

**SYSTEMATIC RAPE: A WEAPON OF WAR**

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**ABSTRACT**

*Rape is not only one of the most heinous crimes against women but also the most gruesome violation of the human rights of women. Currently, if we look at the national (Indian) picture the incidences of rape seems to be a never ending affair. The picture at the international level is no different and when we talk about the situation in armed conflicts the picture gets even worse. An increasing tendency to target civilian populations while waging hostilities is seen in the parties to the contemporary armed conflicts, whether the conflict is international or internal one. Among these civilian populations the most vulnerable ones are the women and children. The age old thinking that sees women as spoils of war continues even today. Women in armed conflicts are exposed to the forms of violence directed specifically to them on account of their gender, example: sexual slavery or systematic rape. Systematic rape, due to the historic lack of protection of women's human rights especially in armed conflicts, has now become one of the means of ethnic cleansing, combatant socialization, psychological warfare and what not. History has numerous incidences to support this claim. This paper is an attempt to analyse the conceptual background of systematic rape and how it has become a weapon of war and its usage in psychological warfare, present implicit implications and urgent need to check it along with suggested reforms in international human rights regime and international humanitarian law.*

**Introduction**

The year of 1975 completely changed how society perceived rape. Susan Brown Miller through her book *Against Our Will: Men, Women, and Rape*, in 1975 shaped the view how rape is not just an individual crime of passion but rather a political problem. According to her rape cannot be perceived as something “natural” as no animal rape is observed by zoologist. It is rather the outcome of patriarchal dominance, a weapon for imposition of domination and authority rather than something related to “sexual gratification” or satisfaction of “natural urges”. She argued that “Man’s discovery that his genitalia could serve as a weapon to generate

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fear must rank as one of the most important discoveries in prehistoric times, along with the use of fire and the first crude stone axe.”<sup>2</sup> She elaborated on the wartime rape and how rape is used strategically in war or other conflicts to humiliate, intimidate and threaten.

Forty-five years later this revelation by Brown Miller, rape is still used as a warfare strategy. The society might have been progressive with Women’s Rights but the international community is a big failure when it comes to protecting the dignity of our woman in conflict zones. In fact, the use of woman body as a proxy battlefield has only gone up. In almost every part of the world women suffer the prejudice and intolerance of men by different kinds of violence directed towards them with sexual violence always topping the list. Rape always has far reaching effects, effects that are more dangerous than effects of any deadliest weapon known to mankind. No matter if it is isolated or systematic, rape is an attack on the entire community. The consequences of rape can be mental trauma threatening a woman for a lifetime or physical consequences like genital injury or infection, STDs, unwanted pregnancies, etc; or social consequences like, being stigmatized and outcasted from the community, disowned by family or husbands or even considered unfit for marriage, etc. But, when this rape is used systematically as a weapon of war the consequences are widespread often aiming at ethnic cleansing, expelling populations, impregnating women to intimidate civilians or attack the lineage of a group. The age-old and deep-rooted patriarchy is responsible for the thinking that considers women as spoils of war and therefore a treat or trophy of the winning side. Sometimes this thinking is strategically used by the senior officers to increase the morale of their soldiers. A study suggests that wartime rape is often used as a method of combatant socialization; especially the armed groups which recruit by force — through abduction or press-ganging are more likely to use rape to create unit cohesion, bonds of loyalty and trust between soldiers.<sup>3</sup>

Therefore, the use of rape in war is a very calculated move which is strategically used not only to harm the dignity of the victim but to strip the entire community or group

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<sup>2</sup>. Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (Simon & Schuster, New York, Reprint Edition, 1993)

<sup>3</sup>. Dara Kay Cohen, “Rape During Civil War: Cross-National Evidence” 107 *APSR* 461-477 (2013)

to which the victim belongs from security, safety and sometimes even humanity by using the most inhuman means over a helpless target.

