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Feminist Perspective of International Law in 21st Century

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ABSTRACT

The concept of feminism is a controversial one and has been misunderstood at many levels. One can assume that such misunderstanding was construed by the patriarchs in the power. It was more out of the fear that feminists were shunned. The feminism waves which started in the 19th century discussed the basic rights like voting rights and educational rights of women. Although the movement started by focusing on the issues related to women and their empowerment but eventually it intersected with other issues and blurred the lines of gender identity. The feminist intellectual inquiry aims to build awareness with practices that will aid in achieving political, social, and economic equality for women to improve women's lives. Feminist theory's most critical aim is to explain women's subordination and find ways to end it.

Feminism being one of the approaches of international law assumes a position to critically evaluate the position of laws and how they inadvertently marginalize a particular gender. Globally, women's participation in National Parliaments is only 24.3%. Policymaking and law-making around gender equality are only useful when such is made by the marginalized group themselves or when their lives and experiences are taken into the account. Thus, it becomes pivotal to see the standing of women in today's context and the male-centric bias in juxtaposition to gender equality.

I. INTRODUCTION

International law was seen as a promising site for feminist participation, as a way of improving women's lives while also ensuring lasting peace. Women's problems were ignored by professional institutions and instruments, and women were still viewed protectively rather than as complete rights-bearing subjects of the law by the mid-1980s, prompting more critical feminist approaches. With the rise of feminist systemic and postcolonial analyses of international law, which looked at its normative and institutional frameworks and discovered them to be profoundly committed to masculinist and imperial dominance, and therefore needed substantial reconstruction. The fundamental commitment of feminism is the fight for women's

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equality, but the fact is that various strands of feminism have been used to inform foreign legal theories and procedures, and some consider women's equality to be an insufficient goal. The recent challenge of thoroughly denaturalizing sex and treating it as a social category has highlighted the urgency of challenging the male/female duality. Examining the new opportunities that more flexible definitions of gender and sexuality open for studying the law's long-term exclusionary effects have also become vital.

Gender discrimination is a violation of human dignity, a threat to the rule of law, and a roadblock to progress. Denying women their rightful position in society – by denying them fair access to education, justice, or a means of subsistence – means robbing half of the community members of their talent and potential. The importance of women in securing every social need, from peace to food, has been demonstrated. Although gender equality is becoming more prevalent in national constitutions, the legislation nevertheless restricts women's rights and freedoms, requires their submission to male relatives, and limits what they will possess or inherit. Feminist international law theory, at its most basic level, entails looking for the institution's silences. It entails looking at the structure and content of the international legal framework to see how women fit into it. "Feminist analysis of international law has two major roles, one deconstructive, the other reconstructive.' Deconstruction of the explicit and implicit values of the international legal system means challenging their claim to objectivity and rationality because of the limited base on which they are built. All tools and categories of international legal analysis become problematic when we understand the exclusion of women from their construction. For example, the notion of statehood that is crucial in international law is no longer unquestioningly accepted as a neutral institution that could be persuaded to accommodate women's interests."²

II. GENDER IN INTERNATIONAL LAW

The advocates for women's rights have demonstrated why women have been marginalized in comparison to men. Women's subordination, according to feminists, is due to patriarchy, which is a system of social structures and practices under which men rule and abuse their power to control the lives of women. The feminist seeks to build its theory and analyse the circumstances that have shaped women's lives on these grounds, as well as investigate the underpinnings of culture and its effect on the nature of a woman's life. As a result, the woman's movement arose with the political goal of recognizing women's subordination and elucidating the reasons for

² Hilary Charlesworth, *Feminists Critiques of International Law and Their Critics*, 13 Third World Legal Studies, 1, 3 (1995) <https://scholar.valpo.edu/twls/vol13/iss1/1/>.

their exclusion in both the cultural and social spheres of public life. The essence of feminism in international relations is to study and analyse how politics are determined in today's world, taking into account the roles of men and women in decision-making, and thus how female viewpoints have affected foreign policy in particular and international relations in general. International relations assume that state-to-state ties fall under the purview of the public domain, which, by definition, includes the historical experiences of a man as he is seen in the public arena while women are seen in the private sphere. As a result, the main ideas have been conceptualized from the masculine gender's perspective.³

