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# Sexual Violence against Women in Armed Conflict- A Hidden Atrocity

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## ABSTRACT

*Gender based violence is a serious issue which mostly affects women. Human rights violations on the basis of gender are prevalent in times of war and armed conflict. In most of the conflict situations, women are the worst sufferers. They experience violence, sexual slavery and other human rights abuses in times of armed conflict. Gender based violence gets complicated when the civilian women are targeted at times of armed conflict. They suffer at the hands of state and non state actors, and also the peacekeeping forces. They become most vulnerable and fall an easy target to exploitation for the reason of their gender, age and status. Gender based violence is a grave human rights violation, which violates the right to security of person and freedom from torture and cruel or degrading treatment. The state actors must respond and take responsibility of the victims of such gender based violence. Timely intervention must be made so that the victims can be provided the required assistance and can be rehabilitated. Victims of sexual violence in armed conflict must be given emergency relief and assistance. Despite this, there aren't enough guarantees that protect human rights of women in armed conflict. The paper aims at exploring the international documents related to humanitarian law, the kinds of protection available at the time of armed conflict and finally an assessment of the current mechanisms safeguarding human rights violations.*

**Keywords:** *Armed Conflict, Human Rights, Violence, Women*

## I. INTRODUCTION

Instances of mass sexual violence to women are used as a method of systematic ethnic cleansing in almost all major armed conflicts. Human Right Violations in Yugoslavia and Rwanda have led to huge outcry in the international domain. Sexual violence as a mode to suppress a community has also been documented during India-Pakistan Partition or during Gujarat riots. Sexual violence against women during armed conflict is still serious issue in

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Guinea<sup>2</sup>, Bosnia and Herzegovina<sup>3</sup>, Mali<sup>4</sup>, Central African Republic, Myanmar, Somalia<sup>5</sup>, Sri Lanka, and Ethiopia and so on. In fact lethal acts against women accompanied by sexual violence take place during armed conflicts. Majority of these acts are committed by the armed groups and state forces. An independent study recorded about 100 situations of sexual violence in 2018 perpetrated by the state forces, a quarter of them carried out mostly in India, Congo, Myanmar, South Sudan and Burundi.<sup>6</sup> Similar situations can be witnessed in the conflict areas of India such as Jammu and Kashmir, North-East region and the Naxal Insurgent areas such as Chhattisgarh.

Advancement of gender equality is a pre-requisite for the prevention of sexual violence which can be ensured by equal representation of women in political, economic and social aspects. Moreover, the victims of armed conflict must have access to justice and access to effective and secure rehabilitation institutions.

“Conflict-related sexual violence” refers to rape, forced prostitution, forced abortion, sexual slavery, enforced sterilization, forced pregnancy and other forms of grave sexual violence. Generally, the perpetrator has its affiliations to the Government or an armed group. The perpetrator may range from terrorists groups, ethnic or religious groups.

Sexual violence has been used as a tactic of war and terrorism, which makes it easy to stigmatize and intimidate the victims. Sexual violence is used tactically against women to displace the undesirable groups or gain power over a territory. It has also been used to target women for declining populations or gaining intelligence or destroying existing social structures. Mass rapes are a result of religious and masculine domination, with the intention to commit ethnic cleansing. Sexual violence has also been used as a means of political intimidation, to prevent women from participating in political activities. Most of the women were targeted on the basis of their reproductive age and to control their childbearing capabilities.

Therefore, sexual violence in armed conflict still continues to happen even in the developed and globalised world. The effectiveness and relevance of International law providing

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<sup>2</sup> The Team of Experts is a member of the Steering Committee, established by the Government, tasked with organizing trials concerning the events of 28 September 2009, when at least 109 women and girls suffered sexual violence, and for which 15 high-ranking individuals have been indicted.

