these human rights, surface rapidly and extensively. As these human rights have been formulated on the basis of experiences of the Western, property-holding male in his life, the international legal community faces a blank wall when faced with the positioning of the gendered subject with respect to gender-specific violations. The power hierarchy is maintained and gender-subordination sustains under such a masculinised and Western view of human rights. One instantiation of this would be that of honour killings; perpetuation of power alongside subordination occurs within this very gender-invisible framework of law and order (Bahar, 1996). Invisible rendition of violent acts against women is an offshoot of this gender-insensitive formulation of human rights, especially rights concerned with gender-based violence. The author is thus interested in looking into how human rights discourse treats different genders and their experiences differently, into why and how a feminist perspective of human rights needs to be implemented and also as to how far it has progressed. The author argues for a change in the methodological formulation of human rights so as to facilitate an equal regime of human rights which grants equal visibility to under-represented genders.

International Legal Regime

The landmark moments in the history of women's human rights laws have been with respect to the 1993 UN World Conference on Human Rights in Vienna and the 1995 World Conference on Women in Beijing. Before the Vienna conference, there was a worldwide petition that addressed the need to consider gender at different levels of human rights proceedings and positioned women's rights violations as those requiring immediate attention (Okin, 1998). The Beijing Platform for Action (a result of the conference) combats specific issues such as intersections of religion, culture and human rights. The immunity given to religious and cultural practices were questioned and held accountable as a result of this. The Platform for Action's blatant rejection of violations of women's rights in the name of culture can be seen in this excerpt:

> While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

What is a Feminist Perspective?

Following the argument that the foundation of human rights lies in the experiences of the Western male alone and that this has aided in the deep-rooting of power and gender hierarchies in the society, we examine the application of a feminist lens to the human rights discourse, as proposed by multiple scholars. Gayle Binion (1995), an academic who focuses on the sociolegal equality along the lines of gender, class and race, raises questions on the current methodological bases of international human rights formulations and provides an exposition of the methodology to be undertaken for the application of a feminist perspective to the current human rights discourse. Her questions lie around the legal aspect of human rights and ask whether the law can be a vehicle of change, how law perpetuates gendered systems, how it includes or excludes female experiences and how women as an international citizen is a notion that has not yet been modelled. She argues that there is a need for a contextual and experiential element in the theorising of law and that this needs to be derived from the common experiences that women across the globe have had. She further argues that law is not the end to strive for and that unlike classical human rights theorists, feminist theorists consider law as a limited tool and that "litigation as a process does not serve women" (ibid).

Various scholars have espoused the need for a feminist perspective by providing a critique of international human rights law, consisting of treaties, conventions, agreements between states, and customary international law. They argue for mainstreaming of gender in human rights law, that is, to assign equal importance to all genders and to consider all genders as the starting point of assessment in any analysis (Johnstone, 2006). The major critiques are regarding the marginalisation of women rights vis-a-vis these laws, the public-private dichotomy exercised in these human rights laws and content of said laws. This paper examines the critique against the public-private dichotomy implicit in laws in detail and then moves on to the critique against content of laws. Apart from recognising the limitations of human rights laws, scholars such as Jill Steans (2007), an academic with a focus on gender in international relations, also argue that a feminist perspective will be advantageous to all disempowered or subaltern groups in general by way of questioning the status quo of rights discourse and increased pressure on states and

the international community so that they can be sensitive to diverse experiences and nuanced standpoints.

Why do we need a Feminist Perspective?

Overcoming the Dichotomy

The characteristic of international human rights laws which has been brought under the radar frequently has been the 'false dichotomy' of the public-private and by extension, the state and family. The public-private divide acts as an overarching theme in the formulation and implementation of human rights laws. I argue that the convention against torture, cultural divides and religious claims can be contested on the basis of this public-private divide. Binion (1995) argues that this distinction has come to be from Locke's writings and this has culminated in the relegation of women to the private sphere and thus, away from policy-making positions. This 'separate spheres' approach also grants invisibility to non-governmental perpetrators of violence and subjects women more strongly to the patriarchal authorities of family, religion etc. She also points to the fact that this invisibility cloak is beneficial to corporations and religion in hiding their unequal wage laws and inequities in unsubstantiated traditions. Saba Bahar (1996), a human rights researcher, argues that the state promotes familial violence by choosing to protect, respect and fulfil human rights only when in the purview of the public, or when rights are violated by a public official. She cites Amnesty International's "Human Rights are Women's Right" and draws the conclusion that violence against women is opposed only in qualified scenarios such as when rape is a governmental instrument, when a woman is violated by governments and armed political groups, forced to undergo a vaginal examination under custody, to cite a few. Violations in families and by non-public actors are rendered invisible because of the maintenance of this public-private divide. She also states that the placement of female genital mutilation only in the appendix of the document highlights the case in point.

