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Abstract

**Introduction**

This paper explores the relationship between feminism, women and marginalization in the context of the HIV/AIDS epidemic and related laws and policies. Globally women comprise of approximately 50% of all HIV infections. The status of marginalized women in the context of HIV is determined by a host of social, economic, and legal factors that make a person more marginalized and therefore more vulnerable to contracting HIV. Particular groups of women have a higher vulnerability to contracting HIV including but not limited to sex workers, injecting drug users, minorities, and migrants. Women are considered to be biologically more vulnerable to contracting the HIV virus.

Feminist legal activists, often acting on particular feminist theoretical frameworks have contributed to decreasing the vulnerability of women to contracting HIV. This paper is an examination of where and how this has happened, and a critical examinations of the limitations of feminist engagement in HIV. As such this paper is meant to be both a mapping of success and an internal self reflection and critique of feminists in the debate and discourse on laws, policies, and programs addressing HIV. Actions based on feminist legal critique have launched national legal reform initiatives in many countries not only to rectify the status of women in accordance with the law but do so with specific intent to decrease HIV vulnerability. These include reforming inheritance laws and instituting laws to end violence against women.

In some of these instances, women might be considered a marginalized group as a whole by feminist legal theorists – for example in the case of inheritance laws based on sex (leading to increased poverty for women and a link to increased vulnerability to HIV). However, in other instances, including the criminalization of HIV transmission, the trend by the state has been to enact laws that result in the “punishment” of groups of women, and specifically sex workers, through the criminalization clients or through raid and rehabilitation schemes. These laws have been made even more permissible through HIV specific funding regulations including the anti-prostitution pledge. In this case there may be some disagreement among feminists as to the claim of marginality, who is entitled to make this claim, and how these issues must be addressed. These disagreements are

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presumably to the same end: to decrease the number of women living with HIV. However, at the heart of the debate stand not only conceptions of gender relations and gender justice but also competing approaches to legal rules and legal reform, and specifically attention or lack of attention to the unintended consequences of legal rules.

This paper demonstrates several aspects of the relationship of feminism as it operates in the context of the HIV global and national governance structures. First, using a governance feminist framing this paper demonstrates that feminism has had an impact on the way HIV/AIDS laws, policies, and programs are designed and implemented. This will be demonstrated through a mapping of the argumentation and influence of feminist thinking over HIV law, policy, and programs. Second, that in it’s impact, various feminist modes successfully or with continued resistance fought to identify “women” as a marginal group and as such vulnerable to contracting HIV. Finally, this paper argues that while the overall feminist framing of an HIV response has been highly effective in drawing attention to women’s inequalities and structural forces that contribute to vulnerability to HIV, feminist argumentation has also contributed to ongoing challenges in the field of HIV, especially where different feminist perspectives collide in ideology and strategy.

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