
SEXUAL VIOLENCE AGAINST WOMEN DURING ARMED CONFLICTS: A STUDY IN INTERNATIONAL LAW

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Abstract: The term "sexual violence" in International Law is used to describe acts of a sexual nature imposed by force, or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power directed against any victim – man, woman, boy or girl. Sexual violence against women during armed conflicts has always been a reality irrespective of the time and reason of conflict. The matter to rejoice here is the fact that the international community has finally began to recognize this problem better than ever before. This achievement can be attributed to the political power women have gained that the issue of accountability in gender based violence has become a part of the international agenda.

The paper attempts to critically analyse the role which International Law has played over the years in dealing with the problem of sexual violence during armed conflicts, by highlighting its achievements and identifying the loopholes that still need to be addressed.

Keywords: Armed Conflicts, Human Rights, International Law, Sexual Violence

Introduction: War has always impacted men and women, both in different ways. Though women do remain in minority as combatants and perpetrators of war, they increasingly suffer the greatest harm. Sexual violence against civilian women and girls during periods of armed conflicts is used as a weapon of war. Women in war-ridden countries face distinctive and desolating type of sexual violence which is mostly framed systematically to achieve military and political gains. The widespread sexual violence during periods of conflict often leaves behind the traumatic legacies. Even after the end of a conflict, the after effects of sexual violence, both physical and psychological, persist in the form of unwanted pregnancies and Sexually Transmitted Diseases. These after effects of war are coupled with discrimination from the society and poor inequitable laws as well. All these directly affects the prevalence of peace and prospects for overall development of the society [1]. It is against this background the present paper attempt to present a critical evaluation of the role of International Law in combating the challenge of sexual violence during armed conflicts. It also analyses the pattern of sexual violence in different armed conflicts and its impact on women individually and on society as a whole.

II. Sexual Violence against Women during Armed Conflicts: An Overview: Sexual violence against civilian women and girls during periods of armed conflict is an underreported crime. It is not so that the international community was unaware of its existence but somehow it has remained unaddressed for long period of time. It was only after the Yugoslavian conflict, this crime emerged as an important issue to be dealt by International law. One of the greatest crimes committed in this century against women was the mass rapes of the women of conquered Europe after the Judeo-Communist

victory there in 1945. The rapists were mainly Red Army soldiers. There were reports of sexual violence against women during the occupation of allied powers of Poland, Germany and Japan. During the entire horror of World War II, around two million women became victims of the madness of sexual violence [2]. During the occupation of Germany, as the Red Army advanced towards the city of Berlin in 1945, the city virtually became a city without men. The fear of sexual attacks stretched in no time across the city. Doctors were asked by patients seeking information on the quickest way to commit suicide and poison was in great demand. Thousands of women were raped in the city of Berlin alone from the age of 10 to 70 years. A large number of female deaths are reported in connection with the rapes in Germany. The scale of rape is suggested by the fact that about two million women had illegal abortions every year between 1945 and 1948 [3]. During the occupation of Austria, in Vienna, same numbers of women were raped including young girls and women. Mass rapes were also conducted during the occupation of Poland. As the Soviet Red army invaded Poland in 1945, Soviet military units used sexual violence profoundly. They went around looting people and conducting mass rapes of Polish women [4].

It is only recently that writers and others have begun to reconsider the issue of sexual violence committed during World War II. At the median of this has been the acceptance of crimes committed against many thousands of Asian women and girls who were forced into military sexual slavery by the Japanese Army during World War II. They have become known as "comfort women". In the year 1992, the government of Japan wrote to each of the surviving comfort woman making an official apology [5]. A report by Amnesty International reveals that the

Japanese Imperial Army enslaved between 80,000 and 200,000 women and girls from 1932 to 1945 [6]. Most of these belonged to Korea, some from Japan while others belonged to the Dutch East Indies. Women and girls were captured through abduction or were trapped through deception. In some cases, they were also purchased from destitute parents and were taken to the 'comfort stations'. Women were kept for months or years together. These girls were mostly above the age of twenty but some were as young as 12 years of age. Women who survived this horror and returned to their homes, remained silent about their experience because of the fear of shame and threats that came their way from the Japanese military [7].

