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# Sexual Violence against Women in Armed Conflict: A Neglected Crime in International Humanitarian Legal Framework

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## ABSTRACT

*Throughout history, women and girls have been frequently targeted for abuse, particularly sexual violence, during armed conflict. They've also been left out of efforts to prevent and resolve conflicts. Despite the increased risk of violence faced by women in armed conflict, they are frequently ignored in policy and programming, leaving them out of decision-making processes and unable to access supports.*

*They continue to face many problems despite growing awareness and activism at the local and international levels. Women are frequently kept out of Security Council negotiations and peace talks due to a lack of high-level leadership committed to incorporating women's rights. Grassroots organisations working on local-level peacebuilding and service provision for women have a hard time getting adequate and continuous support.*

*As a result, this research paper begins by looking at definitional aspect of conflict-related sexual violence (CRSV). The paper then explores the history of wartime sexual conflict and the response of international humanitarian flagbearers towards this issue and sexual violence survivors.*

*Third, the paper examines silences in the international sphere on sexual violence, focusing on how hidden interests guarantee that the status quo continues unquestioned. Finally, the implications of these findings for humanitarian practise are examined, and recommendations are offered for how to proceed in order to achieve more realistic and achievable humanitarian action.*

**Keywords:** *Armed Conflict, conflict-related sexual violence (CRSV), International Humanitarian Law, Sexual Violence and Women.*

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## I. INTRODUCTION

*We have to be a loud and clear voice for those whose voices cannot be heard. Under international law, rape is a crime against humanity—and it is our duty to work to bring impunity for such crimes to an end."*

*- Shirin Ebadi, Nobel Peace Laureate from Iran.*

"If we want people to say 'no more war,' we have to show how horrific it is," said Berit Reiss-Andersen, Chair of the Norwegian Nobel Committee, as the 2018 Nobel Peace Prize winners were announced.<sup>2</sup> Sexual violence and crimes committed against women during conflicts are as old as the history of warfare.<sup>3</sup> Despite the fact that every armed conflict exacts a cruel impact on all members of society, regardless of gender, age, skin colour, nationality, or ethnic origin, women have been and continue to be particularly vulnerable to all forms of such violations, becoming victims of various forms of violence in particular.<sup>4</sup> It is still adopted as a war tactics and weapon. Rape and other forms of sexual brutalities were and still considered as an inhumane, but unavoidable, consequence of war, a form of collateral damage, and women are treated as spoils of war for victorious armies.<sup>5</sup> Despite its prevalence, sexual violence is not an unavoidable consequence of warfare and violence.<sup>6</sup> It, like any other violation, can be avoided. A strong legislative framework and the presence of strong institutions to implement the prohibition of sexual violence are prerequisites.

Many aspects of sexual assault are primarily based on patriarchal ideology.<sup>7</sup> In times of conflict, patriarchal hierarchies and protectionist beliefs harden, making women an easier target for sexual violence.<sup>8</sup> Protection of the women has been regarded an aspect of masculine honour since ancient times.<sup>9</sup> Sexual violence against women was viewed not just as a crime done against the woman herself, but also as an act of shame perpetrated against her owner - *her father, husband, and others*.<sup>10</sup> When taking care of women is the primary measure of male success, it's only natural that the winner will take not just the defearer's property, but also his women.<sup>11</sup> The

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<sup>2</sup> Bharat H Desai, Balraj K Sidhu, *End sexual violence against women in conflicts*, T. India Dec 28, 2018

<https://www.tribuneindia.com/news/archive/comment/end-sexual-violence-against-women-in-conflicts-705031>

<sup>3</sup> *Id*

<sup>4</sup> *Id*

<sup>5</sup> Gardam, J., & Jarvis, M., *Women, armed conflict and international law*, **Kluwer Law International** (2001)

<sup>6</sup> Gloria Gaggioli, *Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law*, **International Review of the Red Cross** (2015)

<sup>7</sup> Ayşegül gökalp kutlu, *Armed Conflicts and Sexual Violence Against Women: An Inevitable Accompaniment?* KOSBED, 1 – 20 2014

<sup>8</sup> *Id*

<sup>9</sup> *Id*

<sup>10</sup> *Id*

<sup>11</sup> *Id*

concept of honour, which is embodied in women's bodies, is what makes sexual assault against women in wartime such an effective tool of terror.

