

Sexual and Reproductive Rights

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Abstract: *This essay focuses the historically changing of sexual and reproductive rights, and discusses how the framework of sexual rights fills in the absence of human rights in the field of sexual topics and benefits the universality of human rights discourse. The discussion of contemporary sexuality is embedded into the larger political framework of global capitalism, neocolonialism, militarism and ethnic conflict, and the gender hierarchies that exist everywhere. In this frustrating context, issues related to sexual and reproductive rights have also begun to emerge, and this essay will address these issues in four parts. The first section analyses the concept of human rights and the sociology of human rights; the second part retains the right to patriarchal male domination of the family and it questions the 'reproductive and sexual rights' of human rights; the third part presents the feminist critique that liberalism does not grant all individuals freedom; the fourth section discusses several issues related to global political processes and the struggle for reproductive and sexual rights, especially in the case of the LGBT rights.*

Keywords: *Human Rights; Feminism and Patriarchy; Reproductive and Sexual Rights; Homosexuality*

1. Introduction

In the past 100 years, the world has changed dramatically, and it has also brought important changes to people's lives, the most obvious of which is the importance and protection of human rights. In order to better protect people's rights, various countries have introduced corresponding laws and relevant systems to protect people's rights. However, as for the rights of sex and reproduction, most people's ideas are still traditional and conservative, so the protection of this right is still in the process of advancing. This article takes human rights as the starting point to explore feminism and patriarchy. From feminist scholars' criticism of human rights, as well as feminist criticism of patriarchal oppression in the family, understand the performance and form of human rights and sexual relations in the current society. Through the relationship between the sexes and the traditional system, it further discusses the struggle between reproductive rights and sexual rights in the global political process and the relevant results. Finally, we will examine the advancement of human rights legislation for lesbian, gay, bisexual and transgender people as a focal point of global cultural and identity struggles, with a more global and universalist approach to current restrictions.

2. Human Rights

In the age of industrialization, the majority had only a minimum of civil and political power, which significantly shaped social lives in this time. Human rights viewed in this way seem universal but are also problematic for a context that goes beyond the sociology of the state. On the study of study human rights, sociologists have regarded human rights as part of an ideology used to mask the relationship between colonialism and the formation of fundamental capitalism. Some radical sociologists, in particular, consider human rights as part of an ideology that obscures the fundamental capitalist economic relations shaped by colonialism. Emanuel Wallerstein, for example, conceptualized human rights as a part of 'world system' of US hegemony [1].

However, as to human rights workers and activists, it is a stigma to remove human rights from the social reality. Human rights norms are often discussed and considered undeniably useful and important in terms of their effect on the real world by many people who work in non-governmental organisations (NGOs) promoting human rights, as legal professionals, or in grassroots development projects. Other human rights academics and practitioners are more cautious, concerned about the importance of human rights to specific areas of life but also acknowledging their limitations [2]. Human rights are invoked and replicated across the central challenges of social life, not as a term outside social existence.

However, for practitioners and activists, combining an analysis of the social context in which human rights law, discourses and practices are formed and developed with a sociological understanding of the full social context in which they are embedded can conversely contribute to a critical understanding of human rights as a phenomenon of equality in contemporary society. Human rights are, therefore, an evolving and living body of thought rather than a static set of norms [3].

In conventional sociology, both Durkheim and Weber stressed the uniqueness of law and morality in each culture, leading to a scepticism of universal rights claims. Weber's attempts to maintain the distinction between reality and value in sociology, as well as his study of modernity's increasing secularisation of law, 'relativises law.' He also "rejects the notion of a universal and normative basis for law (and for rights) being possible" [4].

Any denial of human rights is condemned in the approach of radical sociology, Marx's later impact on Marxism, and other manifestations of radical social thinking, such as feminism. Simone de Beauvoir published *The Second Sex* (1949) a year after the Universal Declaration of Human Rights (1948), a seminal feminist work that presented a history of legitimate civil rights within the state but did not refer to the newly established international human rights [5].