The conflict in former Yugoslavia covers different time spans and geographical areas. There were alarming cases of the use of sexual violence from the state of Bosnia and Herzegovina between the years 1992 to 1995. Though exact numbers are not available but it is estimated that around 20,000 to 50,000 women were raped during this period [8]. The nature of this sexual violence was genocidal. Majority of women raped were Muslims. It was a part of an ethnic cleansing programme. Women were not only raped but were also murdered later on. Women were raped and gang raped on the streets, in their homes, also in front of their family members. 'Rape camps' were deliberately created by Serbian forces and the Bosnian women were sexually assaulted in cruelest possible way [9]. Similar type of Sexual violence was reported during the armed conflict situation in Kosovo in 1998-1999. Rape was used as a weapon of war to frighten people in order to extort money and force them to flee from their homes. Human Rights Watch found credible accounts of ninety-six cases of sexual assault by Yugoslav soldiers, Serbian police, or paramilitaries during the period of NATO bombing, and the actual number is probably much higher [10]. The murderous madness of genocide that destroyed the small country of Rwanda lasted for good 100 days in the year 1999 from April until June. During this period, lakhs of Tutsi and Hutu people were butchered and thousands of Rwandan women and girls were raped and all other forms of sexual violence were committed. The Special Rapporteur on Rwanda by the United Nations said in her report that 'Rape was the rule and its absence their exception' [11]. According to the report, the rapes were systematic and were used as a weapon by the perpetrators of the massacre. As per report around 250000 to 500000 [12] women were raped. According to a report prepared in 2000 by African Unity's International Panel of Eminent Personalities [13], almost all females who survived the genocide were direct victims of rape and sexual violence. According to the testimonies collected through a report of the

'Women's Rights Project', rape was prevalent and thousands of women were raped, gang-raped, and were sexually assaulted with objects such as sticks or gun barrels. During the Rwandan genocide, rape and other forms of violence were directed primarily against Tutsi women because of both their gender and their ethnicity [14].

III. International Law and the Problem of Sexual Violence during Armed Conflicts:

Though we must admit that the international community has remained indifferent at large to the reality of sexual violence, but the mere mention of sexual violence in the sources of IHL or other international law documents prove that there was recognition of the fact that sexual violence does exist, it's a war crime and not an ethical way of waging war on the opponents and also that it's not enough to prevent this alone but prosecution and accountability is equally important. No matter how prevalent the madness of sexual violence during armed conflicts is, International Law has proved itself to be instrumental, up to a certain extent in case of providing justice to the victims of sexual violence during armed conflicts. But this achievement comes with criticism as well, in the kind of language International Law uses to define sexual violence and the fact that it hasn't proved conducive in preventing the crime of sexual violence, rather it only prohibits it.

The rules of International Law prohibiting sexual violence during armed conflicts date back to as early as 1863. Lieber Code represents not only the first attempt to draft the laws of war it was also the first instrument relating to war which explicitly dealt with the problem of sexual violence. Under Article 37, the Lieber Code commanded the soldiers to protect the inhabitants of the occupied territory, in particular women and prohibited rape under the penalty of death in Article 44 [15]. The Hague Convention IV 1907 Respecting the Laws and Customs of War on Land is the most important of the Hague Conventions when it comes to the protection of women during war. Article 46 of the Convention says that the family honour and rights, etc must be respected. Though there was no clear mention of the word rape or sexual violence but still the article was considered hinting towards the problem and prohibiting it by mentioning the word honour [16].