### **(A) Definition and Prevalence**

The term “*conflict-related sexual violence (CRSV)*” refers to “*rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict.*”<sup>12</sup>

In the *Akayesu case*<sup>13</sup>, the International Criminal Tribunal for Rwanda (ICTR) Trial Chamber defines sexual violence as “*any act of a sexual nature which is committed on a person under circumstances which are coercive*”.

The World Health Organization (WHO), defines *sexual violence* as “*any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work*”.<sup>14</sup>

### **(B) Research Objective**

The present study has been undertaken by the researcher keeping in views the following objectives:

1. To understand the issue of conflict-related sexual violence (CRSV) and its contemporary relevance.
2. To assess the definitional aspects of conflict-related sexual violence (CRSV).
3. To understand the psyche of perpetrators for committing this offence.
4. To highlight some examples of recent warfare sexual violence in order to understand the multidimensional nature of this issue.
5. To study and critically analyse the International Humanitarian Legislations on conflict-related sexual violence (CRSV).
6. To assess the role of the international and regional stakeholders towards the survivors of conflict-related sexual violence (CRSV).

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<sup>12</sup> United Nations, *International Day for the Elimination of Sexual Violence in Conflict*, <https://www.un.org/en/observances/end-sexual-violence-in-conflict-day>

<sup>13</sup> ICTR, Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, Judgment (Trial Chamber), 2 September 1998, para. 688; ICTR, Prosecutor v. Alfred Musema, Case No. ICTR-96-13, Judgment (Trial Chamber), 27 January 2000, para. 965.

<sup>14</sup> World Health Organization (WHO), *World Report on Violence and Health*, p.149, (2002).

### (C) Research Methodology

The present study based on doctrinal and analytical methodology. Keeping this in view, the researcher has utilized the conventional method of using libraries consisting of primary sources. The relevant material is collected from various text books, Case Laws, Commentaries, News Paper Articles and E-Journals. International humanitarian legislations, Reports prepared United Nations and other international organisations etc. has been also referred for the purpose.

## II. BACKGROUND/LEGAL FRAMEWORK

### (A) Women And Sexual Violence: 'Weapon' Of War

Rape as a weapon of war is not a new phenomenon. The most notable change in the use of sexual violence in armed conflicts in recent decades, following the end of WWII, is that it is now used deliberately: as a weapon of war, or as a tool of political repression.<sup>15</sup> The delayed recognition of atrocities against many thousands of Asian women and girls who were forced into military sexual slavery by the Japanese Army during World War II is one of the most brutal examples of modern warfare violence.<sup>16</sup> They've earned the label "*comfort women*." In 1992, the Japanese Government officially apologized for compelling these women into military sexual slavery, and has written to each surviving "*comfort woman*".<sup>17</sup> In 1992, the Japanese government issued an official apology for forcing these women into military sexual slavery, and each surviving "*comfort woman*" received a letter. Japan and South Korea reached an agreement in December 2015, in which Japan offered a "most sincere" apology and paid \$8.3 million to the surviving victims. However, with the recent change of leadership in South Korea, this deal was revoked. It shows how wounds of the past refuse to heal.<sup>18</sup> According to the UN's Special Rapporteur on Violence Against Women, these women and girls were subjected to:

*"...multiple rape on an everyday basis in the 'military comfort houses'...Allegedly, soldiers were encouraged by their commanding officers to use the "comfort women" facilities rather than civilian brothels 'for the purpose of stabilizing soldiers' psychology..."*<sup>19</sup>

In Rwanda during the genocide conflict in 1994, thousands of women were alleged to have been sexually assaulted. Women were raped, disfigured, forced into forced prostitution, and seized as "wife" by their captors, according to the reports.

