

# Female Body, Honour, Sexuality and the Use of Rape as a Weapon of War

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## ABSTRACT:

This paper aims to look at the use of rape as a weapon of war in conflict areas around the world. The paper not only looks at why the perpetrators believe this is an effective way of torture and intimidation of the general public but also the result of the same on the survivors and their families. The case of Kunan-Poshpora is a specific sub-topic that traces the history of the issue and the struggle of the people against impunity provided to the state armed forces.

Keywords: Rape, Honour, Armed Forces, Impunity, Policy

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## I. INTRODUCTION

As Guru Nanak Dev, the founder of the Sikh religion in one of his verses said, “*so kyunmandaaakhiye, jitjammerajaan*” which translates to- why abuse the one who gives birth to kings.<sup>1</sup> This and countless other religious and revolutionary verses upholding the dominant and respected position of women in the society have been long forgotten by the state and religious fanatics who target women in a bid to assert their dominance and instil fear in the hearts and minds of the people related to these women. From countless cases of rape being used as a weapon of war in conflict areas like South Sudan<sup>2</sup>, Myanmar<sup>3</sup>, Democratic Republic of Congo, Rwanda etc. to closer at home cases of rape by armed forces in Jammu & Kashmir<sup>4</sup> and the North East, this paper shall strive to look at the reason behind it and why raping women is the ‘greatest symbol of disrepute’ and the ‘harshest measure of social “punishment.”’ We shall look at the case of Kunan- Poshpora and try and understand the interplay of sex, honour and power in conflict areas and the impact that state sponsorship and protection have on the perpetrators and survivors. This paper aims to understand why the honour of society is linked to the penetration of her vagina by some ‘paraayamard’ (any man except the husband) and hence why rape is an effective weapon of war. Why is it that of no fault of their own, the survivors of Kunan-Poshpora have been socially ostracised along with their next generations, who weren’t even born when this monstrosity dawned upon the residents of these twin villages.

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<sup>1</sup>SRI GURU GRANTH SAHIB, 473

<sup>2</sup>Nick Cumming Bruce, *Mass Rape, a Weapon of War, Traumatizes South Sudan*, THE NEW YORK TIMES, (Mar 11, 2016), <https://www.nytimes.com/2016/03/12/world/africa/un-reports-systematic-rape-in-south-sudan-conflict.html>

<sup>3</sup>Christian Caryl, *Rape is still being used as a weapon of war. Right now. Today*, THE WASHINGTON POST, (Nov 21, 2017), [https://www.washingtonpost.com/news/democracy-post/wp/2017/11/21/rape-is-still-being-used-as-a-weapon-of-war-right-now-today/?noredirect=on&utm\\_term=.2297bdee1d03](https://www.washingtonpost.com/news/democracy-post/wp/2017/11/21/rape-is-still-being-used-as-a-weapon-of-war-right-now-today/?noredirect=on&utm_term=.2297bdee1d03)

<sup>4</sup>Rouf Dar, *The systematic use of rape as a weapon of war in Kashmir*, TRT WORLD, (Apr 4, 2018), <https://www.trtworld.com/opinion/the-systematic-use-of-rape-as-a-weapon-of-war-in-kashmir-16468>

## II. FEMALE BODY- SEXUALITY AND CONTROL

The history of the world is patriarchal, that is to say, that for a very long time only men had the power to make decisions and laws for society. Traditionally, rape laws were made in accordance with the perspective of propriety and the nature of citizenship of women, traditional perspectives of propriety and nature. Historically, two types of females were implicitly recognized by the law—the chaste and the unchaste. The rape of a chaste female brought the full force of the law; the rape of an unchaste woman went unpunished but often resulted in the trial being a public degradation ceremony of the "non-virtuous."<sup>5</sup>

Sex in general and rape has a lot to do with power and the need for control over the female body's sexuality. In a study conducted by Jillian Keenan, young boys from the impoverished regions of Niger had organized themselves into gangs called '*palais*'. In one specific instance, she mentions how a gang member of around invited her for a party and very reassuringly told her that he had told the other gang members that they were not allowed to rape her.<sup>6</sup> It shows how it is the aim of the individual to gain power by instilling fear and asserting control and dominion over the female body. In some cases of rapes, the event becomes a crisis for the family of the survivor, in particular, the male members. The male, consciously or unconsciously, may blame himself for having failed to protect the woman from rape.<sup>7</sup> Male mates may feel personally wronged and attacked by therapy of 'their woman,' and may display proprietary indignation that serves more to protect against their own unconscious sense of vulnerability than to express a deeply held personal philosophy.<sup>8</sup>

