

## FEMINIST APPROACH TO INTERNATIONAL LAW: AN INSIGHT

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### I. INTRODUCTION

Law is that element which binds the members of the community together in adherence to recognized values and standards. It consists of a series of rules regulating behavior, and reflecting, to some extent, the ideas and preoccupation of the society within which it functions. And so is it with what is International Law, with the important difference that the principle subjects of international law are Nation-States, and not individual citizens<sup>114</sup>.

Until recently, International Law went unexamined by feminist legal scholars. While feminists have applied manifold theories of jurisprudence to the formal and informal legal systems of the United States and many other countries from New Guinea to Saudi Arabia, rarely have they directed their attention to the procedures and substance of the international legal system. Feminist perspectives on international law have come to be situated between 'resistance' and 'compliance'. That is, feminist scholarship aims at deconstructing international law to show why and how 'women' have been marginalized; at the same time feminists have been largely unwilling to challenge the core of international law and its institutions, remaining hopeful of international law's potential for women.<sup>115</sup> In 1991, Hilary Charlesworth, Christine Chinkin, and Shelley Wright jointly attempted a general feminist critique of international law in *The American Journal of International Law*. Their purpose was to show that "the structures of international lawmaking and the content of the rules of international law privilege men; if women's interests are acknowledged at all, they are marginalized. International law is a thoroughly gendered system."

To the minimal extent that women have entered the male domain of international law and policy, they are often to be found clustered in its "softer" corners, where you find the more "feminine," "human interest" subjects such as refugee law and human rights law. In part, this may be because international human rights law has historically reified civil and political rights at the expense of social, economic and cultural rights. Here too, although civil and political

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<sup>114</sup> Shaw, Malcom, International Law, 6<sup>th</sup> Ed, Cambridge University Press, p 1.

<sup>115</sup> Feminist Perspectives on International Law, Edited by: Sari Kouvo, Zoe Pearson, 1<sup>st</sup> edition, pg. 27.

rights are of pressing concern to political elites all the world over, they may be of distinctly lesser concern to most of the world's three billion women, for whom the daily struggle to feed a family is of more urgent interest than freedom of the press. And international humanitarian law is, to a significant extent, about how soldiers should treat other soldiers in the context of armed conflict. Until quite recently, the fate of women in times of armed conflict received only passing attention in international humanitarian law.<sup>116</sup>

## **II. VARIOUS ASPECTS OF FEMINISM IN INTERNATIONAL LAW**

One key contribution of feminist scholarship has been its revelation of the unattractive underbelly – the structural biases – of international law that traditional scholars, uncomfortable with any apparent lack of finesse in the discipline, take considerable (typically unacknowledged) pains to gloss over. In particular, feminist scholars have pointed to the patriarchal structures upon which the male-dominated discipline is founded and to the very real suffering that occurs in its blind spots. Chinkin, Wright, and Charlesworth, for example, have focused their attention on the biases inherent in the discipline's normative principles, such as the public/private divide that leaves women's suffering and abuse liable to be met with inaction. State sovereignty, a cornerstone of liberal accounts of international law, has also been seen to render women 'analytically invisible because they belong to the State's sphere of personal autonomy'. Other scholars have critiqued specific areas of international law, arguing, for example, for the recognition of women's rights as human rights<sup>117</sup> and for the urgent need to enhance international law's inadequate response to sexual and gender-based violence.<sup>118</sup>

### **1. Feminist Methodologies:**

#### **A: *Searching for Silences:***

A methodology sometimes employed to question the objectivity of a discipline is that of detecting its silences. All systems of knowledge depend on deeming certain issues as irrelevant or of little significance. In this sense, the silences of international law may be as important as its positive rules and rhetorical structures. Permeating all stages of the excavation of international law is the silence of women. This phenomenon does not emerge as a simple gap or hollow that weakens the edifice of international law and that might be remedied by some

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<sup>116</sup> Feminism and International Law: An opportunity of Transformation, 14 Yale J.L. & Feminism 345-361 (2002).

<sup>117</sup> Bunch, 'Women's Rights as Human Rights: Toward a Re-Vision of Human Rights,' 12 *Hmn Rts Q* (1990) 486.

