

Is it time to re-examine human rights theory to adequately address gender-based violations?

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According to the United Nations “one in three women worldwide have experienced physical or sexual violence - mostly by an intimate partner” (UN Women 2015). Furthermore, it is estimated that every second woman killed globally, was killed by her partner. Over 60 years after the Universal Declaration of Human Rights (UDHR) was passed and more than 20 years since The Declaration on the Elimination of Violence against Women was adopted by the General Assembly, violence against women can still be described as a global pandemic. The issues raised in the early 90s by the feminist movement on whether the liberal framework and rights approach can sufficiently address the topic of gender based violence is, thus, still equally relevant in today's society.

Arati Rao and Catherine MacKinnon are two prominent feminists that broadly discuss the issue of violence against women. They both argue for a rethinking of the traditional human rights framework as it is, “established and enforced predominately by men” (MacKinnon 2001, 526). Specifically, they argue for a redefinition or abolishment of the liberal divide between the private and the public sphere, due to its consequences for women's rights. This essay will present MacKinnon and Rao's arguments on whether gender based violence constitutes a distinct human rights problem and how to effectively address the problem. Moreover, the essay will discuss the divide between the private and the public sphere concluding in favour of a renewed understanding of the political nature of the realms.

The focus of international human rights has traditionally been on violations committed by the state against its citizens. The UDHR is an agreement between states that aims to hold states accountable for their treatment of people living within its borders. The principle divide between domestic and international space based on state sovereignty is fundamental to this. Furthermore it is often pointed out that despite the increasing focus on social and economic rights, civil and political rights are the main emphasis of human rights law. This stems from the liberal understanding of rights that is mainly concerned with constraining the power of the state, rather than enforcing its duty to uphold rights.

Arati Rao presents several problems with the current human rights discourse and describes the division of society into the public and private sphere as a "conceptual obstacle to gender justice" (Rao 2001, 507). According to Rao the two spheres are, by definition, unequally valued and distinctly gendered: the private sphere the realm of family life and women; while men dominate the public sphere. Furthermore she argues, "despite all the tortuous arguments for the complementarity of the two spheres, in reality the male governs in each" (515). The two spheres are only "the two sides of the single coin of liberal-patriarchalism" (515).

Rao clearly acknowledges that rights discourse has been helpful and essential in preventing abuse. However, the 'gender blindness' of rights fails to include violations specific to women. Consequently, female victims of human rights abuse can only receive justice if the infringement against her could have happened to a man. Considering the "vast body of feminist research depicting how states themselves have developed a special agenda in the torture of women" (512) this is perplexing. Furthermore, Rao points out how paradoxical it is that despite women being unconceptually central to human rights documents and discourse, the only place where the UDHR asks the state and society to take an active role is in protecting the family unite, the women's realm. Seeing the sheer magnitude of human rights violations taking place within the family, Rao argues that the privileged status of the family is highly problematic.

Catherine MacKinnon directs attention toward the issue of 'gender blindness' in the UDHR by highlighting its lack of ability to deal with the problem of genocidal rape. Drawing upon the reports from the break-up of Yugoslavia, MacKinnon describes how mass rape was used as "a tool,

a tactic, a policy, a plan and a strategy" (MacKinnon 2001, 531). MacKinnon argues that the gendered and ethnic nature of the attacks qualifies "as rape torture as well as rape as extermination" (536) and warranted a slow response from the international community. She attributes the lack of international action to the statist nature of human rights that empower states to act on other states, not individuals. Finally MacKinnon draws an analogy between domestic violence and civil war, "the more a conflict can be framed as within a state – as a civil war, as domestic, as private – the less effective the human rights model becomes" (538).

The basis of both MacKinnon and Rao's argument can in many ways be seen as a clear case for the need of gender based violence to qualify for special rights. One of the main criticisms of this position is that a further gender differentiation of rights goes against the main principle of 'human' rights. The philosophy being that insofar as we are human and can suffer, people are similar. The 'sameness' of rights thus holds a certain value in its ability to unite people about their shared nature and capacity to suffer. Consequently, regardless of whether women are tortured differently to men or women are targets of specific gendered attacks, the pain felt as a result of the abuse is not essentially female, it is human. A human rights framework that approaches these issues not from the perspective of what people share, but in how these attacks differ, can, in many ways, be seen to perpetuate the gender gap by making women a special interest topic.