This shows not just that there has been a gender power relation structure inherently patriarchal and successful in tilting the scales in the favour of men and their ability to control the female sexuality but also points to another deeply offending conclusion: ownership. The historical and contextual examples clearly indicate that women are being considered the property of the man. The rape of a woman had to be the rape of a "man's woman" and hence such an offence was considered a serious transgression: rape has been described to be an offence of one man against another.<sup>9</sup> This argument of ownership of the female body and by extension the control over her sexuality is furthered by the fact that marital sex is not an offence in many nations. Considering that women usually go straight from their parent's house to their marital homes, it is basically a transfer of such right from

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<sup>5</sup>David J Giacopassi & Karer R. Wilkinson, *Rape and the Devalued Victim*, LAW AND HUMAN BEHAVIOR, VOL 9, NO.4, 367 (December 1985)

<sup>6</sup>Jillian Keenan, *I've Told the Others They're not Allowed to Rape You*, FOREIGN POLICY (April 2016)

<sup>7</sup>D.O. Silverman, *Sharing the crisis of rape: Counselling the mates and families of survivors*, AMERICAN JOURNAL OF ORTHOPSYCHIATRY, 166-173(1978)

<sup>8</sup>Priscilla N. White and Judith C. Rollins, *Rape: A Family Crisis*, FAMILY RELATIONS, VOL. 30, NO.1, 103-109, (Jan1981)

URL- <http://www.jstor.org/stable/584243>

<sup>9</sup> Giacopassi & Wilkinson, *supra* note 5

the father to the husband. Irene Kraegel argues that the situation results in viewing sex as a 'right' for men rather than a mutual agreement between a man and a woman.<sup>10</sup>

### **III. THE EFFECTS OF RAPE- PAIN, HONOUR AND SHAME**

Deserted by their families, abandoned by society, forgotten by both separatists and mainstream political parties, rape survivors during the years of militancy in Jammu and Kashmir live an appalling life.<sup>11</sup> It is the same for women all across the world; their plight has either been ignored or forgotten in the view of personal and often political goals of various institutions. Essar Batool and her colleagues in the book '*Do You Remember Kunan-Poshpora?*' argue that humiliating a woman means the humiliation of an entire family and community and an attack on its collective honour.<sup>12</sup> The fear of shaming the family and the social ostracizing that one experiences are what deters many rape survivors from reporting the offence. Many women have even declared their wish to die instead of being raped. While the relation of such community honour being demarked by the intrusion of a woman's vagina links us to the power and control relation, it is imperative to note that the social impacts that are placed above physical impacts that women face as a result of sexual violence.

The physical pain that women go through as a result of sexual violence is not just short term. Such violence has a long-lasting impact on their reproductive health. Women experience significant tearing, bleeding and infections in their genital area which sometimes leads to the difficulty in walking for days or weeks. Other physical symptoms include weakness, urinary incontinence and abdominal pain.<sup>13</sup> Pain is not only a parameter of physical impact. The emotional and cognitive impact is equally or more painful. Rape survivors in a study were found to be experiencing multiple combinations of depression (leading to disturbance of eating, sleeping and working), guilt (based on religious and societal expectations), fear (either generalised fear or fear connected to specific tasks or to men), low self-esteem, intrusive mental recollections, anxiety and shame.<sup>14</sup>

The naturalisation of sexual violence, especially at moments of political conflict, has another serious consequence - that of '*essentialising*' its targets as victims, helpless and in need of protection which obfuscates the reality that they are in fact survivors - in need of protection, yes, but also in need of respect, dignity and justice.<sup>15</sup> In Pazipora, the perpetrators, the armed forces raped around 8 women while shouting slogans of, 'Jai

<sup>10</sup>Irene Kraegel, *Owners of the Secret: The Impact of Rape Trauma on Ugandan Women in the Rakai District*, EMPOWERING WOMEN FOR GENDER EQUITY, NO. 74, RAPE: GENDER BASED VIOLENCE TRILOGY, 30-39, (Jan 1981)  
URL- <http://www.jstor.org/stable/27739339>