Corresponding to the classical sociologists' analysis of human rights, the concept of human rights was not initially addressed in sexual-related issues. Following Beauvoir, the second generation of feminist sociologists in the early 1970s appeared to overlook foreign human rights issues. In her groundbreaking sociological and political study of patriarchy, Kate Millett's second-wave feminist work *Sexual Politics*, for example, offered a brief commentary on citizenship and civil rights, but did not discuss human rights. Recent feminist research informed by sociology, such as the work of Petchesky, Sonia Correa, and Richard Parker, has encouraged a closer analytical engagement with human rights, producing a qualitative defence of the indispensability of human rights [6]. This is part of a larger trend in much progressive political and sociological thinking to engage with and promote human rights on a qualitative level. Following feminist views, however, it was argued that traditional expressions and meanings of human rights still omitted gender-related issues, especially in the microscopic field.

3. Feminism and Patriarchy

To understand the feminist scholars' critique of human rights, we need return to review the feminist critique of patriarchy oppression in the family. Power is a relationship of domination and dominated, and patriarchy, as a power relation that male dominate female, is an unrecognized (but institutionalized) priority from birth and a most ingenious form of 'internal colonization' has been achieved under this reality. Moreover, this power relation is stronger than any other forms of segregation, and stricter and more stable than class stratification. Sexual relations remain the most influential ideology in modern society, and provides one of the basic power structures of the human world [7].

Contemporary society is still a patriarchal society, even compared to past societies. The main unit of patriarchy institution exists in the family, which is a micro-reflection to patriarchal society as a whole. As a mediation between the individual and the social structure, the family controls and obeys the place where political and other authority is insufficient [8]. As an agent of the society and a unit of the patriarchal institution, the family encourages its members to obey the domination of the family head (a man), which is a form of state authority to rule the female citizens in a patriarchal society [9].

Since cooperation between the family and the society is essential, the fates of the three patriarchal institutions - family, society and state - are interconnected. In most forms of patriarchy institution, for example, this interconnection usually performs as the granting of religious support, such as the Catholic precept that 'the father is the head of the family, or the Jewish granting of quasi-priestly authority to men. Chinese Confucianism also creates a parallel between the relationship between ruler and subject and the relationship between father and child, which implies the essentially feudal character of the patriarchal family (and, conversely, of the feudal family). Such a potential connection even continues into modern democracies [10].

The main consequence of the family in patriarchy is the socialisation of young people in the prescribed attitudes of patriarchal ideology toward categories of role, temperament and status. Bronislaw Malinowski speaks of how "no child should be brought into the world without a man assuming the role of sociological father." This indicates that the status of the child and the female depends primarily on the status of the male in the family.

This is strong evidence that patriarchy is prevalent in almost all societies and embedded into the family. It is perhaps also a cautionary tale that change without a thorough understanding of the socio-political system is hardly productive. However, change in a radical society is unlikely to occur without an impact on patriarchy. This is not only because it is an institution that keeps a large proportion of the population in a subordinate position but also because it is a bastion of property and traditional interests.

The concept of public and private spheres of life has been at the heart of Western political thought since the seventeenth century. In Liberal theory, 'private' refers to one or more spheres of social life in which interference with freedom requires special justification. In comparison, 'publicly' refers to one or more spheres considered general or more accessible. In political theory, the terms 'public' and 'private' are often used with less lucidity. It seems that everyone knows what they mean without paying attention to the context.

Despite the persuasive arguments put forward by many feminist researchers, many of whom (whether as radicals, liberals or socialists) emerged from the New Left of the 1960s, the neglect of gender in the main currents of political theory persists. By focusing on gender issues, feminist theorists have argued that political and economic power are closely linked to structures and practices in the domestic sphere, revealing a dichotomy between the public and the domestic. The corresponding feminist slogan is 'the personal and the political'. It is at the root of feminist criticism of the traditional liberal public/family dichotomy. Most nineteenth- and early twentieth-century feminists did not doubt the particular role of women in the family. They often defended women's rights and opportunities, such as education or the right to vote, but they did this because they thought it would make women better wives and mothers. Thus, although feminists demanded equal rights for women in the public sphere, they had accepted a preconceived assumption that women were inextricably linked to the domestic sphere. Although it is not always true that feminists focus on the politics of the family and the personal sphere, 'the personal is political' has effectively become the claim of most feminists. As a result, the family has become central topic to feminist politics and the main focus of feminist theory.

Feminists argue that the existing liberal distinction between the public and the family is based on patriarchal ideology, as society is presented from a traditionally male perspective. However, patriarchy cannot be a central concept in political theory. Those non-feminist theorists still seem to tacitly assume that child-rearing and housework is what women are supposed to do. In response, feminist scholars argue that the dominance of women in child-rearing results from social factors. In addition to factors in the overall gender structure of society, their maintenance cannot be explained without considering factors in the non-domestic sphere. For example, there is gender discrimination in employment and the scarcity of women in high-level politics.

