

2018

Women's Human Rights and Migration: Sex-Selective Abortion Laws in the United States and India

Rangita de Silva de Alwis
University of Pennsylvania Law School

Follow this and additional works at: https://scholarship.law.upenn.edu/faculty_scholarship

 Part of the [Comparative and Foreign Law Commons](#), [Human Rights Law Commons](#), [Law and Gender Commons](#), [Law and Society Commons](#), [Public Law and Legal Theory Commons](#), [Social and Cultural Anthropology Commons](#), and the [Women's Studies Commons](#)

Repository Citation

de Silva de Alwis, Rangita, "Women's Human Rights and Migration: Sex-Selective Abortion Laws in the United States and India" (2018). *Faculty Scholarship*. 1986.
https://scholarship.law.upenn.edu/faculty_scholarship/1986

This Article is brought to you for free and open access by Penn Law: Legal Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Penn Law: Legal Scholarship Repository. For more information, please contact PennlawIR@law.upenn.edu.

Images such as the veiled women, the powerful mother, the chaste virgin, the obedient wife, and so on... exist in universal, ahistorical splendor, setting in motion a colonialist discourse that exercises a very specific power in defining, coding, and maintaining existing First/Third World connections. (Chandra Talpade Mohanty, Feminism Without Borders 41)

Book Review ¹

Rangita de Silva de Alwis, Associate Dean of International Affairs, University of Pennsylvania Law School

Sital Kalantry's *Women's Human Rights and Migration: Sex Selective Abortion Laws in the United States in India*, addresses a long-existing gap in feminist theory at the intersection of a migrant woman's experience and culturally motivated reproductive decisions. By recognizing the possibility that "practices that are oppressive to women in one country context may not have a negative impact on women in another country context" Kalantry takes an important step in creating a framework for evaluating competing human rights interests within the complex cultural contexts that arise in migrant-receiving countries. Her proposed framework rejects the decontextualization and politicization of the migrant woman's experience in favor of an appropriately nuanced approach which inhabits a context-specific interstitial space between cultural relativist and universalist arguments.

Applying this framework in the context of sex-selective abortions, Kalantry posits that existing approaches fail to appropriately balance the competing interest of the female fetus and the living women and girls. Kalantry suggests that these approaches place too much emphasis on the harm done to the female fetus while failing to consider the harmful effect of restricting reproductive choices to living women and girls. Kalantry, in creating this framework, encourages scholars to "do more work to explore the possibility of a liminal space between cultural relativism and universality"²

The relevance of this new transnational framework is implicit in Kalantry's analysis of the rise and fall of sex-selective abortion bans. During the rise of legislation enacting such bans, *It's A Girl: The Three Deadliest Words* was being screened all over the country by organizations such as Amnesty International and prominent women's groups. Made uncomfortable by the documentary's two-dimensional depiction of Indian culture and its emphasis of offensive caricature of "Indians [as] savages, female fetuses [as] victims, and Caucasian American women [as] saviors,"³ Kalantry sought to learn more about the documentary's makers and funders. What she discovered was troubling: the film's director had previously worked for an organization that made gruesome anti-abortion videos and that the funding for the documentary had come from people he had met through that organization. The film had subverted concern about female life for a political end, and the American feminist community had been hoodwinked into promoting a faulty and politically motivated perspective.

¹ Thank you to Teresa Akkara, Penn Law student and Global Women's Leadership Project Fellow for her research assistance and discussion on some of the central themes in this work. Her research focuses on India's sex-selective abortion laws.

² Sital Kalantry, *WOMEN'S HUMAN RIGHTS AND MIGRATION: SEX-SELECTIVE ABORTION LAWS IN THE UNITED STATES AND INDIA*, 12 (Bert B. Lockwood 2017)

³ *Id.* at ix.

Kalantry's proposed transnational framework seeks to provide an antidote for this oversight by encouraging skepticism of flat, dimensionless portrayals of complex decisions. She advocates for the contextualization, careful empirical analysis, and discussion of motivating factors to prevent errant conclusions about choices made by migrant women in migrant-receiving countries. Ultimately, Kalantry concludes that sex-selective abortion bans would restrict rather than enhance women's rights in the United States.

“[W]hen American feminist legal theory developed it did not have to contend with a world with such massive migration of people who also brought practices with them from one place to another. Those theories were largely aimed at assessing and addressing women's inequality in one country context.”⁴ Recognizing the problems inherent to a one-size-fits-all approach to feminist legal theory, Sital Kalantry challenges the elision of immigrant women's context in feminist analyses that would decontextualize the nuanced aspects of immigrant experience. Too often “[w]hen evaluating immigrant behavior, there is a tendency to overestimate the role of culture in shaping behavior and to underestimate the role of context.”⁵ She argues that decontextualizing and stereotyping practices when they emerge among immigrants in another country profoundly erases their agency, context and experiences. Secondly, she argues that the interconnection between gender identity, roles, relations and performance cannot be isolated from power relations and material realities. While there may be commonalities across geopolitical and epistemological realities, Kalantry makes an interesting point that “something that is considered a violation of women's rights may not be a violation of women's rights when it emerges among migrants in another country.” In a world of feminist legal analysis in which universalism sits at one end and cultural relativism sits at the other, Kalantry has articulated important reasons for developing a legitimate feminist theory in the space between these polar concepts.