<sup>11</sup>Syed Junaid Hashmi, *Conflict Rape Survivors: Abandoned and Forgotten*, COUNTER CURRENTS, (Mar 31, 2007), <https://www.countercurrents.org/kashmir-hashmi310307.htm>

<sup>12</sup>ESSAR BATOOL ET. AL., DO YOU REMEMBER KUNAN- POSHPORA?55 (Zubaan, 2016)

<sup>13</sup>KRAEGAL, *supra* note 10

<sup>14</sup>KRAEGAL, *supra* note 10

<sup>15</sup>Navsharan Singh and Urvashi Butalia, *Challenging Impunity on Sexual Violence in South Asia: Beginning a Discussion*, ECONOMIC AND POLITICAL WEEKLY, VOL. 47 NO.28, 58-86, (Jul 14, 2012)

URL- <http://www.jstor.org/stable/23251718>

Hind' which also shows how rape is linked to the notion of nationhood.<sup>16</sup> These issues raise the issue of the nature of the citizenship of women in society and the attachment of honour and shame to survivors of sexual violence. All this becomes more stigmatised and looked down upon in the case of men. Sodomy as a means of torture has been used against men in conflict areas. This is seen to be a direct attack on the masculinity of the man sodomised. The same notions of shame and dishonour are attached to the man, making him a victim, not a survivor. In this context, it becomes easier to understand why the military and militants across the globe are using rape as a weapon of war. It is being used to instil fear and marginalise minorities further from society.

#### **IV. THE CASE OF KUNAN- POSHPORA**

On a cold intermediary night of 23<sup>rd</sup> and 24<sup>th</sup> February 1991, a group of soldiers and officers of the Indian Army cordoned off the twin villages of Kunan and Poshpura and started the search. As was the norm, the men were brought out of the houses and taken to a shelter, basically a torture camp, while soldiers went to search in the houses with women in them. While this was the general routine of the army, it all changed when men in the torture camps heard the wailing and screaming of the womenfolk. Their queries were not answered. After one entire night of getting tortured, when the men finally slithered their way to the houses, they found their wives, daughters and mothers lying unconscious and naked. The village account says that as many as 32 women were raped.<sup>17</sup> What is more important here to note is the impunity with which the forces did it, the impact that the incident had on the lives of these villagers and the unwillingness of the state to prosecute the culprits.

On the 27<sup>th</sup> of February 1991, the villagers went to the police station to get the case registered, without any results, post which they visited the Brigade Headquarters. It was only after it was brought to the attention of Kupwara DC on the 3<sup>rd</sup> March and upon his findings of mass rape and torture that the case was registered on the 8<sup>th</sup> of March 1991. The medical examination of the women was done in two rounds on the 15<sup>th</sup> and 21<sup>st</sup> March which showed evidence of rape, healing injuries and abrasions. In July 1991, the Press Council of India sent a team headed by BG Verghese who submitted a report dismissing the complaints as a 'militant hoax.' The report echoes the government's concern about international criticism by arguing that the charges against the army constituted "a massive hoax orchestrated by militant groups and their sympathisers and mentors in Kashmir and abroad for re-inscribing Kashmir on the international agenda as a human rights issue."<sup>18</sup> The police

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<sup>16</sup>BATOOL, *supra* note 12, at 53-54

<sup>17</sup>BATOOL, *supra* note 12, at 53-54

<sup>18</sup>Asia Watch & Physicians for Human Rights, *Rape in Kashmir- A Crime of War*, ASIA WATCH VOL. 5, ISSUE 9  
URL: <https://www.hrw.org/sites/default/files/reports/INDIA935.PDF>

in October 1991, closed the case as untraced but it was not until 2013 that they actually filed the closure report before the magistrate as required.<sup>19</sup>

