

Crime against Women during Armed Conflict's

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Abstract : Crime (or) war crimes is a serious violation of International Humanitarian law committed against civilians or enemy combatants during an international or domestic armed conflict, for which the perpetrators may be held criminally liable on an individual basis. Crimes committed including but not limited such as torture, rape, destroying civilian population, child soldier etc. Sexual Violence is considered to be an instrument of genocide, crime against humanity and crimes of war. In the contemporary scenario armed conflict Gender based violence has become a major source of crime. Women become the primary victims of sexual violence during armed conflicts. While this remains extremely difficult to qualify because of its invisible nature, available estimate indicates that the act of sexual violence are perpetrated on large scale in various regions of world today. Studies have demonstrated that all types of actors in armed conflict, be they state armed forces, non-state armed group and or multinational forces, have committed sexual violence against women which is an alarming issue. The key point in this paper is changes how war has changed to conflict and to armed conflict and the hardship put forth on women during or after the conflicts.

Keywords : armed conflict, women during war, challenges and implementation

Overview

Armed Conflict A Change In Terminology In The Latest 21st Century But The Impact And The Pain Are Double As The History Dates Back From The Early Era. A Woman Who Has To Be Protected Is Pulled Down In War Zones Either As A Combatant Or As A Victim. This Paper Speaks About Women As A Gender Affected During The Conflict And The Legal Peg Hole's.

What is International Humanitarian Law?

International Humanitarian Law Is Based On The Concept Of Jus Ad Bello. It Is Defined To Be The Law Of War (Or) During War. The Laws Involved Are Meant To Be Active In A Situation Of An Armed Conflict Or During War. However Just Like International Law, International

Humanitarian Law Requires The Political Will Of States For A Situation To Be Considered As Armed Conflicts, So That the Law Can Be In Force. International Humanitarian

Law Does Not Regulate whether a state may actually use force; this is governed by a distinct part of International law which is set out in united nation character.

Define Women in Conflict Situation

Vulnerability on women during conflict settings are more and their roles and needs during conflict has to be determined and initiated. The term 'WOMEN' is purposefully used because rather than focusing on other gender women are fragile to violence's during conflicts rather than men and others. The term 'Gender' is used if there are both men – women interactions, their references to social and cultural issues



Women and Her Cry During Armed Conflict

While conflict initiates suffering on every individual, women basically are affected by short and long term effects. Sexual violence and Sexual Assault are frequently used as a tool of war. Cruelty during conflict leads to isolation, alienation, prolonged emotional trauma, and unwanted pregnancies that often result in abandoned children. As women the role played but not limited during the armed conflicts. Women are designed as caregivers; they must support their families and keep their house together. In absence of male partner during war, women become a sole bread winner. When women become multi-tasked, the conflict shatter their life and destroy their comfort living. In some cases, conflict improves the relationship between gender and their role. Changes even improve women's rights but at the larger side the impact on women during conflict are more than it is discussed by the Writers and the researchers.

Crimes against Women during Armed Conflict

Both Sexual Genders are prone to violence during armed conflicts. Men are equally abused as women but its women who are been targeted more due to their Gender complexity. Crimes against women remain an unresolved human rights problem. When there is a conflict, alarming rate of rape and other forms of sexual violence are being recorded. Rape and other forms of sexual violence is not a new phenomena practiced in conflicts. Women were raped, they were used as sexual machines and as a tool of war. The crime against women were used in as three main categories (1) as for ethnic cleansing (2) to show power and to dominate male gender (3) as a weapon of war etc, While sexual violence against women is deeply rooted in conservative social standards, it basically represents an exploitative type of war crimes which is brutal and barbarous.

In the contemporary forms of conflict, women faces new threats and violence's during conflict. The trend of conflict has changed were women brutality is been increasing in numbers rather than decreasing ratio. All of the resolutions by the United Nations Security Council still pose threat to women during conflict that is prevailed. Brutality against women in all forms of violence like sexual slavery, forced impregnation, forced transmission of deadly diseases like HIV/AIDS, strip search, rape, women trafficking , kidnapping , domestic worker , bush wives and many more. Furthermore many crimes are still unreported due to negligence from family, society etc., Forced pregnancy, forced sterilization, forced Genital Mutilation (FGM), crime against humanity and war crimes.

