

Sexual Violence in Armed Conflict

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Submitted by

Rekha Sah

University Roll No.- 001700703016

Examination Roll No.- MPIN194016

Registration No.-133300 *of* 15-16

Under the Guidance of

Dr. Om Prakash Mishra

Department of International Relations

Jadavpur University

Department of International Relations

Jadavpur University

P.G. Arts Building, Jadavpur, Kolkata- 700032

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Jadavpur University

Kolkata- 700032

Faculty of Arts

Department of International Relations

Declaration

I, Rekha Sah, do hereby declare that my M.Phil Dissertation work “Sexual Violence in Armed Conflict” is a Bonafide work of mine and has not been submitted partially or fully for any other Degree or Diploma course till date.

Signature of the researcher

Certificate page

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ABBREVIATIONS

UN- United Nations

ICRC- International Committee of the Red Cross

UNHCR- United Nations High Commissioner for Refugees

ICTY- International Criminal Tribunal Of Yugoslavia

ICTR- International Criminal Tribunal of Rwanda

OCHCR- Office of the United nations High Commissioner for Human Rights

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CHAPTER 1

INTRODUCTION

An armed conflict comes into existence whenever there is a resort to armed force between states and even within the nation states. Conflicts either can be between interstate or intra states. Common Article 2 of the 1949 Geneva Conventions provides that the law of armed conflicts apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. Armed organisations include both state forces (military, police, government-sponsored militias) and non-state actors (rebels and militias).

Throughout history women have been considered as the ‘spoils’ of war to which soldiers are entitled. Sexual violence in armed conflict, particularly rape, is qualified as a ‘weapon of war’ or as a ‘method of war’¹. Method of warfare is generally understood as the way in which a weapon is used, or as any specific tactical or strategic way of conducting hostilities that is intended to overwhelm the adversary.² Sexual violence refers to sexual humiliation, forced impregnation, sexual penetration or penetration of any object, sexual harassment, prostitution, enforced sterilisation, forced marriage, sexual slavery are few of the examples. Amongst all forms, rape is used extensively as a practice, as an opportunity or as a systematic violence.

¹ United Nations, Office Of The High Commissioner For Human Rights , Rape: Weapon Of War, [Online: web] Accessed on 3 Feb., URL: [https://www.ohchr.org/en/newsevents /pages/rapeweaponwar.aspx](https://www.ohchr.org/en/newsevents/pages/rapeweaponwar.aspx)

² International Committee of the Red Cross. (2011), “How Does Law Protect In War?”, Volume 1.

There are multiple causes behind sexual violence, for example the humiliation of communities and the creation of terror and spreading infection; individual motive; contextual condition; strategic motive for obtaining information, targeting people due to enmity, individual or opportunistic motive or the combination of factors.

The law of armed conflict means the body of International legal principles found in treaties and in the practice of states, that regulates hostilities in situations of armed conflict. While common Article 3 of the Geneva Conventions does not explicitly mention rape or other forms of sexual violence, it prohibits “violence to life and person” including cruel treatment and torture and “outrages upon personal dignity”.³ Additional Protocol I and II have also condoned sexual violence in armed conflict. The protocol defined sexual violence as:

“outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault...all persons who do not take a direct part or who have ceased to take part in hostilities”.⁴

Sexual violence takes place during peace, as well as during armed conflict but the brutality level is much higher during armed conflict as compared to peace. World War II is the major example of large scale sexual violence committed as a strategy of war. Though the issue could not get desirable attention as countries were busy fighting their own war and no one really undertook the humanitarian cause of saving the vulnerable community. United Nations recognised the vulnerable community which includes women and children, as they have been victimised

³ International Committee of the Red Cross, *Rule 93, Rape and other forms of Sexual Violence*, IHL Database, Volume 2 Chapter 32.

⁴ Ibid.

throughout the history of war. It's not like that men have not been sexually violated. A notable case in this regard is Bosnia and Herzegovina where women, children and men were viciously used as a weapon of war.

To sketch the overview, sexual violence during the wartime is not a new phenomenon but it only came to the notice during Rwandan genocide and during the war of Bosnia and Herzegovina. The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) are commonly regarded as the events that put sexual violence in conflict on the international agenda.⁵

International community as a whole has come to an understanding that gender cannot escape armed conflict. The notion of women and men being different biologically is sex, but when society imbibe masculine and feminine role according to the bodies of people it becomes 'gender'. Gender-based violence is described as a form of discrimination against women exclusively. Nowadays, the term 'gender-based violence' is usually understood as covering not only women and girls but also men and boys. The Committee on the Elimination of the Discrimination against Women (CEDAW) defined gender based violence in its General Recommendation number 19 in 1992 as "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."⁶

⁵ Anholt, Rosanne Marrit. (2016), "Understanding sexual violence in armed conflict: cutting ourselves with Occam's razor", *Journal of International Humanitarian Action*, Published 30 June 2016.

⁶ CEDAW Committee, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) General Recommendation, 1992.

The international community had decided to use the term armed conflict instead of war because international community wanted that the applicability of international law regarding sexual violence in armed conflict remain applicable even when there is no formal declaration of war. The answer to the question, why sexual violence is so prevalent in armed conflict lies in economic factor. The inflicting party in a conflict commits sexual violence because they don't have to deal with any financial consequence.

Focus of Research:

In my dissertation I propose to throw light on the clearer understanding of sexual violence, what are its major problems, what are the causes behind sexual violence in armed conflicts. I will try to decipher the pattern of abuses mainly located in regions of Bangladesh and Bosnia and Herzegovina in my case studies. The different approaches and forms of sexual violence will be undertaken. Furthermore, I will also demonstrate historical examples of state organised sexual violence specially in Bangladesh and Bosnia and Herzegovina. In the dissertation I will explore the different coping mechanism adopted by international community for the prevention of sexual violence in wartime.

