

# DIAGNOSIS OF WARTIME CRIME COMMITTED ON WOMEN

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**ABSTRACT:** War has been an integral part of human history from its very beginning. War is the greatest manifestation and celebration of masculinity and hence has always been about men. Women, apart from some mythological portrayals, have always been kept out of that celebration. Popular culture romantically portrays women, as a family to brave soldiers taking pride in their bravery and waiting for their return from the battlefield. However, little is said about the misery women suffer due to such events. Politics and especially conflicts have always been men-dominated areas and little is the concern about such aspects of war where the women are abducted, abused and tortured for being property. The definition of war in the recent past has been changing and now it is no more a fight between two armies on the battlefield rather, civilians are being increasingly targeted. Civil wars and regional conflicts pitting communities along racial, religious, and/or ethnic lines are the common phenomena of this era. Rape, in this situation, is a weapon to punish a community. However, the problems do not end with war or rescue. The vulnerability during flight, and social taboo relating honour to a woman's sexuality all contribute to their plight.

**KEYWORDS:** Crime, War, Conflict, Rape, Women

*“For women, more guns do not mean more security. Through women's eyes, we found a broader notion of security – one that is defined in human, rather than in military terms.” - Rehn, Sirleaf, 2002*

War is the greatest manifestation and celebration of masculinity and hence has always been about men. Women, apart from some mythological portrayals, have always been kept out of that celebration. Popular culture romantically portrays women, as a family to brave soldiers taking pride in their bravery and waiting for their return from the battlefield. That's all, no other mention of women or their condition during or after a war can be found. However, a little glimpse of their life can be traced in history. The plundering of enemy property post-victory has been a common trait in most cultures if not all; women are one such property, hence, abduction rape, or marriage in some cases have been equally common. We find in history women from the Rajput Community in India observing 'Jauhar', a ritual of self-immolation, in case their kingdom loses the war; to choose 'honour' over death. Though the phenomenon is hardly new, dating back to Ancient Greek, Roman, and Hebrew wars, until recently, the evidence, along with the issue, had been generally ignored by historians, politicians and the world at large. Women and girls suffer the consequences of war, so much so that a 2002 report by the Secretary-General of the United Nations women and children as '*disproportionately targets*' constituting '*the majority of all victims*' of contemporary armed conflicts (Ward, Marsh, 2006). The definition of war in the recent past has witnessed a complete shift. War is no more fight between two armies on the battlefield rather, civilians are being increasingly targeted. Civil wars and regional conflicts pitting communities along racial, religious, and/or ethnic lines are the common phenomena of this era. Rape, in this situation, is a weapon to punish a community.

Rape has historically been an integral part of warfare. The conceptualization of women as property has facilitated this, when a state is conquered its properties go along with it. This practice has not ceased even during the modern age. During WWII there are several examples of such incidents. Jewish women were raped by Nazi forces on their way while invading the Soviet Union and the Soviet Union followed the same while going towards Berlin. (Thomas & Ralph, 1994). As per data in Rwanda, the number of victims ranges between 100,000 and 250,000 during the 1994 crisis, 60,000 women were raped during the civil war in Sierra Leone (1991-2002), more than 40,000 in Liberia (1989-2003), up to 60,000 in the former Yugoslavia (1992-1995), and at least 200,000 in the Democratic Republic of the Congo since 1998. (UN)

In 1994, in the context of the Bosnia Rape Cases, Dorothy Q. Thomas and Regan E. Ralph in their paper *'Rape in War: Challenging the Tradition of Impunity'*. From their writing, we find two aspects having causal relation to rape in war. The first aspect relates war rape with the concepts of Masculinity. The concept of 'shame' and 'honour' linked with notions of virginity and the 'protected' status of women in society and family contributes to the attraction to masculinity. Thus, Gender-based Motivation plays an important role. 'Men's domination of women is often deeply embedded in societal attitudes, so much so that its role as a motivating factor is not easily discernible in every individual incident of rape.' (Ward, Marsh, 2006). The second stands for 'Rhetoric Perouse' where women's bodies are "used as an envelope to send messages to the perceived enemy." Says Rehn and Johnson Sirleaf (2002) (Ward, Marsh, 2006). It is argued that 'a comprehensive assessment of the obstacles to ensuring accountability for wartime rape must include an examination of the use of rape for rhetorical purposes.' When the Germans invaded Belgium in August 1914, "rape of the Hun" was propaganda directed toward the United States, 'to come to the rescue of Belgium as symbolized by its ravaged women'. Such rhetoric 'emphasize the gravity of the abuse.' (Thomas & Ralph, 1994). In Burma, rape was part of a campaign to drive the Rohingya out of the country. (Ward, Marsh, 2006). Sexually targeting women fits with the patriarchal narrative that views women as property to be possessed and protected by men. Subjecting women to sexual violation automatically proves the incapacity or weakness of men of their fellow community as they failed to protect *their women*. Thus, it is not merely an attack on women's bodies, rather it is an attack on the masculine ego of an entire community.