4. Reproductive and Sexual Rights

This section discusses a number of issues related to global political processes and the struggle for reproductive and sexual rights. "Sexual rights" is the most recent production of the international debate on the meaning and practice of human rights, particularly women's human rights. It notes that before 1993, sexual rights or sexuality was almost not mentioned by human rights-related international institutions, while the concept of sexual rights existed as a part of the international human rights discourse. The major human rights documents in the Universal Declaration discussed the rights of human in their private lives, but the terms about sexuality were not expressed among them. Until the women's conference declaration in 1992, sexual human rights, including reproductive rights of women, started to be formally covered. Therefore, sexuality was only implicitly recognized in most human rights discussions until recently, though this discussion was restricted into the heterosexual discourses.

A significant turning point came in 1993. World Conference on Human Rights in Vienna issued the Declaration and Programme of Action to appeal all countries to eliminate 'gender-based violence and all forms of sexual harassment and exploitation, including trafficking in women,' systematic rape, sexual slavery and forced pregnancy. In the same year, the Declaration on the Elimination of Violence against Women adopted by the UN General Assembly is even more explicit in condemning all forms of 'physical, sexual and psychological violence against women.' The Vienna Declaration and the Declaration on Violence against Women are important not only because they recognize sexual violence as a violation of human rights, but also because they finally incorporate 'sexuality' into the language of human rights. However, until the International Conference on Population and Development (ICPD) in Cairo in 1994, 'sexuality' was officially included in the international document as a positive term rather

than violent and abusive. Sexual health was also defined in the Cairo Programme of Action as the ability of people to have a satisfying and safe sexual life and the right to decide whether and when to have children. It also defined the purpose of sexual health as "the enhancement of life and personal relationships, not just counselling and care related to reproduction and sexually transmitted diseases".

The concept of sexual rights was further developed as an international principle of human rights in the Platform for Action declared at the Fourth World Conference on Women in Beijing in 1995. The Beijing Platform for Action is considered by many scholars as a breakthrough in recognizing sexual rights as human rights. Women's human rights include their right to be free from coercion, discrimination and violent control and to decide freely on matters relating to their sexuality. Men and women are equal in sexual relations and reproductive matters, with full respect for the integrity of the human person, mutual respect and consent, and shared responsibility for sexual behavior and its consequences.

Although women were firstly recognized as human beings with sexual and reproductive rights and could freely determine their sexuality matters without any explicit restrictions on age, marital status or sexual orientation, it is also important to note that the original formulation of the draft of the Beijing Platform did not use the conception of 'women's human rights' but 'women's sexual rights'. In the final version of the Beijing Platform, the phrase 'sexual rights' disappeared altogether; the phrase 'sexual orientation' (not to mention 'lesbianism' or 'homosexuality') never even appeared in the draft. But conversely 'reproductive rights' and the freedom of female to decide whether, when and how many children to be written into the human rights treaties of Cairo and Beijing. Furthermore, the phrase 'respect for the integrity of the human person' was used in place of references to 'bodily integrity' or the body in any form in the Declaration of Cairo and Beijing.

In 2004, the UN Special Rapporteur on health right, Paul Hunt, published a groundbreaking report in which he stated that 'sexuality is a characteristic of all human beings, it is a fundamental aspect of an individual's identity, and it helps to define who a person is.' This statement argues that the fundamental principles and norms of human rights must cover the recognition of sexual rights as human rights, including the right of all people to express their sexual orientation without fear of persecution, deprivation of liberty or social interference. Feminist interpretations of "sexual and reproductive rights" now tend to obscure sexuality, placing it discreetly in the context of marriage, heterosexuality and reproductive relationships. Existing human rights-related documents, such as the Cairo and Beijing declarations, do not articulate freedom of sexual orientation; therefore, if 'sexual rights' continue to rely on interpretations of these documents, or equal the term of 'sexuality' to 'reproduction', the situation of lesbians, bisexual women and a range of specific sexual minorities may remain ignored.