Feminism is about challenging male-created power structures to serve them. Power is a kind of dominance; when we talk about the systems or processes of power, we assume that some people dominate others. Political institutions are dominated by men in a patriarchal world with a traditionally entrenched male class, and power is thus exercised by them. Feminism attempts to correct this imbalance of power by challenging certain institutions and seeking to make them more equitable and reasonable. Feminism, in this sense, seeks to achieve structural changes in gender dynamics by changing current power relations in women's favour. It's about recognizing the gender component in places where it's not readily apparent. Wars are an example of this. Since the rise of the feminist approach to International Law, war casualties have been measured not only in terms of the number of soldiers killed but also in terms of the number of women raped too.⁴

III. NEED FOR FEMINIST PERSPECTIVE IN INTERNATIONAL LAW IN TODAY'S TIMES

*"In 18 countries, husbands can legally prevent their wives from working; in 39 countries, daughters and sons do not have equal inheritance rights; and 49 countries lack laws protecting women from domestic violence. Globally, 750 million women and girls were married before the age of 18 and at least 200 million women and girls in 30 countries have undergone FGM (female genital mutilation)."*⁵

Feminists condemn the international legal system for denying women access to and participation in law-making in two significant ways. For starters, feminists argue that women are underrepresented in international relations, especially in high-ranking positions in international organizations, diplomatic services, and as heads of state and government. Second,

³ R. W. Connell, *The State, Gender, and Sexual Politics: Theory and Appraisal*, 19 Theory and Society, 507 (1990), <https://www.jstor.org/stable/657562?seq=1>.

⁴ Jayati Sagar, *Feminism and International Relations*, O.P. Jindal Global (Institution of Eminence Deemed to Be University), <https://jgu.edu.in/feminism-and-international-relations-2/>.

⁵ Sustainable Development Goals, *Goal 5: Achieve gender equality and empower all women and girls*, United Nations Organisation, <https://www.un.org/sustainabledevelopment/gender-equality/>.

they argue that, as a result of this underrepresentation, men are almost entirely responsible for the development of international law. As a result, women are effectively barred from engaging in international law-making processes. “Beneath the sovereignty veil, two different situations become relevant: violation of women's rights by the government, and violation of women's rights by private persons; notably, abuse by men in the home and the workplace. From the standpoint of the international law of human rights, the violation of women's rights by governments does not present difficulties distinct from the violation of other human rights. Liberal and radical feminists are at one here in condemning discrimination against women. Discrimination is a violation of international human rights law for which the state is internationally responsible.”⁶

According to the World Health Organization⁷, one out of every three women will face abuse in her lifetime. Unfortunately, during periods of crisis, such as the outbreak of COVID-19, the risk of being exposed to violence rises. “Gender equality isn't only a fundamental right, but a necessary foundation for a peaceful, prosperous and sustainable world. Shockingly, right now, 1 of every 5 women and girls between the ages of 15-49 have announced encountering physical or sexual abuse by a close accomplice inside a year time frame and 49 nations at present haven't any laws shielding women from viciousness. Progress is happening regarding harmful practices like child marriage and FGM (Female Genital Mutilation), which has declined by 30% within the past decade, but there's still much work to be done to eliminate such practices.”⁸ Providing equal access to education, medical care, decent jobs, and representation in political and financial dynamic procedures would drive sustainable economies and benefit social orders and humanity at large. To end the sex-based segregation prevalent in many countries around the world, new legal structures in regards to gender equity in the workplace and, as a result, the destruction of unsafe practices directed at women is crucial.