For over two and a half decades the people of these twin villages have been trying to get justice, but the opponent is the state machinery and it overpowers them. Essar Batool and her associates in the book '*Do You Remember Kunan- Poshpora*'? talk in detail about the social stigma attached to every person who has a link to the village. Even though the number of women who came forward was less than 40, the actual number was much higher. The social stigma and the 'dishonour' theory kept them from coming forward, and yet they could not get married, because no one would marry a girl from a village where everyone was raped.<sup>20</sup> The tactics used by the state all around the world to suppress such claims are the same. These include the intimidation of the people working with the survivors, killings of the human rights activists, public humiliation of the survivors and delay in the process of the judicial hearing. Even after being reprimanded by the Srinagar High Court, the state and the army continued to work hand-in-hand to prevent justice. This included shifting the case hearing to Kupwara which is difficult to reach, 'illnesses' of the state lawyer, replacement of judge and lawyer, marriages in the family of the judicial officials amongst others. The fight against the state is never easy, but such tactics, in a way provide the army with impunity to commit such crimes.

The impunity of Indian forces has a very specific pattern. Most cases of sexual violence that are reported, fall through because of a lack of proper investigative procedures. The forensic tests are botched and evidence gathering is so shoddy that it returns ludicrous results.<sup>21</sup> The Indian armed forces have been using rape as a weapon of war to intimidate and humiliate people of Kashmir in order to suppress their demand for freedom. The same continues in the North East<sup>22</sup> and Maoist<sup>23</sup> areas. In only Jammu and Kashmir, the army has been accused of rapes not just in Kunan- Poshpora (1991) but also in Hakhoora<sup>24</sup> (1990) Sopore<sup>25</sup> (1990), Shopian (1992)<sup>26</sup>, Haran<sup>27</sup> (1992), Shopian<sup>28</sup> (2009) amongst innumerable others, some reported, others not.

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<sup>19</sup>BATOOL, *supra* note 12, at 29-33

<sup>20</sup> Andre Vltchek, *India's Shame*, COUNTER PUNCH, (Feb6, 2015)<https://www.counterpunch.org/2015/02/06/indias-shame/>

<sup>21</sup>SINGH & BUTALIA, *supra* note 15

<sup>22</sup>Manjula Sen, *Right to Rape?* THE TELEGRAPH, (Jun19, 2013)

[https://www.telegraphindia.com/1130619/jsp/opinion/story\\_17023481.jsp](https://www.telegraphindia.com/1130619/jsp/opinion/story_17023481.jsp)

<sup>23</sup>Brinda Karat, *When Rape Becomes A Weapon Against Tribal Women*, NDTV, (Jan 12, 2017) <https://www.ndtv.com/opinion/when-rape-becomes-a-weapon-against-tribal-women-1647667>

<sup>24</sup>Khalid Gul, *May18, 1990: When BSF troopers 'raped' bride*, GREATER KASHMIR, (May 18, 2008)

<http://www.greaterkashmir.com/news/news/may-18-1990-when-bsf-troopers-raped-bride/33991.html>

<sup>25</sup>ASIA WATCH AND PHYSICIANS FOR HUMAN RIGHTS, *supra* note 18, at 6-7

<sup>26</sup>Human Rights Watch, *Shopian*, HUMAN RIGHTS WATCH <https://www.hrw.org/legacy/about/projects/womrep/General-43.htm>

<sup>27</sup>ASIA WATCH AND PHYSICIANS FOR HUMAN RIGHTS, *supra* note 18, at 12

<sup>28</sup>Nusrat Sidiq, *2009 Shopian rape and murder case*, KASHMIR READER, (Mar 28, 2009)

<https://kashmirreader.com/2018/03/28/2009-shopian-rape-and-murder-case/>

## V. RAPE AS A WEAPON OF WAR: GLOBAL EPIDEMIC AND JURISPRUDENCE

The use of rape and sexual assault and harassment as a weapon of war is neither exclusive to India nor is it new in the global military scenario. It has been used since times immemorial, right from the Greek and Roman armies to the Delhi Sultanate period to the invasion of Afghanistan by the Soviet Union and is being used as we breathe in Myanmar against the Rohingya and in South Sudan amongst others. It is not only used by the state's army against civilians under suspicion but also by armed militia. The same was highlighted in the aftermath of the 1947 partition of the Indian Subcontinent and the 1971 Bangladesh liberation war amongst others. Thousands of accounts of the use of rape as a way to dishonour the family of the other religion have come forward by the migrants from Pakistan to India and the other way around.