War rape tradition has always been ascribed to gender motivation. Though it is difficult to distinguish gender motivation from the specific political function served by rape (Thomas & Ralph, 1994), in the past few decades it has been possible to carve out a separate column for the political and strategic aspects of rape in war. A sexual attack on a woman can well be translated into an attack upon a community. Every culture in the world emphasizes women's sexual purity and the protection and control of women's purity that renders them perfect targets for abuse. Thus 'rape is neither incidental nor private. It routinely serves a strategic function in war and acts as an integral tool for achieving particular military objectives.' (Thomas & Ralph, 1994) Sexual violence may be systematic, carried out for explicit purposes such as destabilizing populations, destroying bonds within communities or instilling fear among them. In many instances, rape is often a public act, aimed to maximize humiliation and shame. In Timor Leste, the Indonesian military reportedly raped women in front of their families and forced Timorese men to rape Timorese women. Rape can serve as a tactical weapon as well. Although rape generally functions like other forms of torture, in some instances, however, it also can serve a strikingly sex-specific function, when, for example, it is committed with the intent of impregnating its victims. In Bosnia, Muslim women impregnated by Serbs reportedly were held captive until late term to prevent them from aborting. This is known as 'Ethnic Cleansing' that occurred in Bosnia or Rwanda to instigate the flight or expulsion of an entire community. Public rape, forced impregnation, mutilation of genitals and intentional HIV transmission are techniques of ethnic cleansing. In Kosovo, an estimated 100 babies conceived in rape were born in January 2000 alone -- the International Red Cross speculated at the time that the real number of rape-related pregnancies was likely to be much higher. (Ward, Marsh, 2006).

Gender-based factors may be related to political strategies but it has their 'individual footing' as well. The recruitment of comfort women during WWII is one such glaring example. More often, the victims of sexual slavery are younger. An estimated 40 per cent of child soldiers around the world are girls whose duties range from taking part in active combat to providing sexual service to male comrades. Whether recruitment is forced or voluntary, it is unlikely to anticipate the extent to which they will suffer sexual exploitation (Ward, Marsh, 2006). It was after around forty years of the war, the Japanese government officially admitted to and apologized for forcing thousands of women into sexual slavery as comfort women during World War II come long after survivors came forward to tell their stories of being kidnapped, lured with false promises of employment, and shipped to various locations where they were forced to work as prostitutes. (Thomas & Ralph, 1994)

Displacement, refugee status, and lack of financial and/or other resources – all constitute the state of flight and contribute to the vulnerability of women. Irrespective of whether it is a cross-border activity or an internal displacement, women and girls remain at high risk for sexual violence during flight. Without money or other resources, women and girls caught in such situations may be compelled to provide sexual favour in return for safe passage, food, shelter etc. In Colombia, the Ministry for Social Protection reported in 2003, that 36

per cent of internally displaced women in the country have been subjected to sexual violence. According to another study, women living in barrios in or near Cartagena (Colombia) had faced a higher degree of violence since displacement than before flight (Ward, Marsh, 2006).

The absence of border controls and normal policing along with women with a higher degree of vulnerability provides an ideal environment for trafficking. A 1999 governmental survey of over 2,000 prostitutes in Sierra Leone found that 37 per cent were less than the age of 15 and of those, the majority were displaced by conflict and were unaccompanied by family. (Ward, Marsh, 2006). Such a condition gets worse with the arrival of peacekeeping forces as it instantly creates a market for prostitution. (UNICEF)

Complexities do not end with war or flight for women. Violence faced during a war is only the beginning of their long-term suffering. Article 27 of the Fourth Geneva Convention prohibits "*any attack of [women's] honour, in particular against rape, enforced prostitution, or any form of indecent assault.*" The mischaracterization of rape as a loss of honour and not as a physical invasion against the victim reinforces their unwillingness to come forward and report it. (Thomas & Ralph, 1994) A woman who gets raped, "*is the one who is stigmatized and excluded for it,*" says Dr. Denis Mukwege Mukengere, director of Panzi Hospital in Bukavu in the Democratic Republic of the Congo. According to Amnesty International, the trauma, namely sexual assaults, to these survivors is made worse by the stigma. Many believe that their honour in society has been 'marred'. (The Washington Post, 2014) Rejection by their families and communities for having 'lost their value' is a common trait found in almost every place of conflict. They are mocked, humiliated, and rejected by people, family and acquaintances, and sometimes abandoned by husbands who fear contracting HIV, or simply cannot tolerate the 'shadow of dishonour' they believe their raped wives bring. Rape victims in Darfur, for example, have been arrested for "illegal" pregnancies. Under such circumstances, prostitution may seem the only viable option for these women. (Ward, Marsh, 2006).