<sup>118</sup> B. Meyersfeld, Domestic Violence and International Law (2010).

rapid construction work. It is rather an integral part of the structure of the international legal order, a critical element of its stability. Women are not completely absent from the international legal order: for example, a specialized area of women's human rights law has been developed and there is some specific acknowledgment of women in other areas of international law.

**B: World Traveling:**

A second methodological issue for feminists in international law is how to respond to the many differences among women. International law asserts a generality and universality that can appear strikingly incongruous in an international community made up of almost two hundred different nationalities and many more cultural, religious, linguistic and ethnic groups. Thus, the abstract commitments of the Convention on the Elimination of All Forms of Discrimination against Women will be translated in greatly varying circumstances, from political systems that do not allow women to vote, to systems of more subtle discrimination. The occasional nod in the direction of diversity among women in international instruments remains at a very general level; for example, the use of classifications such as "Western women" and "Third World women." These monolithic categories carry a lot of baggage: assumptions of wealth, education, work and progress, on the one hand, and of poverty, oppressive traditions, illiteracy and overpopulation, on the other.<sup>119</sup>

Just as some scholars have questioned a rights-based approach, in recent years some feminists have begun to raise questions about essentialist/universalist approaches in the context of international law. Influenced by the work of Carol Gilligan and others, feminists have long criticized both domestic and international civil and human rights documents that take it for granted that maleness is the norm.<sup>120</sup> Critics note that even within elite Western feminist scholarly circles, one woman's bread is another woman's poison. Surely, then, it is a form of arrogance to insist that the world's three billion women have a common perspective on such a highly problematized subject as "rights." Does an illiterate woman on a subsistence farm in rural Cameroon have anything much in common with prostitute working in Thailand's sex industry, or a Chicana laborer in New Mexico, or a female astrophysicist in Germany and what about cross-cutting commitments to tribe, religion, ethnicity, or community that many women may feel. If we wish to develop a conception of "rights" that embraces the communal

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<sup>119</sup> Chandra Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses*. FEM INIST REV.6 1 (1988).

<sup>120</sup> Robin West, *Feminism, Critical Social Theory and Law*, 1989 U. CHI. LEGAL F.59.

as well as the individual, "peoples" as well as "people," how should feminist international lawyers respond to Taliban-style "religious" restrictions on women, To Female Genital Mutilation (FGM), To Indian women's cults that reify suttee<sup>121</sup>. To put it bluntly, can a small group of privileged, first world women lawyers presume to say anything at all about "women" as an international class.

## **II. CRITIQUE TO THE CHINKIN ARTCILE**<sup>122</sup>

### **A. BRIEF OF THE ARTICLE:**

The present article introduces law as an entity which operates on abstract rationality, and is thus universally applicable and capable of achieving neutrality and objectivity. Contradicting to the aforementioned statement, it highlights that not only municipal law, but also the international law having principle subject matter as Nation States, is gender biased and not neutral in its approach.

The article questions the immunity of international law to feminist analysis. The authors aspire to have "gender issues" to be within the ambit of international law. Further, the authors draw special attention to the aspect that feminist perspectives to international law are zero or next to marginalized. The paper tries to look beyond abstract entities like state to an actual implication of international rules on the lives of women within states.

The authors in the article vehemently argue that the structure of international lawmaking and content of rules of international law privilege men and the entire international law per se, is a thoroughly gendered system. The article also enlightens on the possibilities for change that the feminist theory can have on the international regime by taking women seriously and describing the silences and fundamentally skewed nature of international law.

#### **1. Different Voices in International Law:**

The two prongs used by the authors to analyze the feminist approach to international law are; first, the relationship between feminist and Third World challenges to international law and

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<sup>121</sup> Suttee is defined as self-immolation following a husband's death.

<sup>122</sup> Feiminist Approach to International Law, Vol 85. No. 4 (Oct 1991), p. 622.

second is whether the voices of women from the developed and developing worlds have anything in common.

The article links the first prong from a patriarchal perspective. The origin for feminist jurisprudence is the presence of men on the top of the social strata. Whereas the classification of some countries as third world is due to process of colonization which has only an elite men perspective. This perspective of patriarchy is imposed on both the groups so as to train them to fit in the world of developed countries and men.

The authors have emphasized that there is difference of opinion in both the worlds with respect to feminist approach. Western feminism began as a demand for the right of women to be treated as men. Western feminists have sought guarantees from the state that they should be placed at the same position as men. The Third World feminism per se, never had any independent recognition as that of the western feminism.

