Rights and Capabilities: Magna Carta of Women

Marina Durano
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OBJECTIVE

TO UNDERTAKE A COMPARATIVE STUDY BETWEEN THE HUMAN RIGHTS FRAMEWORK AND THE CAPABILITIES APPROACH IN THE CONTEXT OF REDUCING GENDER-BASED INEQUALITY

APPLICATION OF CAPABILITIES APPROACH IN A LEGAL SETTING

HOW DO YOU OPERATIONALIZE THE LAW?
METHODOLOGY

- SIMPLE: TEXT ANALYSIS

- WITHOUT REFERENCE TO LEGAL CASES (VERY LITTLE JURISPRUDENCE AVAILABLE)
“CAPABILITY, NOT FUNCTIONING, IS THE APPROPRIATE POLITICAL GOAL”
MARTHA NUSSBAUM
FUNCTIONINGS

ARE THE COMBINATION OF THINGS THAT PEOPLE ARE ABLE TO DO AND TO BE -- VALUABLE ACTIVITIES AND STATES THAT MAKE UP PEOPLE’S WELL-BEING

BEINGS AND DOINGS THAT PEOPLE VALUE AND HAVE REASON TO VALUE
CAPABILITIES

Are all the possible sets of functionings that persons can achieve. It is the freedom to enjoy various functionings.
AGENCY

Is the ability to pursue and realize goals that one values and has reason to value. An ‘agent’ is ‘someone who acts and brings about change.’
“ASSESSMENT OF PROGRESS HAS TO BE DONE PRIMARILY IN TERMS OF WHETHER THE FREEDOMS THAT PEOPLE HAVE ARE ENHANCED”

AMARTYA SEN
that capabilities be the space in which comparisons are to be made for inequality evaluation

Amartya Sen
MAGNA CARTA OF WOMEN

Republic Act 7910 is the Philippines comprehensive women’s human rights law.

Brings the Philippines in line with international laws, especially CEDAW, as well as, ICCPR, CRC, ICESCR
Article 1. All human beings are born free and equal in dignity and rights.
AIMING FOR EQUALITY

THE MAGNA CARTA OF WOMEN AIDS FOR SUBSTANTIVE EQUALITY

“THE FULL AND EQUAL ENJOYMENT OF RIGHTS AND FREEDOMS CONTEMPLATED UNDER THIS ACT. IT ENCOMPASSES DE JURE AND DE FACTO EQUALITY AND ALSO EQUALITY IN OUTCOMES (CH. II, SEC. 4, PARA (E))”
AIMING FOR EQUALITY

What is gender equality?

“PRINCIPLE ASSERTING THE EQUALITY OF MEN AND WOMEN AND THEIR TO ENJOY EQUAL CONDITIONS REALIZING THEIR FULL HUMAN POTENTIALS TO CONTRIBUTE TO AND BENEFIT FROM THE RESULTS OF DEVELOPMENT” (CH. II, SEC. 4, PARA (F))
“EQUALITY OF WHAT?”
AMARTYA SEN
MAGNA CARTA OF WOMEN

- SAYS EQUALITY IN HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ALL ASPECTS OF LIFE

- CONSISTENT WITH RAWLS PRIMARY GOODS: “RIGHTS, LIBERTIES AND OPPORTUNITIES, INCOME AND WEALTH, AND THE SOCIAL BASES FOR SELF-RESPECT” (FIRST PRINCIPLE)
2-TIER CLASSIFICATION

DISCRIMINATION (PRIMARY): APPLIES TO ALL WOMEN

“ANY GENDER-BASED DISTINCTION, EXCLUSION, OR RESTRICTION WHICH HAS THE EFFECT OR PURPOSE OF IMPAIRING OR NULLIFYING THE RECOGNITION, ENJOYMENT, OR EXERCISE BY WOMEN, ..., OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS...” (CH. II, SEC. 4, PARA (B))
CLASSIFICATION

MARGINALIZATION (COMPOUNDING EFFECT): APPLIES TO SUB-CATEGORY OF WOMEN

“A CONDITION WHERE A WHOLE CATEGORY OF PEOPLE IS EXCLUDED FROM USEFUL AND MEANINGFUL PARTICIPATION IN ... LIFE” (CH. II, SEC. 4, PARA. (C) AND (D))
CLASSIFICATION