Kalantry's work argues that “[i]t is appropriate to limit sex selection in countries where there is evidence that sex selection is so widespread that it is harming other women and girls. But where such negative consequences are not present, then bans serve no purpose in promoting women's rights.”⁶ Kalantry's work demonstrates that too often, in the context of sex-selective abortion bans, analysis focuses on the harm to the female fetus. “Few people, in the United States, [] are aware that bills to ban sex-selective abortion have spread like wildfire in state legislatures. Since 2009, the U.S. Congress and nearly half of all state legislatures have considered bills banning sex-selective abortion.”⁷ The harm to reproductive choice that would result from a ban protecting that female fetus is often left undiscussed. “[W]hen two competing rights are at stake,” Kalantry argues “a cost-benefit analysis should be undertaken.”⁸

While sex-selective abortion in a country that devalues women is a women's rights violation, there is no evidence that in a country where women face less challenges based on the

⁴ *Id.*

⁵ *Id.* at 13.

⁶ *Id.* at 45.

⁷ *Id.* at 74.

⁸ *Id.* at 44.

devaluation of women, sex-selective abortion may not be based on gender discrimination. A coercion narrative which sees women as victims rather than agents, may result in reducing women's reproductive rights. Through methodological and situational analysis, Kalantray chips away at this binary of victimhood and western feminist perspective and calls for a more nuanced theory to identify exhilarating new directions for feminist theory and practice. In fact, Kalantray focuses on empirical research in order to debunk stereotypes that arise from insufficient research and decontextualization. In her work, Kalantray lays out the results of an in-depth empirical study which "tells a different story about Asian American reproductive patterns."⁹ In fact, Kalantray "interpret[s] the data to suggest that by and large, Asian Americans desire both boy children and girl children. A few Asian families who have three children may have intervened to achieve balanced families. Survey data of people's attitudes about the sex of their children also shows that Asian Americans are more likely to desire balanced families than Caucasian Americans."¹⁰ The results of this study indicate that while human rights must remain universal, its translation may differ from context to context. What needs to be challenged is not the universalized rights discourse, but the universalized representations of non-western women as inhabiting an ahistorical and decontextualized space. Kalantray argues effectively and systematically that traditional feminist analysis fails to account for the particularized context of non-western women.

Kalantray calls for a transnational theory that is truly rooted in the experiences of transnational postcolonial women. Transnational feminism argues that models of feminism presume a white, able bodied, middle-class feminist subject located in the Global North and posit a construct women from the Global North as saviors of their disadvantaged sisters from the south. However, transnational theory has also been coopted. because transnational feminism largely developed in the US academy, it may be masked by the emphasis on "othering" of approaches rather than on context.

To Kalantray feminist theory and practice is a diverse multifaceted corpus that resists simplification, feminist theory must continuously create new versions of resistance. This tension can be seen in the CEDAW: "[w]hile the provision of the CEDAW that calls for the broad elimination of discrimination suggests that sex-selective abortions should be prohibited, especially in countries where it is being used in a gender-biased manner, another section of the CEDAW can be used to challenge any restrictions on sex-selective abortions."¹¹ The CEDAW, and the rise and fall of the sex-selective abortion ban demonstrates that the emphasis on context for the advancement of women's rights and theory should be integral to feminist theory.

The transnational mission is the project of building a non-colonizing feminist theory through an intersectional analysis of race, nation, colonialism, sexuality, class and gender.

There is a universal patriarchal framework which Kalantray's scholarship attempts to counter, and resist a power imbalance where an analysis of culture has to be necessarily situated in context.

⁹ *Id.* at 125.

¹⁰ *Id.*

¹¹ *Id.* at 64-64.

Kalantry has broken the silence about the experiences of migrant and immigrant women. The potential of her analytic strategies will have far reaching import. “Part of the reason feminists in India object to sex selection is because they believe it occurs as a result of unequal social institutions and that it also perpetuates those institutions. It may be true that the practice is discriminatory against girls in India, but that doesn’t necessarily mean it is discriminatory in the United States. A practice gains meaning as discriminatory in the context in which it occurs.”¹²

The suggestion that non-Western women need saving is patronizing. It is also incorrect, however, to engage in a permissive and extreme version of moral relativism, which can mask itself as cultural sensitivity. Just because women in all cultures face challenges does not excuse the inexcusable. Women in any place have the right to critique what is wrong in every place, and this includes sex selective abortion. Western women and men can speak for other women and men, if they carefully hold a mirror to themselves as they do so. This mirror will reveal that there are no narrow binary opposites or collisions of culture. Instead, cultures coalesce and renew in a dynamic and shape shifting manner that Kalantry argues, calls for a new feminist inquiry.

¹² *Id.* at 175.