A War Crimes Commission was set up in 1919 to bring forth the real and true picture of the atrocities committed by German and other axis powers during World War I. The commission included rape and forced prostitution as violations of the laws and customs of war. This was a step forward and an indication that the idea of sexual violence during armed conflicts is changing from 'being a reward for

victors' to being a war crime [17]. The first international criminal tribunal of real significance in the matter of war crime came with the establishment of the Nuremberg (Germany) and the Tokyo (Japan) tribunals of 1945 and 46 respectively. Although there was no provision mentioning Rape in the statute of Nuremberg but there was still the possibility of prosecution because of the recognitions of war time sexual violence under customary international law [18]. The Tokyo tribunal however can be seen as a more successful tribunal out of the two. Indictments before the Tokyo Tribunal did expressly charge rape as war crime. General Matsui had the command of Japanese forces. Evidence related to rape was presented before the tribunal and General was convicted of the rapes committed by his troops. However, criticism came when none of the victims were called upon to say their side or their official statements and hence the prosecution became a mere formality [19].

The contemporary International Law of armed conflicts is primarily based on the Geneva Conventions consisting of four treaties, and three additional protocols, with the purpose of humanizing armed conflicts. In these Conventions and protocols the most significant part is the concept of 'grave breaches'. Recognition of a particular crime as a grave breach is of great significance because States have a duty to search for persons who are alleged to have committed grave breaches and, if found within their territory, to bring them before their courts for prosecution. This is probably the biggest shortcoming of the Geneva conventions and the Additional Protocols. They lag behind because rape or sexual violence does not fall in the category of grave breaches under these treaties. However they still do recognize rape as a war crime [20].

The Article 3, common to all the four Geneva Conventions, prohibits outrages upon personal dignity, in particular humiliating and degrading treatment. Since it is common to all the four Geneva Conventions, it automatically protects both, the civilians and the detained prisoners of war [21]. Article 27 of Geneva Convention IV stipulates that women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault [22]. Article 75 of Additional Protocol I prohibits outrages upon personal dignity, enforced prostitution and any form of indecent assault, mutilation and threats to commit it. It further states that if women are to be restricted of their liberty then they must be kept in quarters separate to that of men and shall remain under the direct supervision of women [23]. And Article 76 provides that women shall be specially respected and must be protected in

particular against rape, forced prostitution and any other form of indecent assault [24]. Article 4, Additional Protocol II also seeks to prohibit outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault' [25].

Keeping in view the brutalities and war crimes committed in Yugoslavia the United Nations Security Council through its Resolution 827, established the International Criminal Tribunal for Yugoslavia (ICTY), for the prosecution of persons responsible for serious violations of International Humanitarian Law committed in the territory of former Yugoslavia since 1991. The ICTY later examined the reports of the Commission of Experts which found out that there have occurred massive systematic and organized, detention and rape of women. For the first time in history, rape was explicitly recognized to have taken place in an armed conflict and the crime of sexual violence got its recognition in the Statute of ICTY under Article 5(g) as a crime against humanity [26]. A year later another military tribunal the ICTR was established in order to prosecute people responsible for the Rwandan Genocide and other serious violations of international law in Rwanda, between 1 January and 31 December 1994. Through the review of numerous official United Nations reports ICTR acknowledged the use of wide spread sexual violence and other serious violations of International Humanitarian Law. Sexual violence against women was recognized to have occurred and rape got an explicit mention as a Crime against Humanity in Article 3(g) and rape and enforced prostitution under the war crime provision of Article 4 (e) of the Statute of ICTR [27].

Through the jurisprudence of both of these tribunals, rape and other forms of sexual and gender violence has been recognized as among the most serious of offenses and has been charged and prosecuted as such. Thus the Statutes of both the Tribunals did mention and prohibit rape more explicitly than their forerunners in Nuremberg and Tokyo and hence a welcome change was brought in the discourse of International Law through this giant leap [28].

International Criminal Court (ICC) is a permanent international tribunal to prosecute individuals for genocide, crimes against humanity, war crimes and crimes of aggression. It was adopted in the year 1998 and came into force in the year 2002. Article 7, 1(g) of the Rome Statute defines rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity as a crime against humanity. Article 8, b (xxii) and 8, e (vi) list rape, sexual slavery, forced prostitution and any other form of sexual violence as a serious violation of common article 3 of the four Geneva Conventions. Article 8

establishes sexual violence as a war crime in both conflicts of an international and non-international character [29].