WHO ARE THE MARGINALIZED

“REFERS TO THE BASIC, DISADVANTAGED, OR VULNERABLE PERSONS OR GROUPS WHO ARE MOSTLY LIVING IN POVERTY AND HAVE LITTLE OR NO ACCESS TO LAND AND OTHER RESOURCES, BASIC SOCIAL AND ECONOMIC SERVICES, ...” (CH. II, SEC. 4, PARA. (C) AND (D))
MULTIPLE IDENTITIES

- GOING BEYOND CLASS (OCCUPATION-BASED)
- DIVERSITY ACROSS INDIVIDUALS
- DIVERSITY IN THE QUALITIES THAT MAY BE ASSESSED FOR EACH INDIVIDUAL
REFLECTIONS

- HISTORY OF THE WOMEN’S MOVEMENT IN THE PHILIPPINES

- ATTEMPTING TO DISTINGUISH ITSELF FROM THE BROAD POLITICAL STRUGGLE

- FEMINIST POLITICS

- “QUASI-MARXIST, LABOUR-CENTERED” TO “CULTURE AND IDENTITY-BASED CONCEPTIONS”
DIvision of Labor

Housewife and mother identity is not mentioned in the law (not even in ch. IV, section 19)

Venezuelan Constitution, Art. 88 that recognizes housework as work

See also Bolivian Constitution
CARING SOCIETY

“ANY REAL SOCIETY IS A CARE GIVING AND CARE RECEIVING SOCIETY, AND MUST THEREFORE DISCOVER WAYS OF COPING WITH THESE FACTS OF HUMAN NEEDINESS AND DEPENDENCY THAT ARE COMPATIBLE WITH SELF-RESPECT OF THE RECIPIENTS AND DO NOT EXPLOIT THE CAREGIVERS. THIS, AS I HAVE SAID IS A CENTRAL ISSUE FOR GENDER JUSTICE.”
CHAPTER IV

Provisions illustrate the point on feminist discourse going beyond class analysis and engaging with women-specific issues in different sites of patriarchy.
CHAPTER V

Right to food, right to resources for food production, right to housing, right to decent work, right to livelihood, credit, capital and technology, right to education and training

Social protection: recognizing vulnerability
DIFFICULTIES

- ATTACHED TO RIGHTS

- SIDE-CONSTRAINTS OR GOAL-PROMOTING ACTIONS?

- RELATIONSHIP BETWEEN DUTIES AND RIGHTS?

- WHAT CONSTITUTES RIGHTS?
SEN’S COMPROMISE

- Human rights are ethical demands attached to valuable freedoms

- Protection from the worst abuses and deprivations

- Freedoms as “descriptive characteristics of the conditions of persons”
AGENCY

- PARTICIPATION AND ACCESS TO INFORMATION IS INTEGRAL TO THE APPLICATION OF A RIGHTS-BASED APPROACH

- DEMOCRATIZATION IS NOT THE ONLY OBJECTIVE

- WOMEN’S CONTRIBUTIONS TO NATION-BUILDING ARE SEEN AS IMPORTANT

- INSTITUTIONAL MECHANISMS IS SPECIFIED
AGENCY IS INSTRUMENTAL

FROM A CAPABILITIES PERSPECTIVE

LESS ATTENTION GIVEN TO PERSONAL CHOICE AND A WOMAN’S AGENCY IN REALIZING HER PERSONAL GOALS AND OTHER GOALS THAT SHE VALUES

GAD AS THE INSTITUTIONAL MECHANISM IS A STATE-CENTERED APPROACH (SINCE STATE IS PRIMARY DUTY BEARER)
“AGENCY SUCCESS”

Sen distinguishes between “realized agency success” and “instrumental agency success”

Realization of an objective vs. realization of an objective through one’s own efforts

Related to perfect obligations vs. imperfect obligations (Kant)?
CONCLUSIONS

Magna Carta follows Rawlsian principles of justice.

It is a resource-based inequality evaluation, especially in relation to marginalized groups.

Two-tier classification implied with discrimination and marginalization creates a false dichotomy of concerns.
CONCLUSIONS

- The Magna Carta does not directly confront the gendered division of labor and the social assignments for caring.

- Agency is an instrumental view attached to state institutional mechanisms.
POTENTIAL?

Lies in the incorporation of capabilities approach as a framework for gender audits and analysis that is integral to the institutional mechanism.

But this is a technocratic solution rather than a political solution (requiring social movements for its promotion).