Physical and Psychological health problems come with sexual violence such as Sexually Transmitted Infections (STI). A rape victim may also suffer from traumatic fistula -- tissue tears in the vagina, bladder and rectum with additional long-term medical complications of uterine prolapse and other serious injuries to the reproductive system, such as infertility, or complications associated with miscarriages and self-induced abortions. STIs also increase the risk of HIV transmission. The Joint UN Programme on HIV/AIDS (UNAIDS) stated, of the 170,000 people between the ages of 15 and 49 estimated to be living with the virus in Sierra Leone in 2001, some 90,000 were female. (Africa Renewal, 2015). 'As a result of the systematic and exceptionally violent gang rape of thousands of Congolese women and girls, doctors in the DRC are now classifying vaginal destruction as a crime of combat.' (Thomas & Ralph, 1994). The mental state of survivors is also at stake in the absence of any psychological support from any professional or family, and this trauma may even last for years.

A complete atmosphere of vulnerability is not attributed to sexual violence alone but also social atrocities. among the Syrian refugees, the rate of child marriage is accelerating. Reported by Save The Children minor girls were married off by their families in the fear of not being able to protect them from sexual violation.<sup>1</sup> Alleviating poverty or the burden of a large family with many daughters; providing protection for young girls; continuing traditions, culture or family; and serving as an escape for girls living in an abusive home environment all these are forwarded as causes of early marriage. Robert Jenkins, UNICEF's Jordan representative warns against the consequences of child marriage as "limited economic opportunities due to loss of schooling"; "being victims of abuse"; and "complications during pregnancy". War discourages girls from attending school on grounds of safety and security. In Somalia, girls dropped out of school for this reason and in some cases, this accelerated the chances of their early marriage. School attendance is further discouraged when the absence of males means greater workloads for women. This is particularly true when, in the absence of both parents, adolescent girls take over as heads of their households (UNICEF).

The characterization of rape as 'personal' has long been the stand-in national and international order. The International Commission of Jurists assumed that young girls and women kidnapped by Pakistani troops in East Pakistan were for the soldiers' sexual pleasure. 'The report failed to understand the link between widespread rape and the Pakistani army's stated goal of breaking the spirit of

<sup>1</sup> Too young to wed, 2014

the revolting people of East Pakistan during the civil war. European Commission of Human Rights pronounced the abuse to be inhuman treatment by Turkish forces in Cyprus but failed to examine its function as a form of torture. (Thomas & Ralph, 1994).

Apart from the Geneva Convention, of 1949, a major and serious consideration of rape as a war crime was given after the incidents of rape in Bosnia and Rwanda took place. International Criminal Tribunal for [former] Yugoslavia ICTY (1993) and International Criminal Tribunal for Rwanda ICTR (1994) were the first instances where rape and other sexual violence during the war were considered a crime against humanity and genocide. These two trials also set an example by charging accused people guilty of crimes. Security Council resolution 1325 (2000) serving as the core resolution along with 1820 (2008), 1888 (2009) and 1889 (2009) focuses on strengthening women's participation in decision-making and ending sexual violence and impunity. Later resolutions 1960 (2010), 2106 (2013) and 2122 (2013) either strengthen or simply reuttered provisions set up by previous resolutions. The Rome Statute of the International Criminal Court 2002, includes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or "any other form of sexual violence of comparable gravity" as a 'crime against humanity when it is committed in a widespread or systematic way' (UN).

In the words of the Croatian author Slavenka Drakulic, who has written extensively about war crimes in the Balkan conflicts of the 1990s says, "We know now, as we knew even before the passage of this resolution [UN Resolution 1820 (2008)], that rape is a kind of slow murder." (UNHR). International law lately but finally brought much-needed attention to sexual violence and considered it as a war crime. However, attention has attached much significance to "mass rape" and "rape as genocide." By emphasizing 'rape's scale' it has failed to 'reflect both the experience of individual women and the various functions of wartime rape.' (Ward, Marsh, 2006). With the existence of impunity for the violators of such laws, punishment in such cases is still a far goal. International tribunals in Former Yugoslavia and Rwanda have set the example. But international tribunals themselves serve only a fraction of cases (Ward, Marsh, 2006). National governments generally do not possess jurisdiction extending to foreign forces. National laws even do not serve properly due to the mischaracterization of sexual crime and also due to immunities given to armed forces. Apart from legal incapacity, there is ample apathy on the part of governments and agencies in supporting the victims. Even basic protection is unavailable whereas, necessary medical and legal assistance are largely found absent. Sometimes victim's plea gets lost in the atmosphere of peace, which requires forgetting the past. In the words of Thomas & Ralph, 'Whenever committed by a state agent or an armed insurgent, whether a matter of policy or an individual incident of torture, wartime rape constitutes an abuse of power and a violation of international humanitarian law...The differential treatment of rape underscores the fact that the problem—for the most part—lies not in the absence of adequate legal prohibitions, but in the international community's willingness to tolerate the subordination of women.' (Thomas & Ralph, 1994)