It was in the International Criminal Tribunal for the former Yugoslavia (1993) that the jurisprudence was pioneered that saw rape and sexual violence of other types as international crimes and have convicted over 30 of the 70 people accused of war crimes of sexual violence.<sup>29</sup> In 1998 in the Akayesu judgement of the International Criminal Tribunal for Rwanda that mass rape was brought under the purview of war crimes and crimes against humanity. Under this case, the definition of rape advanced from simply "non-consensual intercourse" to rape and sexual violence as a physical invasion of a sexual nature, committed on a person under coercive circumstances and as part of a widespread or systematic attack on a civilian population that has been discriminated against on national, ethnic, political, racial or religious grounds. It has also been regarded as a form of torture, thus de-emphasising its stigmatised nature in popular perceptions.<sup>30</sup> The Rome Statute of the International Criminal Court (ICC) includes rape and forms of sexual violence as part of the crimes of genocide, crimes against humanity, and war crimes.<sup>31</sup>

## VI. CONCLUSION:

Rape has been described as the worse form of violence, surpassing death. Survivors have expressed the wish to die rather than live with the stigma of having been raped attached to them for the rest of their lives. The children in Kunan- Poshpora till date are unable to go to middle-school because of the bullying and name-calling as they hail from 'a village of raped women.'<sup>32</sup> The mother of a 15-year-old was made to watch 10 armed men rape her daughter turn by turn to instil in her and the community a feeling of subjugation to the higher authority. The reason why it is being used is due to the social stigma that gets attached to the victim. The

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<sup>29</sup>Legacy Website of the ICTY, TPIY and MKSJ, *Landmark Cases* <http://www.icty.org/en/features/crimes-sexual-violence/landmark-cases>

<sup>30</sup>SINGH & BUTALIA, *supra* note 15

<sup>31</sup>Mag. Nicole Brigitte Maier, *The Crime of Rape under the Rome Statute of the ICC: with a special emphasis on the jurisprudence of the Ad Hoc Criminal Tribunals*, AMSTERDAM LAW FORUM, VOL 3:2 (2011)

<sup>32</sup>BATOOL, *supra* note 12

perception that the raping of a woman makes the whole community she belongs to dishonoured. It is the aim of such actors to suppress by humiliation anyone who stands for their rights and freedom. It is the presumption of ownership of a woman by the man of the house that puts the family in a crisis mode.

Studies have shown that by talking about the experience in an environment that was deemed safe and confidential, survivors were actually able to move ahead in their life faster and talk about future sexual relationships.<sup>33</sup>The ordeal is also difficult for men and especially young boys who are sodomised due to the lack of gender neutrality in rape laws in most of the countries. Sodomy is also then linked to masculinity. The interplay of masculinity, power and sexual violence, prevents justice. The global jurisprudence has after a millennia taken cognizance of mass rapes as a war crime and crime against humanity. The state's outlook and attitude to the prosecution of army personnel for such crimes also has a major effect. In the case of India, where the state has latently given the army a free hand to do as it deems fit as long as it can keep militancy in check via acts like AFSPA and others, has distorted the belief in the minds of the civilian population that the state can ever be neutral or that justice can ever arrive.

Patriarchy is to be blamed for a lot of these issues. It is because of the patriarchal norm of viewing women as property that the honour of the family is now linked to who and how many people penetrate the women of the house. The protective attitude considered a general community norm also leads to the increase in shame and dishonour for the family of the survivor and leads to the myth that if the rape has happened despite the protection, then the woman herself might have enticed the man. The tactics of victim shaming that are a handy tool of the defence lawyers against rape survivors have been prohibited by the Supreme Court of India and relevant statutes exist in other countries are often ignored and such ignorance is tolerated by the judges, who themselves have a patriarchal mind-set.

There is a need to firstly, define the crime of rape as not only sexual but also violent and remove the stigma attached. The ideals of purity propagated by ancient religious texts are now redundant and need not be adhered to. If a woman does not bleed on her first night with the husband, she should not be considered impure and the myth of the hymen not breaking if not for sex also needs to be shed. The government has to bring the military personnel into the realm of the public in such cases. It is important to hold them accountable, for the psyche of the survivor and the society. Impunity provided by the state in order to crush one revolution is the seed for a stronger, second one.

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<sup>33</sup>KRAEGAL, *supra* note 10