<sup>3</sup> In 2018, two projects were funded through the United Nations Action multi-partner trust fund: a project aimed at assisting survivors in Bosnia and Herzegovina; and another which facilitated the deployment of two experts to develop a comprehensive strategy on gender-based violence, including conflict related sexual violence, in Mali.

<sup>4</sup> Ibid.

<sup>5</sup> In Somalia and the Central African Republic, women were targeted along with other family members because of the actual or perceived affiliations of their husbands or sons.

<sup>6</sup> <https://acleddata.com/2019/06/19/fact-sheet-sexual-violence-in-conflict/>; visited on 15<sup>th</sup> April, 2020.

protection to the victims is questionable in present times of crisis. Moreover, the effectiveness and accountability of the institutions is also doubtful, where there is an urgent need for the States to take proactive steps to curb armed conflict based sexual violence. The paper aims at analysing the relevance of the legal provisions and effectiveness of the existing institutions in present time. The article shall also analyse if there are any gender-related shortcomings in the international laws. The researcher shall also reflect on India's response towards incidents of sexual violence in conflict areas.

## **II. STATEMENT OF PROBLEM**

Human race suffers the repercussions of armed conflict but women get specifically affected due to their status of being the weaker sex. Women face issues of poverty, discrimination and are victimized during armed conflicts. All the major conflicts that have occurred throughout the world, women have been at the worst suffering end. Women face violence in graver forms than men with instances of rape and other forms of sexual violence. Women become the most vulnerable at the hands of the enemy, where sexual violence is used as a means to humiliate them and torture them. International humanitarian law provides for protection of victims of armed conflict, but in the present times, it is advisable for the States to take proactive approach to the issues of grave violence against women. As the nature of armed conflict is changing with time, the existing laws must respond to these new developments. In this vital juncture, States should intervene to deal with violations in their territories.

## **III. SCOPE AND LIMITATION**

The researcher contains the scope within the area of sexual violence against women in armed conflict. The researcher extends the limitation to the global perspective and filters out the State response to this issue in Indian Diaspora.

## **IV. OBJECTIVES**

- Main objectives of the research work is to find out issues related to protection of women in armed conflict
- To determine the relevance of the existing laws in IHL & HRL relating to protection of women in armed conflict.
- To analyse the effectiveness of enforcement mechanisms under International Law and India's response to sexual violence against women.

## **V. RESEARCH QUESTIONS**

- Whether the existing laws in IHL& HRL in sexual violence against women in armed conflict issues relevant in present time?
- Whether the existing enforcement mechanisms effective to address to the present situation?

## **VI. METHOD OF RESEARCH**

The researcher has adopted the doctrinal method to do research work. Analysis of case laws, general rules and principles of international law and concepts has been meticulously done. Reference has been made to international conventions, tribunals, recommendations of organisations to conduct primary research work. The other sources of international law such as customary law and peremptory norm also constitute the primary and secondary sources of research. The researcher has adopted an analytical and critical evaluation and analogical reasoning.

## **VII. SOURCES OF DATA**

The method of research is doctrinal in nature; hence the sources of data are primary as well as secondary sources, which include textbooks, articles, journals, international reports and independent surveys.

## **VIII. SPECIFIC PROTECTIONS UNDER IHL AND HRL**

For an assessment of the laws protecting women in armed conflict, the rules of IHL and HRL and the extent of its applicability must be stated. Moreover, Human Rights are inherent to every individual; therefore they also have additional protection against violations done by enforcement agencies. On the contrary, IHL is only applicable to the parties to an armed conflict and it confers no rights to individual victims. Moreover, there is a lack of effective enforcement agencies for hearing complaints of the victims of the armed conflict. This inefficiency creates a gap to be filled by respective states in order to prosecute for the war crimes.