The mischaracterization of rape as a personal act along with impunity for soldiers and apathy on the part of the government makes it nearly impossible for the victims to seek justice. Peruvian military officers dismissed rape accusations against the military as a "regrettable excess." Leader of the Bosnian Serbs, Radovan Karadzic, denied news of widespread rape as "not organized but done by psychopaths." and 'propaganda of "Muslim mullahs."' (Thomas & Ralph, 1994). AFSPA acts as a shield for Indian soldiers making them almost unaccountable to the civil administration. Apathy on the part of Governments, along with social norms holding rape as the destruction of honour, makes it easy for the perpetrators of crime to instigate fear amongst the victims and cause underreporting or no reporting at all. Such a situation may facilitate national or international propaganda striving for either gaining sympathy or support in favour of action. This happened in former Yugoslavia where both parties were busy accusing each other. 'Rape survivors in the former Yugoslavia reportedly have attempted or committed suicide and have experienced severe clinical depressions and acute psychotic episodes after repeatedly recounting—sometimes in front of a television camera—the details of their assaults.' (Thomas & Ralph, 1994). Where a situation provides an open invitation of exploitation for international propaganda, exaggeration of events is the most normal case. Exaggeration coupled with underreporting ill serves the cause by raising doubt over the testimonies of women and often the importance of the problem is lost in that sea of misinformation.

The actual number of rapes in any war will never be known due to social stigma, fear, governmental apathy and the incapacity of international law to investigate and bring justice to victims. If this is the situation with rape and sexual violence, officially recognized as a war crime, it is not difficult to understand the intensity and difficulty in meeting other problems that evolve during or after the war. Child marriage and lack of access to educational opportunities among war-hit communities, whether or not displaced, cannot be met with mere legal assistance (which is sometimes not even available). The same is the case with rape survivors suffering from trauma or social rejection. The required fund is mostly unavailable to provide ground-level assistance to the women or children. It is an irony that of the amount the world spends on war, only the smallest fraction of that is spent on reconstruction or reconciliation of victims. From 2000 to 2006 only \$8,413,560 out of a total of \$105,754,768 allocated to UN institutions and NGOs for increased protection of vulnerable populations and working more effectively with governments was dedicated to specific Gender Based Violence programming. Even less was dedicated to gender and women's empowerment (\$6,307,559) and reproductive health (\$70,856,143). (Ward, Marsh, 2006) A collaborative effort between international organizations and local civil societies as witnessed in Sierra Leone's case can produce different results. A collaborative effort by UNIFEM helped women to testify before Truth and Reconciliation Commission (TRC) revealed, Sierra Leone's "invisible war crime"; 33.5% of adults and 44.9% of minor victims were women (Africa renewal, 2005).

Social stigma, as has been discussed, does not appear only during times of turmoil. Taboos are there in society and cause similar problems for victims of sexual violence even during times of peace. The mindset and sexual objectification of women prepare the ground for any such atrocities. Be it the army or anyone else, they are part of some or other society, fed with social and religious values. Sometimes, the reason behind the violence is the restoration of religious or ethnic values and identities. Yazidi women were offered a bleak choice of conversion to Islam and being married, or facing imprisonment and potential death by ISIS. According to interviews conducted by Human Rights Watch, both options often led to rape and brutality. So, some women chose death. Many have been forced into marriage, sold as slaves or given as gifts. Under Islamic State control in northern Syria, at least eight women have been stoned to death for alleged adultery. One woman, who was a dentist, was beheaded for treating both men and women (The Washington Post, 2014). Leaving aside the correctness of the interpretation of Islamic law by ISIS, it cannot be ignored that their activities are guided by socio-religious motivation. The fact behind the elevated number of child marriages among Syrian refugees is that the majority of those children are girls. Marriage hardly provides any solution to the problem like security rather than increasing it. It merely serves as an easy method for doing away with a burden. It stems from the deep-rooted social concepts such as having a daughter is not a necessity but a burden or marriage provides security, which is a total lie if we go by statistics of domestic violence, but we won't accept it; all these are products of a mind trained by socio-religious values and norms. It is not possible to understand wartime crimes in isolation from the greater understanding of gender and positions allotted in line with gender in society.

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