From pre-history era of war till today's scenario, only the terminology of 'WAR' has been upgraded as 'CONFLICT' and the nature of war has been changed from international to non-international armed conflict (or) it has even become harder to choose what the nature of the conflict is. As the rise in number of conflict, the crime against women remain the same yet new collection of violence's are in practice today.

The Relationship between Sexual Violence against Women during Armed Conflict and International Humanitarian Law

Sexual Violence as a Crime Against Humanity

The beginning of the modern era of crimes against humanity was marked from the Nuremberg Charter The notion for crimes against humanity was to see that the types of acts amounting to war crimes could also be punished when the victim's nationality and the perpetrator are the same. Moreover, rape and other forms of sexual violence were not listed as 'crimes against humanity' in article 6(c) of the London Charter, nor in article 5(c) of the Tokyo Charter. Only Control Council Law 10 expressly referred to rape in its provisions. It is seen that, the two charters contained the term 'other inhumane acts', purvey in protection to women from sexual violence during armed conflict. Under Article 3 European Human Rights Convention, In *Cyprus v. Turkey*, the human rights found that the widespread rape has constituted torture and inhuman treatment. Furthermore, In Former Yugoslavia, crime against humanity which referred as an inhuman act of serious

nature and also believed that the act was taken in the form as 'Ethnic Cleansing' and other sexual assaults – The Secretary (General's Commentary)

Classification of crimes was distinguished by the ICTY and ICTR tribunal, rape and sexual assault and forced nudity as crime against humanity. But to a point how can a trial chamber classify the crimes without giving a definition or even considering the other forms of sexual violence? The Rome Statute of the International Criminal Court contains a much broader definition of crimes against humanity than those in the Statutes of the Tribunals. Both tribunals have found that sexual violence can constitute torture and slavery as crimes against humanity.

Sexual Violence as a War Crime

The Hague Conventions

However rape has been considered as a war crime under customary International Law, the

1899 Regulation 31 and 1907 Regulation 32 Hague Conventions did not explicitly list rape and sexual violence as war crimes. In Hague convention, Article 46 is subsumed about the protection of women from sexual violence during armed conflict. According to Copelon, honour and dignity as rape crime against humanity is a core issue. Her argument is, if rape is treated as crime against honour, then question of virginity is always a pre-condition.

Violence against women was never recognized but it was later during the provisions of the Hague Convention are of significance. In Hague convention 1907, under Article 46, if a person is not protected by the Hague, they are protected by the customary International Law general and prohibited sexual violence. Therefore, this Convention is of significance because it protects women in its provisions and it also extends the protection to customary international law.

The Geneva Conventions and Additional Protocols

The distinguish between non-International and International armed conflict was given by the Geneva conventions and their Additional Protocols. It's because of the regulation it was categories into two. The International humanitarian law applies different rules depending on the nature of the armed conflict. Therefore, the nature of law application will be different from the protection in internal armed conflict. In an international armed conflict, the 'grave breaches' of the Geneva Conventions become applicable. In addition to other provisions of international humanitarian law applying to such armed conflicts only article 3 common to the Geneva Conventions and Additional Protocol II apply to non-international armed conflict.

It is noted that, customary International law has developed to mark the gap between two regimes, the former ICTY, President argued that 'there has been a convergence of the two bodies on international law with the result that internal strife is now governed to a large extent by the rules and principles which had traditionally only applied to international conflicts. The International and Internal armed conflict both gives the same pain to the women who have been sexual assaulted. It is very necessary to evaluate the protection that is access to the women from sexual violence by the Geneva Conventions and Additional Protocols during International and Non-International armed conflict

Development of Law Under the International Jurisprudence

Following the world war II, the ad-hoc tribunals were formed to trial the perpetrators, the International court of Former Yugoslavia (ICTY), the International Court Tribunal on Rwanda (ICTR), and the International Criminal Court (ICC). Trial on war crimes, crime against humanity, rape, Genocide, Unlawful killing all these categories are been punished by law. The first trial on Dusko Tadic gave a definition of rape and the court

also found the violations of Article 3 of the Geneva conventions. After the battle of Solferino 1859, which led to the formation of Geneva Convention and later with amendments of Additional Protocols? This becomes the base for the Jurisdiction tribunals to prosecute the predators. Later came the Rome statute which is a part of ICC. With all these ad hoc and the recent sister tribunals of the United Nation Security council in Cambodia, Sierra Leone, Iraq and the Bangladeshi Tribunal are the also prosecuting the persons who have committed war crimes.