### **Rape Under International Law**

Lieber Code, 1863<sup>4</sup>, punished wartime rape whether isolated or systematic with capital punishment. Despite this it actually took years for international law to develop and being able to punish the perpetrators of this menace. Even during the Second World War the crimes of sexual violence done by the Nazis on Jewish women and abduction of Asian Women to use them as comforting women by Japanese government for its soldier went unpunished. The rape of more than 200,000 Bengali women during the war of independence from Pakistan didn't ring a bell to the international community. It was finally the International Criminal Tribunal for Rwanda and Yugoslavia (ICTR & ICTY respectively) that for the first time punished the menace of rape during war. The judicial creativity of these tribunals to punish wartime rape is appreciable. ICTR gave the following definition of rape:

“A physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence which includes rape, is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive.”<sup>5</sup> According to ICTY following may be accepted as the objective elements of rape:

(i) the sexual penetration, however slight:

(a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or

(b) of the mouth of the victim by the penis of the perpetrator;

(ii) by coercion or force or threat of force against the victim or a third person.”<sup>6</sup>

Rome Statute though not define rape, list it as war crime and crime against humanity However, Elements of Crimes states that rape may occur when:<sup>7</sup>

1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a

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<sup>4</sup>. It was an instruction signed by U.S. President Abraham Lincoln to the Union Forces of the United States during the American Civil War that dictated how soldiers should. It was the very first code on land warfare.

<sup>5</sup>. The Prosecutor v. Jean-Paul Akayesu ICTR-96-4, para 598

<sup>6</sup>. The Prosecutor v. Anto Furundzija IT-95-17/1-T Para 185

<sup>7</sup>. Arts 7(1)(g)-1 and Art. 8(2)(b)(xxii)-1, ICC, *Elements of Crimes*, 2011

sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

In *The Prosecutor v. Jean-Pierre Bemba Gombo*<sup>8</sup> the International Criminal Court sets history by convicting defendant on the basis of command responsibility .i.e; a commander responsible for the work of his subordinate. The judgment went to reinforce the definition given under elements of crime which means it recognized rape committed against a person incapable of giving genuine consent which was in sharp conflict with the *Kunurac* definition which focused on the overpowering of a victims free will via coercive circumstances.

The reasons for a non-specific definition of crime of rape at the international level is actually to help the victim and court to be able to put more and more forms of sexual violence under it, similar to the way the definition of torture is used.

### **Rape In Armed Conflicts : Psychology Of Wartime Rape**

The use of rape in war is deadlier than any weapon. One might think that such crimes are outliers but it isn't so the use of rape as a weapon of war is widespread. Modern day conflicts use rape for:

- Ethnic Cleansing

Continues rapes with the aim of destroying the lineage of a community, by either impregnating the women or by forced sterilization or infecting women with deadly

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<sup>8</sup>. ICC-01/05-01/08

diseases like HIV AIDS, in an area for a long period of time can result in the ethnic cleansing. Examples are seen in the conflicts of Bosnia and Vietnam, Uganda Herzegovina, Cambodia, , etc. In Bosnia women were systematically raped so they could give birth to a Serbian baby.<sup>9</sup>

- Military tactic

Military sometimes uses brutal rape for extracting information either from the victims or any person close to them. They use it as a means to torture. Male systematic rape in Libya is one such example.

- Destroying the opponent psychologically

Sexual violence is a tactic of war to humiliate, dominate, install fear or forcibly relocate civilian members of a community or an ethnic group.<sup>10</sup> During war, rape is often used as a calculated means of psychological warfare in order to humiliate the enemy and generate fear by undermine their morale. Since the damaging effect of rape can last for years even generations, it is often considered the most effective and cheap tool that not only silences the victim but her(his) entire community .

- Combatant Socialization

As explained by Dara Kay Cohen<sup>11</sup> wartime rape is used a “combatant socialization”. According to him the military groups use gang rape as a socialization tactic during armed conflict. They use it to:

1. Prompt feelings of power and achievement
2. Establish status and a reputation for aggressiveness
3. Create an enhanced feeling of masculinity through bonding and bragging
4. Demonstrate dedication to the group and a willingness to take risks

War rape according to him does serve as a primary tool to create a cohesive military group.

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9. Laura Smith-Spark, “How did rape become a weapon of war?” , BBC NEWS (FEB. 26, 2019, 12:45 AM) <http://news.bbc.co.uk/2/hi/4078677.stm> .