### **(A) UNDER INTERNATIONAL HUMANITARIAN LAW**

Even though women don't participate directly in armed conflict, they are provided the same protection as men. General principles of IHL are applicable to all persons in need of protection without discrimination. For instance, IHL prohibits discrimination on the grounds of sex but this also allows favourable discrimination as "women shall be treated with all

consideration due to their sex”.<sup>7</sup>

IHL also provides rules for special protection of women in armed conflict keeping in view their medical and psychological needs and child-bearing role, making them more vulnerable than men.<sup>8</sup> Many rules of the Geneva Convention have now become international customary law since states comply with these provisions. Article 27(2) of the GC IV provides protection against rape and attacks on their honour. The scope of this provision was further extended by Article 75(2) (b) of Additional Protocol I which prohibits actions aimed to outrage the personal dignity of women or subject them to degrading treatment. Similarly, AP II enumerates rules for protection of women from rape even in non-international armed conflict. Acts of rape, sexual assault, torture, inhuman treatment and indecent assault are considered as “grave breaches” under the Geneva Convention. These protections also extend to psychological and social assistance to women when required. Therefore, women are entitled to special protection considering their special needs.

But, it is also maintained that IHL should cater more than just mere rules and specific action must be taken to ensure implementation of IHL. The states must take effective administrative and judicial measures to ensure that they fulfil their obligations under IHL and provide protection to women in armed conflicts. The pertinent question here is: Do we need a change in IHL to protect women in armed conflict? It is not the insufficiency of the rules of IHL but the failure of the State parties to actually implement them. “If women have to bear so many of the tragic effects of conflict, it is not because of any shortcomings in the rules protecting them but because those rules aren’t observed.”<sup>9</sup> It is the duty of the states to legislate on the lines of the rules and implement the existing IHL principles. Contemporary critics of the feminist school have criticised few provisions to be based on archaic and stereotypical mindset which normalises the discrimination. The provisions appear to reflect the paternalistic view, with chivalric attitudes, just like the ordinary discrimination against women. Moreover there is a lack of effective standards which must be applicable to post-conflict situations, to ensure rehabilitation of women in armed conflict.

### **(B) UNDER HUMAN RIGHT LAW**

The important documents which enumerate the human rights are the Universal Declaration of Human Rights, the rules of customary international law and the covenants on Social, Economic and Cultural Rights and on Civil and Political Rights. Women suffering violence

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<sup>7</sup> Article 12 GC I and II, Article 14 GC III

<sup>8</sup> Judith Gardam & Michelle Jarvis, *Women- Armed Conflict and International Law* pg. 19-51 (2001)

<sup>9</sup> International Committee of the Red Cross, *Women and War*, at 26, Aug. 1995

and discrimination in armed conflict stems out from the discrimination women suffer in almost all areas of life.<sup>10</sup> The pertinent question here is whether the human rights law are effective in improving the situation of women in armed conflict and providing them with protection. With an increase in the number of presidential statements and resolutions from the Security Council, it can be seen that a lot of importance is being given to the issue of women in armed conflict. The general trend had been to provide women with special protection during armed conflict but various other effects of violence on women had been continuously overlooked.<sup>11</sup> It was until the Beijing Conference on Women in 1995 which considered that the effects of armed conflict on women has a lot to do with the overall discrimination and disadvantages women are subjected to in their daily lives. Therefore there is a need to gender expertise in the mechanisms which provide rehabilitation to women in armed conflict.<sup>12</sup> It is therefore imperative on the governments to ensure that the rules of international human rights law find relevance in their state acts and fulfil those obligations to protect women. Therefore it can be analysed that the collective response under HRL remains inadequate even though the crimes against women have been acknowledged. An effective strategy was adopted post Beijing Conference where women should also be trained before, during and after the armed conflict to make them less vulnerable to its after effects.<sup>13</sup>

## **IX. ASSESSMENT OF ENFORCEMENT MECHANISM & STATE RESPONSE IN INDIA**

The mechanisms provided generally under the international law to ensure compliance of rules related to armed conflict are less than satisfactory. Its application in armed conflicts either becomes insufficient or counter-productive to achieve the results. One of the major reasons for the inadequacy is the decentralisation of law making and law implementing actions of the States. In times of armed conflict, it is either the State which violates or has been victim of violation which takes up the role of providing effective mechanisms. Some developed states either support the injured state or intervene with peacekeeping forces. Decentralization poses threat to the effective application of IHL unless third party states are neutral to both the states otherwise they can take sides.