The legacy of colonial rule has been particularly problematic for many women in the Third World. The local women constituted for cheap labor, prostitutes, slaves and their emancipation from this plight got associated to the national movements which typically pursued wider objectives than merely to transfer power from colonial rule to indigenous people. Hence in the Third World, the nationalistic objectives are always given an upper hand over the feminist objectives.

The only common string between the western and third world feminism is the challenge that it raises to the structures that permit male domination, although the form of the challenge and the male structures may differ from society to society. The international feminist perspective on international law will have as its goal the rethinking and revision of those structures and principles which exclude most women's voices.

## **2. Masculine World of International Law:**

The authors expose the presence of masculinity in the international legal order. They are of the view that the subjects of international law, that are states and international organizations, are devoid of women. Women are either unrepresented or underrepresented in the national and global decision making process.

States are patriarchal structures because they exclude women from elite positions and decision making roles. Further the structure of state is also based on the concentration of power and control in an elite and the domestic legitimization of a monopoly over the use of force to maintain that control. International organizations are no different from state structures. It is so because the former is considered as a functional extension of the latter which allows men to act collectively to achieve their objective.

The article also throws light upon the nature of Article 8 of the United Nations Charter which ensures the legitimacy of women as permanent staff members in the international organizations. The authors view the phrasing of this article negatively, rather than an affirmative obligation to include women<sup>123</sup>. This view of the authors to an extent is true, since women's appointments within the United Nations have not attained even the limited promise of Article 8. The international order excludes women from all major decision making by international institutions on global policies and guidelines, despite the often disparate impact of those decisions on women.

The authors try to display the statistical scenario of women's representation in the international organizations and conclude the male dominance in the system. For example, the human rights bodies have a vast underrepresentation of women which is an area of attention towards women. Similarly, only one woman has sat as a judge on the International Court of Justice.<sup>124</sup>

### **B. CRITICISM:**

The development of feminist jurisprudence in various legal spheres has made contributions to a vast extent. It has given an unconventional but successful perspective towards the legal structure in a feminine setup. One believes that disciplines such as law is neutral in its approach since the ulterior objective of this discipline is to deliver justice. However, feminist approach to international law, that is the present article, has deviated from the primary objective of achieving equality.

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<sup>123</sup> Feiminist Approach to International Law, Vol 85. No. 4 (Oct 1991), p. 622.

<sup>124</sup> Suzanne Bastid was an ad hoc judge in the case Tunisia v. Libya, 1985 ICJ REP 192.

The article reflects on the biological development of boys and girls in their childhood. It states that boys rely on “ethic of rights” whereas girls rely on “ethic of care” to solve a moral dilemma.<sup>125</sup> An international dispute resolution or analysis of an international legal order does not need either of the two approaches. Instead, if one may be bold, it thrives on the political order of the Nation-States involved in the dispute. Such political order is devoid of male dominance since it is a reflection of that Nation’s interests as a whole on one platform.

Non representation or underrepresentation of women in the international organizations or at the International Court of Justice should not be construed with the aspect of inequality. If numerical representation of women is the criteria to achieve equality then the feminist scholars are raising their concerns at the wrong platform. These prestigious institutions are formed with the objective to achieve global peace and prosperity and these two objectives should be void of gender inequality.

#### **IV. CONCLUSION**

Feminist scholars of international law are enabling a different narrative to emerge about the discipline. Through their lenses, a more complex and less palatable understanding of the subject emerges. Far more than simply calling for token participation, texts such as these are making an urgent call for the discipline’s structural biases to be acknowledged and addressed. It is clear that questions remain to be answered. How, for instance, can feminists highlight the problems facing women globally without casting them as one-dimensional victims (a trap that both these books fall into at times) Further, both these texts demonstrate that merely acknowledging the importance of intersectional discrimination and cultural diversity is wholly insufficient. Feminists have cast international law as a narrative, allowing, in Heathcote’s words, ‘the sanctity of the legal text to be challenged’. There is an urgent need for a greater range of marginalized participants to contribute their stories to international law’s narrative structures.

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<sup>125</sup> Feiminist Approach to International Law, Vol 85. No. 4 (Oct 1991), p. 615.