Progress in the sexual rights debate will never be made without the contribution of a new set of political actors. In many countries and communities, speaking openly about women's rights to all kinds of sexual pleasure is not accepted by the general public and can lead to the closure of organisations, attacks on members, and even death. Women's ability to resist sexual violence and oppression is always limited by different forms of power, no matter how much they want to change the situation. We can never withdraw from political discourses because the historical context in which we live (globalization, racialization and gendering) is always changing and no single actor can completely control it. In this political context, even a tentative talk about sexual rights is a big step forward. In the context of the research, when women are studied, they are resistant when it comes to sexual rights, and we need to find out what the conditions are that can help them make changes, and then we can better address these issues and change more of the status.

5. Homosexuality, Heterosexuality and International Human Rights Law

Human rights for lesbians, gays, bisexuals, and transgender people (LGBT) have been a focal point in the global fight over culture and identity. The Montreal Declaration (International Conference on LGBT Human Rights 2006) and the Yogyakarta Principles on the Application of International Human Rights Law about Sexual Orientation and Gender Identity were drafted and signed by global LGBT activists in 2006, demonstrating and symbolizing the LGBT movement's international struggle. LGBT non-governmental organizations (NGOs) have finally been granted significant and reliable representation. The topics of 'sexual orientation' and 'gender identity' had finally found a position on the international human rights, legal, and policy agenda, including at the United Nations.

Analyzing 'LGBT human rights' necessitates a critical examination of the culturally specific identity categories of 'lesbian,' 'gay,' 'bisexual,' and 'transgender' as 'LGBT,' as well as the combination of

'LGBT,' and 'human rights,' which is a redefinition of human rights in the historical context of the absence of sexual and. The idea of 'LGBT civil rights' emerged in response to the absence of LGBT people from prior definitions of humanity.

Interdisciplinary work in women's, gender, and feminist studies started to comment on human rights in the late 1970s, with an initial emphasis on sexual harassment and reproductive rights, rather than sexuality in general. It has taken a long time to mature in conventional disciplines like law, sociology, and political science. Although 'reproductive rights' first appeared as a term in North American and European women's movements, Rosalind Petchesky argues that distinct movements representing women's reproductive health and rights emerged rapidly outside of the West World in the early to mid-1980s. In the early to mid-1980s, various social movements with a convergence of ideas relating to women's reproductive health and rights rapidly emerged in Latin America, Asia and Africa. However, it was only from the early 1990s that rights related to sexuality, sexual orientation and gender identity became a subject in the academic literature, before feminist notions of reproductive and sexual rights were used to contest and enter the expanding human rights discourse.

Move to the 1997 UK Parliamentary debates on the age of sexual consent, Sexual progressives argued that the age of sexual consent should be dropped to 16 years old, which was also supported by child and youth welfare organizations such as the NSPCA, the National Children's Bureau, the National Children's Home and the British Association of Social Workers. This debate on the age of consent reveals an emerging political field in which the principle of equality before the law is increasingly established. Secular principles and human rights play a strong role, and social diversity is increasingly accepted. The containment and discrimination of homosexuality is no longer over serious, but they remain the essential context for policy-making.

International lesbian, gay, bisexual, and transgender (LGBT) and human rights activists have embraced the ideas of "sexual orientation" and "gender identity" in recent years, most notably in the Montreal Declaration (2006) and the Yogyakarta Principles (2007). As core elements in the evolving global human rights debate, the categories of "sexual orientation" and "gender identity" mark the establishment of a new discursive paradigm, which contradicts the concurrent emergence of a "global queer politics".

In the Yogyakarta Principles, 'sexual orientation' is defined as each individual's capacity to develop profound emotional, affective and sexual attraction to, and intimate and sexual relationships with, individuals of different genders or the same or multiple genders. Also critics who challenged the connection between gender labels like "lesbian" or "gay" and anti-discrimination and human rights legislation have embraced the definition of "sexual orientation" over time. Legal scholar Robert Wintemute's reflection on the difference between symbolic and instrumental usage of the law in the 'LGBT' category is a good example of this. His statement contributes to a more comprehensive view of human rights. In his opinion, same-sex couples' rights should be included in the definition of civil rights, and human rights law's sex discrimination clauses should be invoked to cover "sexual orientation" discrimination.

6. Conclusion

In this essay, we examine recent critiques of human rights-based systems, as well as the evolution and substance of the definition of sexual rights, and then argue that, shortcomings and all, human and sexual rights are still viable for health and social justice. For the deeper and insoluble challenges in the study of human rights with their liberal traps have created conceptual blind spots. We should continue to discuss sexual rights (female human rights, reproductive rights and LGBT rights) in the human rights discourse, and explore a more global and universalist approach against various limitations.

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