### **(A) HUMAN RIGHTS ENFORCEMENT UNDER UN SYSTEM**

UN tends to apply use of force as an enforcement measure which in itself is no less than an armed conflict. Therefore a more humanitarian approach should be adopted to respect the

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<sup>10</sup> Fourth World Conference on Women, Action for Equality Development and Peace, Beijing Declaration and Platform for Action, U.N. Doc. A/Conf.177/20 (Oct. 17, 1995), Para 135.

<sup>11</sup> Banerjee Sunita, *Violence Against Women in Globalizing Asia*, (Swastik Publications, Delhi, 2009.)

<sup>12</sup> 42<sup>nd</sup> Session of Commission on the Status of Women (CSW), U.N. Doc. E/CN.6/ 1998/ 12 (Mar. 2-13, 1998)

<sup>13</sup> Ibid.

needs of the women victimised in armed conflict. The second measure which UN takes against States violating international law is Sanctions. Strict Sanctions can give rise to indiscriminate human suffering. IHL and HRL must therefore adapt to individual circumstances and provide to the specific needs of protection to the victims of armed conflict. Moreover IHL should be adopted in national legislations to ensure a more organised enforcement agency. Since, the obligations of UN are erga omnes; hence it obliges every State to respect it. The qualified personnel should be trained in handling issues with gender sensitivity. Even though the general and specific mechanisms are applied to rehabilitate the victims of armed conflict, education and training shall supplement the implementation of law.<sup>14</sup>

#### **(B) ASSESSMENT AND NEED FOR INDIVIDUAL STATE RESPONSES**

The capacity of national institutions must be strengthened so that the respective states can be held accountable for the past crimes and ensure a deterrent effect for the future crimes. The national authorities must be assisted by the international organisations so that they can ensure rule of law and accountability for criminal acts during armed conflict related sexual violence.<sup>15</sup> The example of Central African Republic can be stated here. Specialised police unit was set up to investigate sexual violence in a case of mass rape in Bossangoa in 2018. Similarly, a Team of Experts was set up by Government of Guinea for conducting the trials for the sexual violence against 109 women and girls.

But it can't be denied that a lot of survivors of sexual violence face structural barriers preventing them to approach the appropriate judicial mechanism.<sup>16</sup>

#### **(C) STATE RESPONSE IN INDIA**

Conflict areas in India become zones of extreme violence, where violence is used to achieve their goals. Women face collateral damage in conflict areas and this suffering becomes invisible due to the exercise of extra-ordinary laws. Exercise of such laws sometimes blurs the distinction between perpetrators and civilians. Women suffer abuse and extreme violence on a regular basis and this also includes sexual harassment at workplace, violence against sex workers, disabled women and young girls. Communal violence sometimes overshadows the abuse and violence women undergo. Violence done by armed forces in the North East has

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<sup>14</sup> Karima Bennoune, *Do We Need New International Law to Protect Women in Armed Conflict*, 38 Case W. Res. J. Int'l L. 363 (2007)

<sup>15</sup> The Team of Experts on the Rule of Law and Sexual Violence in Conflict; Security Council Resolution 1888 (2009).