Special Laws that Protect Women under International Humanitarian Law

The common Article 3 and its threshold in protecting the women from sexual violence during armed conflict in the Geneva Convention, no way has the terminology of rape and other forms of sexual violence. It is just mentioned about the outrages of personal dignity in specific to humiliating and degrading treatment. The Article 3 does not hold anything special, it remains silent. However, the recognize of the fact that it will never possible to think ahead of future tortures who is ready to satisfy their barbarous drive and the more clear list becomes it restrictive. The nature of wording that is Put forth here is pliable and detailed. In considering the indistinguishable words in other provisions of the Geneva Conventions and the Additional Protocol I, it is Squabble that the act of sexual violence obviously violated article 3 common to the Geneva Conventions

The co-relation between the Common Article 3 and Article 27 and Article 147 of Geneva Convention speaks about the sexual violence as a grave breach during conflict. Article 4(2)(e) states that 'outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault' are prohibited at any time and at any place. Article 13(2) provides that [t]he civilian population as such, as well as individual civilians shall not be the object of the attack. Acts or threats of violence the primary of which is to spread terror among the civilian population are prohibited. Hence, the protection provided under these articles corresponds to the protection offered by article 27 of the Geneva Convention IV, and therefore constitutes grave breaches.

The International Criminal Tribunals and the International Criminal Court

The statutes of the International Criminal Tribunals for the Former Yugoslavia and Rwanda have provisions of a similar nature as the Geneva Conventions and the Additional Protocols on the protection of women from sexual violence during armed conflict. Article 8(2)(b)(xxii) of the Rome Statute provides that individuals can be prosecuted for committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions. Furthermore, article 8(2)(e)(vi), which concerns internal armed conflict, uses terms that are identical to the terms used in article 8(2)(b)(xxii) as serious violations of article 3 common to the Geneva Conventions. Hence, sexual violence against women during armed conflict constitutes a grave breach of the Geneva Conventions.

Sexual Violence as Genocide

In the conflict of former Yugoslavia and Rwanda careful thought was given for the First time in associating between Sexual Violence and Genocide, with remarkable brace sexual violence could constitute genocide if the other elements of the crime are present. In further to destroy the community of former Yugoslavia and Rwanda, sexual violence against women was used. Humiliations and emotionally torched so as to make them flee from their mother land. Terror and chaos were used as weapon, forcible impregnation by different ethnic group. According to MacKinnon, rape is enforced instrument that exile you to leave home and the society. Rape that can never seen, watched but it destroy the community shatters society and it's an act of genocide.

The reason for the privation of treaties criminalizing sexual violence as such is because sexual violence in this instance is not considered as an attack directed at a woman alone, but against the ethnicity group to which the woman belongs. Therefore, the woman is render for protection as a member of a group. According to Article

2 of Genocide Convention contains list as Crime as Genocide as: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group. In Akayesu, the ICTR trial Chamber held that sexual violence may constitute genocide on both a physical and mental level. The Trial Chamber also found that '[s]exual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and as a whole (Spirit, Life and will to Live). There is no doubt that rape and other forms of sexual violence can constitute the crime of genocide if the required elements of genocide are satisfied.

Considerably, the Women's Protocol does not define these crimes. By morality of the provisions of article 11(2), which provides that state parties will act 'in accordance with the obligations incumbent upon them under the international humanitarian law', it is assumed that the definition of such crimes is that which is accorded by international humanitarian law. Understanding of states under the Women's Protocol War crimes, genocide and crimes against humanity constitute peremptory norms (jus cogens) of international law from which no state can depart. Since sexual violence during armed conflict constitutes crimes against humanity, war crimes and genocide, the status of Jus Cogens is prevailed in these crimes. Crimes that have acquired such status give rise to obligations towards all.