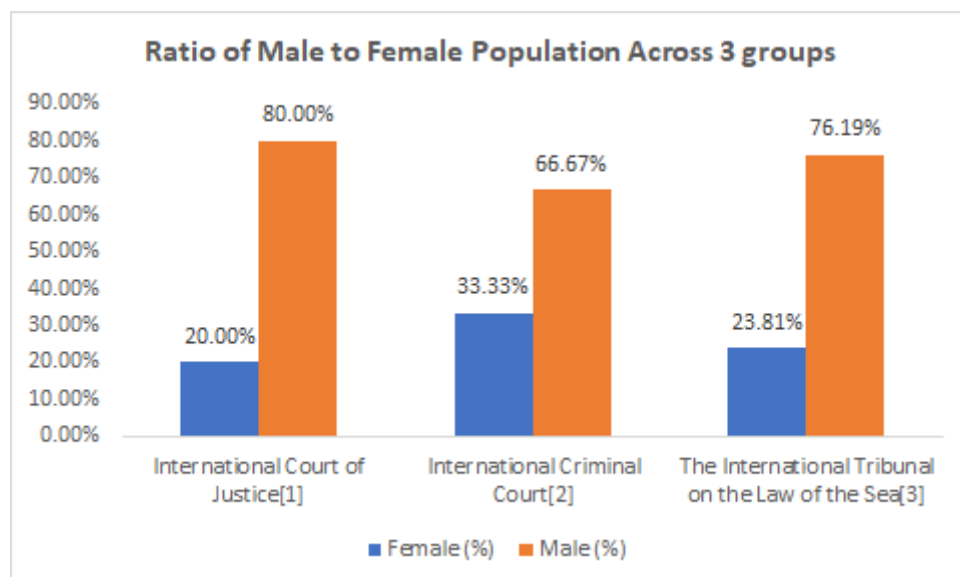
International Judicial Organisation	Female Members	Male Members	Total Members
International Court of	3	12	15

⁶ Fernando R. Tesón, *Feminism and International Law: A Reply*, 33 Virginia Journal of International Law, 647, 657 (1993), <https://ir.law.fsu.edu/articles/33/>.

⁷ *Global and regional estimates of violence against women*, WHO, 2013, <https://www.who.int/publications/i/item/9789241564625>.

⁸ S. Shanthi and Kakarla Sai Mitravinda, *Gender equality the need of the hour*, International Journal of Language, Literature and Culture, (2020), <https://osf.io/d7apn/>.

Justice ⁹			
International Criminal Court ¹⁰	6	12	18
The International Tribunal on the Law of the Sea ¹¹	5	16	21



Statistically, the critical issue of equality and lived experience is borne out, and women's voices and talents are all too frequently overlooked. It also has a deeper meaning than representation. Underneath the percentages, there are a few things to consider. To begin with, these vacancies are filled by appointments and then elections – finally, it is up to states to nominate candidates for election, which is frequently where the roadblocks arise. Then there's the issue of elections, which might bring up prejudices all over again.

IV. CONCLUSION

Only when both men and women have equal opportunities will a country achieve higher development growth. Women in society are often cornered and denied fair access to health, education, decision-making, and economic freedom in terms of salaries as men. The social

⁹ Current Members, ICJ, <https://www.icj-cij.org/en/current-members>.

¹⁰ Judicial Divisions, ICC, <https://www.icc-cpi.int/about/judicial-divisions>.

¹¹ Members, ITLOS, <https://www.itlos.org/en/main/the-tribunal/members/>

system has existed for a long time in which girls do not have the same opportunities as men. In most families, women are the primary caregivers. As a result, women are primarily responsible for household tasks. Women are underrepresented in higher education, decision-making, and leadership positions. The imbalance between men and women is a drag on a country's growth rate. As the number of women in the workforce rises, the country's economic growth rate rises as well since women account for half of the citizens. Gender equity improves the nation's overall well-being as well as its economic stability. Here, the feminist perspective on international law comes into play. It highlights the needs and ways to achieve gender equality on the international front.

So far women are underrepresented in national parliaments and consequently, in international organisations. The female to male ratio is so skewed that even on the face of it we can see that equality exists only in letter. The policies on paper need to do the 'walk to talk'. We need to realise that if laws are being made for the betterment of women, then such laws should be made by the women themselves. They are the ones who are experiencing the fallback and no man can understand their point of view better than women themselves. So, no real development can happen unless women are the ones in power making laws and policies for their fellow women.

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