<sup>16</sup> Kelly Dawn Askin, *War Crimes Against Women : Prosecution in International War Crimes Tribunals* (M. Nijhoff Publishers, Cambridge, 1997)



been condemned by the Government and human rights institutions. In states such as Kashmir and Nagaland, women have suffered sexual violence at the hands of security forces, and such crimes don't see the light of day.<sup>17</sup> Generally, women who have lost their husbands or families become economically weak and more vulnerable to sexual abuse. Similar events have unfolded even in Naxal areas, where getting education is a difficult task. Women and young girls are either married or stay at home due to the fear created by conflict. Violations of Human Rights by the armed forces have been challenged in the North Eastern states, raising the issue of unconstitutionality of the Armed Forces Special Powers Act in Nagaland. Even after the Jeevan Reddy Committee recommended scrapping of the law, it is still in force.<sup>18</sup>

Indian State has approached the issue of violence in conflict areas by providing relief to the families, conducting workshops on sexual violence, trafficking of women, and bonded labour with the help of officials from Human Rights Commission.<sup>19</sup> The major shortcoming in Indian response towards violence in armed conflict is the continuance of special laws for governing those areas. Segregation of people on the basis of religion also make women of those particular group vulnerable to abuse and violence. State response has not reduced the issue of sexual violence in conflict zones and application of feminist critique and academic inputs can give a new perspective to the solutions. The state must be vigilant in the security provided to women who face the risk of sexual abuse. Since India is a signatory to CEDAW, it is imperative to adhere to the standards and state programmes should be formulated as such to implement the obligations of the instrument and reduce sexual violence in conflict areas. Strengthening of existing mechanisms to make them more accountable and enable them to investigate and prosecute effectively. This shall ensure protection of the victims and deter future violations. Workshops on sexual violence should be conducted to sensitize government officials, police and military on sexual violence against women. Most importantly, the victims of sexual violence should be provided rehabilitation and the Government and civil societies should take proactive steps to reintegrate the survivors in mainstream society. State must provide them with economic, social, medical, psychological assistance.

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<sup>17</sup> Seema Kazi, *Between Democracy and Nation: Gender and Militarization in Kashmir*, Women Unlimited, New Delhi, 2009, pp. 134-190.

<sup>18</sup> Pooja Bakshi, *Sexual Violence in Conflict Zones and State Responses in India* (FICHL Policy Brief Series No. 53, 2016)

<sup>19</sup> Based on Ministry of Home Affairs, Report from 2003-2014; The Annual Reports of the Ministry of Home Affairs of India are available at <http://mha.nic.in/AnnualReports>, last visited on 17<sup>th</sup> April 2020.

## X. CONCLUSION

The judgments passed by ad hoc tribunals constitute as milestones yet a majority of perpetrators aren't prosecuted. The effectiveness of international instruments depends on the realisation of the purpose with which they were drafted. Even though the international community accepted the seriousness of the issue of sexual violence against women in armed conflict, the state responses lack proper implementation. Special protection to women in armed conflict is one aspect of the underlying issue. The other aspect, which is the post-conflict rehabilitation, plays a major role in the re-integration of women in society.

Issues of gender discrimination are underlying shortcomings of the existing international framework and simple redrafting can be adopted to reflect modern understanding of the causes of violence against women. The very principles of IHL are under threat due to the preventive actions taken up by the government in form of "war against terrorism."<sup>20</sup>

Implementation of international law is a challenge, especially in reducing sexual violence against women. Even though the State parties ensure compliance with the international documents, it is evident that States lack in their individual responses towards such situations. Even though the law is designed as such to provide protection to women, it also depends in the way the armed forces are trained and the understanding of violence against women. Unless a holistic approach is implemented, the crimes against women cannot be prevented and prosecuted. Even though the issue has garnered mainstream attention, conflict literature lacks feminist critique and is almost separately dealt with violence against women in armed conflicts. No doubt, there are deficiencies in the existing framework; there is still a long way to achieve effective protection for women against sexual violence in armed conflict.

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<sup>20</sup> Gabor Rona, *Interesting Times For International Humanitarian Law: Challenges from the "War on Terror,"* 27 Fletcher F.Of World Aff. (Issue 2) 55 (2003).

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