It is therefore stated that when an act of violence against women prevails during conflict state, it affects the whole International community and its obliged to act. However, these crimes have taken their place in the customary International Law. So, haven in the absence of a treaty agreement states are still bound by the provisions of the treaty prohibiting such crimes. Only the non-contracting states are obliged to the treaty and they are considered to have become customary International Law. Therefore leaders and senior executors of the state do not have the right to provide blanket amnesty to transgressors of Jus Cogens International. Instead state have the responsibility to see that all the legal action pertaining to their crimes are done in good faith.

Article 11(1) of the Women's Protocol provides that state parties undertake 'to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations, which affect the population, particularly women'. Furthermore, the Women's Protocol

provides that state parties undertake to 'protect women, irrespective of the population to which they belong, in the event of armed conflict'. The state parties will do so 'in accordance with the obligations incumbent upon them under the international humanitarian law'. Under international humanitarian law, war crimes, genocide and crimes against humanity give rise to universal jurisdiction or obligations of states to prosecute or extradite, and the right to compensation.

United Nation Security Council Resolution 1325 And 1820. If Any Recent Resolution ?

Resolution 1325(2000)

It was in 2010, the UNSC on women, peace and Security (WPS) with one mind adopted on the most important mandate on the specific impact of women on war and the later contribution to conflict settlement and the post – conflict peace building. It is one of the important tool of stabilization of Congo mission (MONUSCO's) and also it became the platform to help individuals, NGO's, International Organization's in the process of peace settlement or building peace during conflict situations

Resolution 1820(2008)

This resolution was considered as historical resolution on WPS because after eight long years, the security council recommended all parties of the armed conflicts to immediately stop sexual violence against civilians and also call for immediate action for the protection of civilians, inter-alia, women and girls from all forms of

sexual violence. This resolution is considered to be one of the most relevant documents in the development of a strategic framework for the promotion of women's contribution to peace and security and addressing all forms of gender-based violence.

Resolution 2242 (2015)

Before the 15th anniversary of the resolution 1325 on one mind adopted once again a new Resolution 2242 to improve implementation of its landmark women, peace and security agenda. This resolution only urged the UNSC bodies to better integrate gender perspectives into their work

Challenges to Implementation and Enforcement

Over the past years the UNSC trying to implement the resolutions during the conflict situation but due to lack of hurdles in enforcement and implementations because of the cultural role linked with women It also has a obvious adverse effects in the implementation and enforcement of international protocols and conventions on gender and women's rights. A weak legal framework also stands as a challenge in the implementation of international conventions and protocols on gender and women's rights. Observations made indicate that there are no binding international conventions of the protection of women in armed conflict reference can be made to the statement in bold in the above statement .The provisions specifically dealing with gender and women rights are found in humanitarian law and other conventions addressing issues affecting both men and women.. The fundamental rights of all human being exist in the Universal Declaration of human Rights, the International Covenant on Economic, Social and Cultural Rights. These provide human rights of all sexes without discrimination. Other related human rights instruments include the Convention the Convention on the prevention and Punishment of the Crime of Genocide, the international Convention on the Elimination of all forms of Racial Discrimination and the convention of the rights of the child among others. In such a situation women are protected by customary humanitarian law .A critical analysis of these laws show that the ordinary humanitarian law fail to sufficiently address the problems that women face in conflict situations. The other difficulty emanates from the fact that the conventions are written from a male perspective ignoring specific issues on women. Using a masculine perspective, most of the humanitarian laws focus more on women's sexual and reproductive roles. They aim at advantaging children especially when provisions are stated for pregnant and nursing women. In such a situation the gendered nature impact of conflict is ignored in most cases. Even the United Nations Security Council Resolution 1325 of 2000, Resolution 1820 of 2009 and Resolution 1888 of 2009 concentrate mainly on condemning sexual violence on women in conflict situations ignoring other issues relating to the gendered nature of conflict situations. To a larger extent sexual violence in conflict situations has received significant attention and a number of measures have been put in place at international level to address that yet there are other areas of women's experiences in conflict situation which remain insufficiently addressed. To address issues of sexual violence in conflict situation International Tribunal for the former Yugoslavia and the Criminal Tribunal of Rwanda were put in place and these managed to successfully persecute perpetrators of grave breaches of the Geneva Conventions (1949) and they passed several rulings on sexual violence. The lack of implementation strategies is another challenge faced in the enforcement and implementation of international conventions and protocols on gender and women's rights in conflict situation. In a majority of cases the international instruments are unconsciously implemented without an implementation plan and no clear definition of institutional responsibilities. In some cases where the machineries exist they are found to be in their early stages of development. To add to that when national issues relating to gender and women's right are being addressed very little reference, or none at all, is made of international or regional instruments. The existence of limited gender disaggregated data in crisis situation also lead to complexities in monitoring and evaluation of gender and women's rights conventions and protocols especially in situations when nations signed the agreements but failed to domesticate the convention in the nation's legislature. The other problem relates to the small numbers of women in public decision making. Some of these specific issues relate to the consequences that women and girls suffer due to feticide, HIV and AIDS and how it relates to gender based violence in conflict situations, political violence targeted on women in conflict situation among other abuses both private and public. The absence of research on such