<sup>15</sup> Human Rights Watch: *Rape as a weapon of war and a tool of political repression*, **The Human Rights Watch Global Report on Women's Human Rights** (1995) <https://www.hrw.org/reports/pdfs/g/general/general958.pdf>

<sup>16</sup> *Id*

<sup>17</sup> *Id*

<sup>18</sup> **Bharat H Desai** *supra* note 2

<sup>19</sup> *Id*

*"Under-age children and elderly women were not spared. Other testimonies mention cases of girls aged between 10 and 12. Pregnant women were not spared. Women about to give birth or who had just given birth were also the victims of rape in hospitals. Their situation was all the more alarming in that they were raped by members of the militias some of whom were AIDS virus carriers (as was the case of the national chief of the militias, as several witnesses report). Women who had just given birth developed fulminating infections and died. Women who were "untouchable" according to custom (e.g., nuns) were also involved and even corpses, in the case of women who were raped just after being killed."*<sup>20</sup>

Similarly, during the Lord's Resistance Army's (LRA) reign of terror in northern Uganda, the group used extensive violence against people to punish or prevent them from supporting the government. Forced marriage or sexual enslavement of women and girls, many of whom had been forcibly recruited, dominated the organization's sexual violence repertory.<sup>21</sup> When Iraq invaded Kuwait in 1990, sexual assault was a common occurrence during the ensuing conflicts, as it had been in previous conflicts.<sup>22</sup> In conflict zones, the use of sexual assault, as well as the acceptance of such acts, brutalities, and accompanying trauma, results in 'walls of silence.' As a result, it is frequently regarded as an inescapable and unavoidable 'evil' outcome of conflict.

## **(A) International Concern Over Conflict-Related Sexual Violence (Crsv)**

### **1. Post- World War II Criminal Trials**

Following World War II, the Allies established two multinational war-crimes tribunals, one in Tokyo and the other in Nuremberg, to prosecute suspected war criminals.<sup>23</sup> Despite the fact that rape and other forms of sexual violence have been forbidden by the laws of armed conflict for centuries, neither the Nuremberg nor the Tokyo tribunals' Charters mentioned sexual violence.<sup>24</sup> None of the assaulted women were actually asked to testify, and the issue of women's suffering was barely mentioned.

### **2. The Geneva Conventions and Additional Protocols**

Following the tragedies of World War II, the International Committee of the Red Cross established these Conventions in 1949 in attempt to alleviate the condition of war victims. Many

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<sup>20</sup> René Degni- Ségui, *Report on the Situation of Human Rights in Rwanda*, Special, **Rapporteur of the Commission on Human Rights**, (1996)

<sup>21</sup> *Civil War, Reintegration, and Gender in Northern Uganda*, 55 **Journal of Conflict Resolution**, 877–908.

<sup>22</sup> United Nations, *Rights in Kuwait under Iraqi Occupation*, **Report of the Special Rapporteur on the Situation of Human 6+6+++6** (1992).

<sup>23</sup> United Nations, *Sexual Violence and Armed Conflict: United Nations Response*, <https://www.un.org/en/preventgenocide/rwanda/pdf/sexual-violence-and-armed-conflict-1998-UN-report.pdf>

<sup>24</sup> *Id*

of these regulations aim to protect women in their roles as expectant mothers, maternity cases, and nursing mothers, while others govern how female inmates are treated.<sup>25</sup> There are also specific regulations dealing with sexual violence.<sup>26</sup>

### 3. UN Responses to Sexual Violence

The Gulf War and United Nations Compensation Commission (UNCC): The UN Compensation Commission (UNCC) was established in 1990 to compensate victims who were affected as a result of Iraq's illegal invasion of Kuwait.

Yugoslav Tribunal: The United Nations Security Council established an ad hoc war crimes tribunal (Yugoslav Tribunal) in 1993 to trial individuals accused of violating international humanitarian law during the war in Yugoslavia. The Yugoslav Tribunal is a UN Security Council subsidiary entity based in The Hague, the Netherlands. An effort has also been made to build the Yugoslav Tribunal's Office of the Prosecutor (OTP) in a way that addresses to crimes against women.