10. UN Security Council resolution 1820, on women, peace and security (2008). S/RES/1820 (2008)

<sup>11</sup> . Supra Note 2

### **Incidences Of Systematic Rape Around The Globe**

The data related to systematic sexual violence in armed conflict is usually unrecorded owing to the circumstances created by the conflict. And, where it is even recorded methodology cannot be trusted to give the exact number as these records are usually based on personal interviews therefore actually number of incidences might always be under-recorded. Still some countries that have experienced systematic sexual violence during armed conflicts are given below:

- During Bosnian war: Bosnia, Herzegovina, Yugoslavia

In the April of 1992 the Bosnian war broke out with the government of Yugoslav republic of Bosnia-Herzegovina declaring itself independent from Yugoslavia. For next several years the war continued with approx 100,000 deaths till 1995.<sup>12</sup> Though there is no credible data available but The most commonly cited estimate for rape during the Bosnian war is approximately 20 000 cases, which comes from a 1993 European Commission report detailing a fact-finding mission to investigate the treatment of Muslim women during the conflict and to determine whether rape could be described as “systematic”.<sup>13</sup>In May 1993, the U.N. Security Council created the International Criminal Tribunal for the Former Yugoslavia (ICTY) to try the war crimes committed.

- Democratic Republic of Congo

Mass rape was used as a weapon of war in the conflict in the eastern part of the country to intimidate communities, including in the context of the struggle for control of land and resources.<sup>14</sup>More than 15 000 rapes were reported each year to the United Nations mission in the DRC in both 2008 and 2009<sup>15</sup>

- Japan

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<sup>12</sup>. Bosnian Genocide, available at <https://www.history.com/topics/1990s/bosnian-genocide> (last visited 28 FEB, 2020)

<sup>13</sup>. Tia Palermo a & Amber Peterma, Undercounting, overcounting and the longevity of flawed estimates: statistics on sexual violence in conflict, Bulletin of the World Health Organization (2011) available at <https://www.who.int/bulletin/volumes/89/12/11-089888/en/>

<sup>14</sup>. Report of the Secretary-General on children and armed conflict in the Democratic Republic of the Congo (2014)

<sup>15</sup>. Supra note 12

During World War II, the Japanese government placed over two hundred thousand women and girls in military brothels to serve as "comfort women" for its troops.<sup>16</sup> These women were abducted primarily from Asia.

- Libya

Peer-reviewed studies suggests that 9.2% and 15% of women were raped in Libya during the civil war which has a drastic difference from the numbers claimed by media. i.e; 75%.<sup>17</sup>

- Rwanda

There is an estimate of about 250 000 to 500 000 individuals being raped during the 1994 Rwandan genocide.<sup>18</sup> These numbers are argued to be low than the actual numbers.

- Sierra Leone

All the fighting forces, especially the rebel RUF militia, had committed crimes against the civilian population, including widespread rape, sexual assault and mutilation of women. Many of the rapes took place when the victims were abducted and forced to become sexual partners of their captors. Girls as young as 10 years old, were abducted by rebel forces and forced to become sexual slaves. Medical sources indicated that most women IDPs had contracted sexually transmitted diseases (STDs), frequently as a result of rape.<sup>19</sup>

Systematic Rape during armed conflict is wide spread and has happened in almost every part of the world but systematically recorded bulk data is not there all we have is individual interviews recollecting the terrifying experiences.

### **Male Systematic Rape: Growing Trend**

Women and girls face various forms of sexual violence in armed conflicts and their male counter -part is also not immune from this. Most of these incidences being

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<sup>16</sup>. Christine Chinkin, Lecture given at the London School of Economics: Women and War (March 13, 2006) referred in Mark Ellis, Breaking the Silence: Rape as an International Crime, JIL (2007)

<sup>17</sup>. supra note 12

<sup>18</sup>. United Nations Special Rapporteur report on Rwanda (1996)

<sup>19</sup>. Report of the High Commissioner for Human Rights pursuant to Commission on Human Rights resolution 2000/24 Situation of human rights in Sierra Leone (2001)

unreported disabled the issue to gain focus. The lack of reporting because of the societal thinking that a man being a victim is a question mark on his masculinity because society puts up a burden on our men that first of all they cannot be a victim and second of all if by some reasons they become one they should always know how to cope up on their own. Therefore, when a man is victimized instead of reporting the crime he is filled with self-loath, self-doubt, guilt and shame. All these factors along with the after effects of war or conflicts leads to non-reporting of crime which in turn is responsible for non-availability of required systematic data but this non-availability of data doesn't means the issue isn't serious. A newspaper article in The Guardian<sup>20</sup> reveals the horrifying details of male systematic rape in Libya where men were sodomised by various objects, including rockets and broom handles. These atrocities were used to humiliate and damage the victim to an extent that they dare not rejoin the political, military or civic life. The study of armed conflict of Yugoslavia gave a terrifying data of about 6000 concentration camp victims in the Sarajevo Canton, 5000 were men and 80% of them had reportedly been raped.<sup>21</sup>

All this clearly indicates that systematic rape is a problem and is not just limited to women. MEN ARE VICTIMS TOO.