issues hinder the implementation of effective programmes, strategies and approaches as they are recommended by the international instruments on gender and women's rights. In the absence of research data it is very difficult to put in place appropriate monitoring and evaluation frameworks and activities. The other difficulty manifests when there is limited scope and coverage of services and interventions. This happens when the numbers of the people affected are very limited in scope and reach. This difficulty is closely linked to insufficient investments made in addressing existing problems. Even if some services exist they may be concentrated in urban areas or larger cities. These services at times lack the coordination and the referral capacities required. Many of the services like safe houses, legal aid and other support structures are provided by nongovernmental organisations which are lacking in financial and other. The other factor is the low demand of the services by the victims. This comes into play especially from the systematic discrimination that women face from the institutions and communities that surround them. Some of the factors include the fear of stigma from community members, family and friends, the attitude of service providers especially health personnel and police, limited legal knowledge, inability to access services due to poverty, restricted decision making in the household and many other factors. The fragmentation of efforts also stands as a difficulty in implementing the conventions. This creates gaps in the way interventions are applied. A combination of factors can lead to the fragmentation of effort. It can be a result of poor funding resulting from poor political will to cultural and religious norms that are prohibitive. In the efforts to address the situation of women and girls in conflict situations are fragmented it also stand as difficulty in addressing women's problems emanating from the crisis situation. Nevertheless, such an approach is insufficient, unless values of gender equality and are instilled in all members of society, in order to change the underlying social norms.

References

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Convention Respecting the Laws and Customs of War on Land, Annex of Regulations, 18 October 1907 (1907 Hague Convention).

1 Bassiouni explains that the general nature of the article should not be taken to mean that it does not prohibit acts of sexual violence, especially in light of the 1907 Hague Convention's governing principles of the 'laws of humanity' and 'dictates of the public conscience'. See Bassiouni (n 10 above) 348

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Art 5(c) of the Tokyo Charter defines crimes against humanity as 'murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction

of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated'. Charter of the International Military Tribunals for the FarEast, 19 January 1946 TIAS 1589 (Tokyo Charter)

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Protocol [I] Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3, entered into force 7 December 1978;

Protocol [II] Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non- International Arm

The grave breaches are the principal crimes under the Geneva Conventions. See T Meron War crimes law comes of age (1998) 289.

Art 3(1) of the Geneva Conventions prohibits '(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture . . . (c) outrages upon personal dignity, in particular humiliating and degrading treatment art 2 of the ICTY Statute: 'grave breaches of the Geneva Conventions' and art 3 'violations of the laws or customs of war'. art 4 of the ICTR Statute: 'violations of common article 3 of the Geneva Conventions and Additional Protocol II'.

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