The Vienna Conference on Human Rights, 1993: The UN World Conference on Human Rights in Vienna in 1993 marked a turning point for women's human rights. The recognition of violence against women, such as domestic abuse, mutilation, burning, and rape, is a human rights concern was particularly significant. At the Vienna Conference, a tribunal formed by NGOs heard testimonies concerning violations of women's human rights around the world, including sexual violence during armed conflict.

The Declaration on the Elimination of Violence against Women: It expressly acknowledges that women in conflict are particularly vulnerable to violence.<sup>27</sup>

The Fourth World Conference on Women at the Fourth World Conference on Women: Sexual violence against women during armed conflict was a key subject of the Fourth World Conference on Women, held in Beijing in November 1995. Women and armed conflict are one of the 12 essential areas of concern to be addressed by Member States, the international community, and civil society, according to the Beijing Declaration and Platform for Action.<sup>28</sup>

The ad hoc war crimes tribunal for Rwanda: Thousands of women are alleged to have been sexually abused in Rwanda during the genocide conflict in 1994. After the Rwanda Tribunal was established in November 1994 to prosecute alleged war criminals from the Rwanda War,

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<sup>25</sup> *Id*

<sup>26</sup> *Id*

<sup>27</sup> United Nations, *Declaration on the Elimination of Violence against Women*, (1993)

<sup>28</sup> United Nations, *Report of the Fourth World Conference on Women held in Beijing* (1995) including the Agenda, the Beijing Declaration and the Platform for Action, (1995).

minimal actions were done to address sexual assault.

### III. ANALYSIS

#### (A) Conflict-Related Sexual Violence (Crsv): A ‘Neglected’ Crime Under International Humanitarian Law

The 1949’s Geneva Conventions and Additional Protocol I, identifies some specific offences as "*grave breaches*". This classification "*grave breaches*" is significant because it fastens a duty upon States to detect such offenders who falls in this category and if they caught within their boundaries, to bring them before their courts or extradite them for trial.<sup>29</sup> However, disappointingly sexual violence is not label as "*grave breaches*". This omission sexual assault from "*grave breaches*" list reflects the international community's historical reluctance to recognise the significance of sexual violence during armed conflict.

Another issue with the Geneva Conventions and Additional Protocols is that they define rape and other types of sexual abuse as assaults on women's "honour," or at most as an outrage upon personal dignity. The notion is that "honour" (or dignity) is something lent to women by men, and that a raped woman is thereby dishonoured.<sup>30</sup> The failure of these instruments to classify sexual violence as a "*violent crime that violates bodily integrity*", creates a significant barrier to resolving sexual violence against women.

When it came to victim and witness protection, there was no doubt that the Yugoslav Tribunal had made huge steps. The Yugoslav Tribunal, however, lacks the authority to mandate compensation as part of the penalties imposed on convicted offenders, and no counterpart claims commission, such as the UNCC, has been established. The Tribunal's judgments provide conclusive proof of criminal liability for the harm, but the victim have to seek compensation claims through domestic means only. This analysis assumes that domestic institutions have the requisite structures in place to compensate victims. This is frequently not the case, specifically in nations that have recently experienced armed war.

Despite the fact that the Rwanda Tribunal's Statute (an ad hoc Rwanda Tribunal) formed in 1994 provides wider scope for addressing sexual violence as the Yugoslav Tribunal's Statute, very few steps were taken to address sexual violence. In addition to defining rape as a crime against humanity, as does the Yugoslav Statute, the Rwanda Statute refers to "*rape, compelled prostitution, and indecent assault*" as violations of Common Article 3 of the 1949 Geneva

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<sup>29</sup> *supra* note 23

<sup>30</sup> J. Gardam, *Women and the Law of Armed Conflict: Why the Silence?* 46 **International and Comparative Law Quarterly**, 46, 55 (1997)