Binion (1995) adds to this discussion by arguing that the extension of the universalism-cultural relativism debate takes prominence only with respect to gender-related practices. For instance, she argues, even though slavery is well entrenched in culture, it is widely condemned whereas women who wear purdah, are denied the right to drive etc. are seen as voluntary participants in their culture. Custom and culture act as secondary defence mechanisms for practices such as female genital mutilation which is already protected by a layer of the public-private divide. Susan Moller Okin (1998), an academic with a focus on feminist politcal philosophy, adds to this line of thought by citing the example from public discourse regarding violative practices.

For instance, in Afghanistan in the fall of 1996 girls' schools were closed, women were subjected to house arrest unless they were completely covered up etc. A medical director in a hospital in Kabul was noted saying that these impositions on women were "a small price to pay for the peace". Meanwhile in Ivory Coast, supposedly many cultures away, the US Embassy Spokesperson, when asked about clitoridectomy, said that it must be left to the cultures to decide what is a problem and how much of it can be tolerated. In these two very different situations, made comparable by comments delivered by educated officials belonging to widely differing cultures, unified only in their objective of making the woman a subject to culture's ways, we can observe culture being utilised as a defence mechanism.

Contentions Over Content

eminist critique of content and definition of human rights laws can be explained with the example of the Convention on Torture. Christine E. Gudorf (2011), an academic with a focus on religious studies, argues that the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is blind towards the torture experienced by women. This can be understood from the excerpt:

> For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity

Though this definition recognises women prisoners of war and women in occupied territories, it turns a blind eye to acts of torture committed outside the purview of a public official. Domestic abuse, human trafficking etc. escape the arms of the law owing to the flawed framework of the law. The convention's exclusionary nature and backgrounding of pertinent issues such as domestic violence needs to be examined in detail. Gudorf (2011) further argues that rapes are not considered torture on the basis of two assumptions; one, non-consensual sex is the norm for women and second, men and their uncontrollable sexual desires justify the crime committed. 'Bodyright' is brought to the forefront and the ownership of women's bodies is

questioned by a feminist analysis. Clare McGlynn (2009), an academic with a focus on law, sexual abuse and gender equality, discusses the *Aydin vs. Turkey* case which led to the classification of rape as torture for the first time. Aydin, a 17 year old woman, was taken into custody for obtaining information about supposed terrorist activities and was raped. Even while classifying it as rape, the court's emphasis on 'sex and youth' of the victim and the fact that it happened while in state custody and by a state official serves an exclusionary purpose. McGlynn's argument is similar to that of Gudorf with respect to the enactment of the public-private divide. She also argues that the emphasis on sex and youth creates more barriers towards the carrying out of justice.

How to Implement a Feminist Perspective?

Though the above developments are steps towards the feminist project, scholars endorse more opinions when it comes to the implementation of this gender sensitive framework of international human rights. Steans (2007) argues that a formation of collective identity and a feminist consciousness is necessary for a universal feminist political project as gender mediates the lives of all women and is 'a site of contestation'. She adds to her argument by saying that transnational actors need to be accorded more import and that they should not be dismissed on the basis of claims of imperialism and that they contribute to the project of inclusivity and diversification of representation of the interests of feminists at a global level. Steans also recognises the accoutrements of such a proposition by acknowledging the Western imperialist tendencies in feminist movement wherein by a process of othering (exclusion from the said group), voices from the Third World tend to be suppressed. When a uniform, homogeneous identity of a woman is discursively constructed, Steans argues, the Western feminists tend to speak for their Third World counterparts and this leads to the question of universality and particularity in women's human rights. To overcome this caveat, Steans suggests a dialogue on human rights. She argues that, through a dialogue, feminists will receive exposure to the specificity of certain gendered relations in particular contexts and that this will lead to an acceptance of a plurality of experiences. The subalterns and the hegemonic actors must come to a common ground in their quest of unifying the feminist project along with the lens of cultural pluralism. Bahar (1996), on the other hand, emphasises the importance of grassroots movements in brining women's human rights issues to attention while also providing support and refuge to women threatened by domestic violence and such crimes not coming under the purview of international human rights, She further argues that grassroots movements played a deeply instrumental role in the passing of the *Convention against Elimination of*

Discrimination Against Women. She states that Amnesty International's 1995 report was a result of lobbying by a grassroots organisation to 'rewrite the narrative of the passive female victim'. She also cites examples of grassroots movements that define agendas with respect to local contexts. For instance, African movements against genital mutilation and Indian movements against reproductive technology and the anti-fertility vaccine.

Feminist scholars have persuasively argued for a change in the perception and the implementation of human rights laws in order to minimize the project of exclusion and to make the regime inclusive of diverse experiences. I agree with the contentions the scholars have raised against the Convention on Torture and the public-private dichotomy. I also think that representation from all genders in these law-making bodies and international organisations of import can go a long way in advancing the feminist project. I believe that an important qualification to be made here is with respect to representation not only across the gender spectrum but also across the First and Third Worlds, in order to avoid the critique faced by feminist discourse in being advantageous to or accessible only to the hegemons in global order.

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