### **International Law For Protection Of Women In Armed Conflicts**

The United Nations has been continuously working to provide an international legal regime for protection of women. The fourth Geneva Conventions of 1949 for the protection of victims of war and their two Additional Protocols of 1977, is primarily relevant to provide protection of women and girls during armed conflict. International Human Rights law and humanitarian law is also applicable in times of armed conflicts giving protection to internally displaced persons or refugees in armed conflicts which includes women . Trafficking and forced prostitution and other contemporary forms of sexual slavery which are the after effect of any armed conflict is covered by

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20. Revealed: male rape used systematically in Libya as instrument of war, The Guardian, 3Nov,2017 , available at <https://www.theguardian.com/world/2017/nov/03/revealed-male-used-systematically-in-libya-as-instrument-of-war> .

21. Z`eljka Mudrovc`ic', 'Sexual and Gender-Based Violence in Post-Conflict Regions: The Bosnia and Herzegovina Case' in The Impact of Armed Conflict on Women and Girls: A Consultative Meeting on Mainstreaming Gender in Areas of Conflict and Reconstruction, UNFPA, 2001, pp. 60–76 (see p. 64). Referred in Sandesh Sivakumaran, Lost in translation: UN responses to sexual violence against men and boys in situations of armed conflict, IRRC (2010)

CEDAW and United Nations Convention against Transnational Organized Crime and its supplementary protocols. Specific provisions for protecting children from child pornography, child prostitution and sale of children in armed conflict are given under the Convention on the Rights of the Child and its Optional Protocols. The Rome Statute not only includes rape as a crime against humanity and war crime but also has provisions for fair representation of male and female judges and for ensuring the availability of legal expertise on specific issues such as violence against women and children.

All these conventions along with the International criminal law and international criminal justice delivery system have given a lot of hopes for future by convicting and punishing the offences of sexual violence.

### **Suggested Response**

The menace of systematic rape in armed conflict is something which cannot be removed by an individual country alone. It requires collective efforts under the leadership of United Nations, though efforts can be at national and international levels. Following can be the suggestive measures:

1. The restitution program for victims should be multi-dimensional i.e it should be:
  - i. Individual centric in a way that it provides mental and physical health treatment to the victim. Counselling should also be given to the near ones of the victim
  - ii. social centric in a way that awareness is created to cut off the stigma associated with sexual violence so that reporting of incidences takes place along with the reintegration of victims with their family and society. Social and legal barriers to education and employment of victims should be pulled down by collective efforts
  - iii. Economic centric by ensure necessary financial and human resources so that victim`s life is not just dependent over the compensation which never comes sooner.
  - iv. And the program should not be gender centric as a growing trend of male systematic rape is also observed. So the program should be gender neutral including all genders not just binary genders.

2. With the concept of globalization, global parliament getting popular we need creation of a Strong Criminal Justice Delivery system specifically for crimes of sexual violence and contemporary for of slavery to ensure successful prosecution. This could include establishment of a permanent bench of ICC which would have experts to deal with sexual violence and an elaborated codified law specifically devoted to the subject of sexual violence during armed conflict.
3. A homogenous system of victim compensation should be developed for victims of both individual and systematic sexual violence. The compensation award should not wait for the final verdict of the criminal trial and reparation should be as quick as possible.
4. A culture of respect for woman and their human rights should be build because experiences dictates that where cultures of violence and discrimination against women and girls exist prior to conflict, they will be exacerbated during conflict.<sup>22</sup>
5. The participation of women and girls and the inclusion of gender perspectives in both formal and informal peace processes are critical to ensuring that political structures, economic and social institutions and security sectors negotiated through peace talks.

### **Conclusion**

Sexual Violence is no more the by-product of war it is now used as a calculative strategy in war. The growing trends are horrific and we can't afford to have more victims now. So, the international community needs to acts upon this. It is like now or never. The very first thing is that all countries should stick to their international commitments regarding treatment of prisoners, civilian amidst an armed conflict, whether national or international.

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<sup>22</sup>. Security Council , Report of the Secretary-General on women, peace and security 16 October 2002, S/2002/1154.