Conventions and Additional Protocol II.<sup>31</sup> There was hardly any effort taken to carry out a comprehensive investigation into sexual violence. As a result, no charges of rape or other forms of sexual violence were filed. The case of *Jean Paul Akayesu* is a perfect example of this. Witness JJ, a 35-year-old Tutsi lady, took the stand and testified in the trial of Jean Paul Akayesu, one of the first accused to face the Rwanda Tribunal. During the genocide, Akayesu was the bourgmestre (mayor) of the Taba commune in Rwanda. Despite the horrific nature of the atrocities revealed by Witness JJ, and the responsibility for the world community to acknowledge and address such suffering, her tale was almost forgotten. The trial was suspended for a time, and when it began in October 1997, Akayesu was charged with sexual abuse against displaced women who sought refuge at the Taba community. It was contended that Akayesu had not perpetrated any acts of sexual violence; rather, it was claimed that he is liable for acts of sexual violence committed by others since he was present, in a position of authority, but failed to take any preventive actions.<sup>32</sup>

The tribunal had few limitations specifically the lack of addressing all gender-based suffering and eliminating gender biases in society and institutions. It only had a limited capacity to bring justice for women who have suffered as a result of conflict. The conviction rate in cases before the International Criminal Tribunal for Rwanda does not reflect the high levels of gender violence officially recorded during the genocide. In comparison, till April 2011, 93 suspects were indicted in all cases before the International Criminal Tribunal for Yugoslavia, 44 of whom were charged with offences involving sexual violence. 29 of the 44 people were found guilty of sexual assault.

Besides all the institutional infirmities, a sexual crime investigation has its own set of challenges, such as non or under-reporting of sexual offences due to societal, cultural, or religious reasons; undetachable stigma for survivors of CSRV; inadequate support of domestic law enforcement machinery and local authorities and limitation in forensic and documentary evidence collection along with other challenges. As a result, there is a tendency to treat sexual violence as an unavoidable consequence of war, or simply collateral loss.

#### IV. CONCLUSION

As women fight to endure violent conflicts, they are confronted with a lack of empathy for the multi-faceted character of their pain. The predominant focus on sexual and penetrative abuses of women's bodies has resulted in a lack of awareness of emotional trauma, as well as harm to

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<sup>31</sup> *supra* note 20

<sup>32</sup> *In re Jean Paul Akayesu: Indictment, (The Prosecutor v Jean Paul Akayesu)*, (1996) I.C.T.R. No. 96-4-I (1997), para. 12(B).

homes, personal spaces, children, and others with whom women are intimately associated.

In conclusion to the legal framework study, it is important to note that there has been a substantial shift in attitudes concerning women's role in armed conflict. Crimes against women perpetrated during and immediately after wars are no longer kept in the shadows, and are no longer viewed only through the lens of robbing mothers and caregivers of their honour. It has long been acknowledged that women are still adversely affected by the effects of armed wars, and that their experiences differ greatly from men's.

On the contrary, despite the occasional efforts to prosecute perpetrators, impunity remains a major issue, and CSRV is still the least recognized war crime. In addition, despite the improved efforts in women's issues in armed conflicts, the majority of the legislative discourse consists of soft legal frameworks, such as non-binding agreements, action plans and resolutions, which have very restricted impact on women's actual positions and the prevention of violence in contemporary armed conflicts.

#### **(A) Suggestions**

1. Enhancing regional organisation's collaboration with the UN, as well as their support for concerned Member States, in order to address conflict-related sexual violence including.
  - Offering technical and financial assistance to impacted Member States in order to improve the rule of law and service response.
  - Attempting to address cross-border issues and ensuring extensive training of domestic security forces.
  - Support grassroots organisations such as NGOs, Civil Society etc.
2. International and regional authorities should ensure access to essential health care services (including sexual and reproductive health services) in conflicted and non- conflicted zones for survivors.
3. Establishment of rehabilitation centres for the survivor women.
4. Organising educational programmes on issues like unplanned pregnancy, severe sexual and reproductive injuries and contracting sexually transmitted infections, including HIV and AIDS for girls.
5. Provide special aid in terms of legal, financial and social needs to the children born out of wartime sexual offences.

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