Though the 'sameness' of human rights may have come from a good place, MacKinnon points out how it effectively means that "when a woman is tortured by her husband in her home, humanity is not violated" (527) but when a woman is tortured in a prison cell humanity is violated. In other words, the sameness of human rights does not capture common suffering but violations that occur to men and women in the same way. As a result, attacks such as rape, where women are specifically targeted based on their gender, have failed to culminate in the necessary legal action. Rao further argues this by emphasising how marital rape and domestic violence inflict evident pain and "long term consequences that injure and dehumanise women" (Rao 2001, 520). However, despite the undeniable pain inflicted "here she is a woman and only a woman" (MacKinnon 2001, 527). Gender specific rights may thus be necessary in order to achieve 'sameness' in suffering, by emphasising how an attack on a woman is also an attack on a human

being.

In addition, gender based rights are arguably necessary due to the sheer magnitude of abuse aimed systematically at women because of their gender. MacKinnon describes in detail the genocidal rape in Bosnia, while also emphasising how this was not unique to the Yugoslavian break-up wars, but a common tool in warfare. Rao on the other hand focuses on the issue of marital rape and how it continuously has failed to be recognised for the abuse it is. Thus, from a pragmatic perspective, the fact that the UDHR has failed to tackle this 'pandemic' of violence toward women warrants a legal change. Consequently, a greater recognition of how gender based violence constitutes a distinct human rights problem may be helpful in order to prevent further systematic targeting of women. However, neither MacKinnon nor Rao are of the opinion that this would be enough. They both argue for the revaluation and potential removal of the divide between the private and the public sphere.

Liberalisms focus on individual autonomy and private decision-making capacity has been instrumental for the modern separation between the private sphere, free from state intervention, and the public realm of politics and other communal activities. Accordingly, liberal human rights theory's respect for the private has made human rights NGOs and advocates concentrate on states' breach of UDHR in the public sphere, rather than the problems taking place in the private sphere. This means that police brutality gets classified as a human rights abuse, while gang violence as some private citizens breaking the law.

The basis for Rao and MacKinnon's clear condemnation of the sphere separation stems from the fact that the clear majority of women's rights violations take place in the private sphere. Women are more frequently subject to abuse, violence, rape and even murder domestically. Since liberal human rights theory is centred on violations taking place in the public realm, the language and legal culture to address the majority of abuses faced by women is, therefore, insufficient. Furthermore, according to Rao, UDHRs privileging of the family, as an institution is highly problematic since it implicitly assumes that unjust power structures only exist in the public sphere and not in private life. It effectively becomes a 'weapon to be used against the abused woman to assign responsibility and blame', (Rao 2001, 518) rather than preventing further abuse. MacKinnon points out how this culture magni-

fies, due to the fact that the liberal human rights framework only empowers states to act against states, not individuals or groups. The consequence of this is that "each state's lack of protection of women's human rights is internationally protected" (MacKinnon 2001, 539).

However, the removal of the distinction between the private and public sphere creates several problems. Firstly, the divide between the public and the private sphere was, as mentioned, a result of the belief in individual freedom and recognition of privacy. Despite the fact that in certain situations one would appreciate state interference. A removal of the divide altogether may lead to an overly controlling state that does not see value in the concept of individual autonomy and privacy. People's ability to decide how to live their lives and sovereign states freedom to determine their internal policies may then be curtailed, leading to a different set of human rights questions.

Moreover, states play a clear role in creating societal structures, and gender inequality in the public may reinforce oppression in the private sphere. MacKinnon and Rao's focus on the crimes committed by individuals and groups in the private sphere seems to assume that states are not responsible for human rights violations, if they aren't committed officially by the state police force. However, seeing as states perpetuate inequality and gender hierarchy through economic and social policies, oppression and abuse of women domestically can still be seen as political, regardless of whether a husband or a policeman was the offender. It may, therefore, not need a necessary redefinition of the public and private sphere, but instead argue that states take responsibility for the patriarchal culture they support and actively work to change. Non-interference is not being neutral; states are currently accepting family violence and influencing the male dominance that it flows from.

In order to confront what the United Nations describes as a pandemic of violence against women this essay has argued for a further recognition of how gender-based violations constitute a distinct human rights problem. In addition, this essay advocates that states play an active role in developing and perpetuating the system of dominance that drives gender based violence. The traditional liberal separation of the two spheres is, therefore, not the primary reason why the human rights framework has ignored domestic violence. States have failed to adequately understand its responsibility to interfere. What is private and what is public is political, making domestic violence a human rights issue states should tackle.

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