Sierra Leone has also witnessed a bloody civil war that began in the 1991. In a 12th June 2000 letter to UN Secretary General Kofi Annan, Sierra Leone President Kabbah requested United Nations assistance in establishing a special court to try members of RUF (United Revolutionary Front) for crimes against the people of Sierra Leone and for taking of United Nations peacekeepers as hostages. On 4th October 2000, SG Annan reported to the Security Council on the basis of an agreement with Sierra Leone for the establishment of the Special Court. The statute of the Special Court of Sierra Leone lists rape and sexual violence as 'crimes against humanity' [30]. Article 2(g) prohibits rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence. Article 3 (e) prohibits outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault and Article 5 (a) says that the Special Court shall have the authority to prosecute persons who have committed offences under Sierra Leonean law which also includes offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 [31].

Customary international law further strengthens the existing treaty law norms in providing better protection to the concerned victims. Under customary law also rape and other forms of sexual violence are prohibited. Rule 94 says that slavery and slave trade in all their forms are prohibited. Rule 134 provides that the specific protection, health and assistance needs of women, affected by armed conflicts must be respected and Rule 156 says that serious violations of international humanitarian law constitute war crimes and these include crimes of sexual violence as well [32].

Although of late international law of armed conflicts has explicitly recognized rape and other forms of sexual violence as a war crime and crime against humanity, it is subjected to criticism of addressing the problem in inadequate manner and not taking into account the reality of women's experiences of the world. Moreover, despite the recent international outrage on the sexual abuse of women in the armed conflict of former Yugoslavia, these deficiencies remain largely unchecked [33]. This may be because of the fact that aforementioned provisions of International Law are merely providing protection to women but not explicitly prohibiting the act of rape or sexual violence [34].

The most noticeable loophole to mention here is the fact that states have an obligation to make grave breaches of the Geneva Conventions and Protocols subject to jurisdiction of their own courts and punishable with severe penalties and this list of grave breaches does not include the crime of rape [35].

IV. Conclusion: Sexual violence, both in times of peace and armed conflict situations, is rampant and universal and is considered to be one of the most dismaying, prevalent, and most common violations human beings suffer, especially women. It is a genuine public health and human rights violation and has a deep, both short and long term impact on physical and mental well being. The victims are mainly girls and women, irrespective of their age. Sexual violence is rarely a crime of passion; it is rather an aggressive act that is more of an exercise of power and dominance over the victim. Rape in armed conflicts is matter of power and control where armed men take privilege of their masculinity and military strength. It is a matter of hatred, superiority, vengeance and national pride [36].

Sexual Violence during armed conflicts can be avoided, not only by booking the perpetrators of this heinous crime through stringent laws but by also sensitizing the armed men not to indulge in such acts. Ensuring accountability for crimes committed against civilians, particularly women, by prosecuting rape, abduction, and sexual slavery as war crimes and crimes against humanity in accordance with international humanitarian law is paramount. Ensuring that all peace talks include women representatives from different political parties and civil society, and ensuring a minimum percentage representation of women among all negotiating parties can ensure that the women's voices and issues are also heard. The provision post-armed conflict relief is also an important factor. Specially for the victims of sexual violence, who not only bear the physical but mental suffering as well, relief and rehabilitation is the only way they can be retreated back to a normal schedule of life [37]. The challenges are huge but can still be met with correct political will and cooperation from all members of the concerned society and international community. We must therefore pledge to do more awareness raising of these crimes, to end the impunity that exists and to hold perpetrators accountable for their acts, provide necessary support to victims, and to support both national and international efforts to build the capacity to prevent and respond to sexual violence in conflict. International law has some great successes to count on but still a lot needs to be done.

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