Both men and women would be part of my study because men are also victims of sexual violence in conflicts. However, women are first to get protection against sexual exploitation because women due to stereotyping and stigmatization in society become more vulnerable, it is not often they come out and speak of their experience as this would lead to rejection by their families and abandonment by the communities.

The focus of my dissertation is mainly on the evolution of the International law and norms regarding sexual violence in armed conflict, the challenges International Community faced in initiating policies' framework and challenges of national or domestic adherence to the policies.

First and foremost, in my dissertation I will analyse the different definitions of sexual violence given by various sources, I propose to start with the introduction of the concepts of sexual violence and armed conflicts, the inter-relation between them; the nature and consequences of sexual violence coupled with the discussion on how rape has been used as a weapon of war historically. Additionally, I will explore the legal institutional roles in framework of laws related to sexual violence and how policies evolved within international framework will be discussed briefly, together with the role of International Criminal Tribunal of Yugoslavia (ICTY) and the role of International Criminal Tribunal of Rwanda (ICTR) in concluding that sexual violence has emerged as a new form of terrorism. For this purpose the landmark judgements of ICTY, ICTR and ICC will be examined in the dissertation.

Furthermore, the role and responsibilities of United Nations (UN) towards the issue of sexual violence in armed conflict will be addressed. UN is the most important institution in dealing with the issue of sexual violence in armed conflict. There has been a regular assessment on the subject by Secretary-General, who presents the annual report on the issue every year since 2008.

I will also discuss whether genocide should come under the purview of sexual violence or not. Thereon, I will examine two case studies of sexual violence in East Pakistan's War of Liberation and armed conflict in Bosnia and Herzegovina.

The significance of the research:

My dissertation emphasises on the fact that even while sexual violence in armed conflict is perpetrated throughout the history very little attention has been devoted to the issue. Therefore, I will decipher what took so long to the international community to realise that the issue demands proper attention. The feminists' groups and NGOs have done a remarkable job in bringing the issue of sexual violence in armed conflict to the forefront of the entire international community. The dissertation will try to discuss the need for creating public awareness in respect of gender based conflicts.

The dissertation will explain the paramount importance for the nation states to frame the domestic jurisdictions of sexual violence in armed conflict in accordance to the International Humanitarian Law (IHL). One inescapable truth of sexual violence in armed conflict is the creation of an enormous number of refugee and 'Internally Displaced Persons' (IDPs). It is reported that rape is most likely to happen in a detention camps. Refugees are the most vulnerable community and their situation has been exploited in many cases. The similar situation applies to IDPs. They try to escape from the war zone risking their lives, and often end up in detention camps where rape cases are vividly reported, as had happened in the case of Bosnia and Herzegovina.

United Nations High Commissioner for Refugees (UNHCR), along with other major agencies such as International Committee of the Red Cross (ICRC), The United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), UN General Secretary and many more are catering to humanitarian assistance for the victims mainly refugees but international community needs to put more effort to lessen the predicament of people who escaped the horror of war from their own

country to have a peaceful life. These people settle in unknown places with future full of uncertainties. Besides, the fear of sexual exploitation at any moment makes it even harder to lead a normal life.

My dissertation will also highlight the crucial role of socio- cultural component of a community in shaping the lives of victims who have had enough suffering in armed conflicts. There is the second type of rape which is largely practiced in societies and that's ostracisation by the community. Once the conflict is over, the stigma and taboo related to sexual purity of women becomes a talking point, and this makes it rather difficult for victims to retreat from pain and suffering.

The research objectives-

Objectives of the dissertation will show how sexual violence had been used as a weapon of war in the case studies of Bangladesh and Bosnia and Herzegovina. I will try to explore the dimension of ethnicity which acted in the backdrop of armed conflicts in both the cases, how the people of different ethnic leanings were singled out and targeted, thus both the cases present the situation of “ethnic-cleansing.” The multi-ethnic nature of the society was similar to each other in both the cases, leading to clash between one-another. Hence, the method of warfare was bound to be similar.

In case of Bangladesh, the ethno-linguistic differences led to a clash between the Bengali Muslims in particular and the other Muslims in general i.e. between East Pakistan and West Pakistan. West Pakistan supported the idea of united Pakistan and East Pakistan demanded the independence which resulted in the creation of a new state of Bangladesh on December 16. In Bosnia- Herzegovina the case was

slightly different than Bangladesh. There was no form of discrimination felt by the either sides, nonetheless; the disturbance was followed due to the multi-ethnic composition immediately after the independence from Socialist Federal Republic of Yugoslavia. The economic instability was pervasive, in the absence of accountability, the people started feeling a sense of inferiority. The fervid nationalism was so high that it broke a bloodthirsty violence and thus created a system of dominance over inferiors. The deficient democratic element also added chaos.

The dissertation will also try to understand the development we have reached in providing solutions to the problems of sexual violence in armed conflict. An assessment of efforts will be undertaken by different forums in regulating the laws of protecting people against sexual violence. According to Dr. Gail Stern, the idea that sexual violence is alterable and subject to prevention through public policy is a recent development and needs to be explored.

Research Objective:

- To understand sexual violence through historical armed conflict in history
- Inclusive study of violence against men and women in armed conflict.
- How sexual violence act as an instrument of war the relationship between sexual violence and armed conflict.

Research Questions:

- To understand the development we have reached in providing solutions to the problems of sexual violence in armed conflict. Assessment of the efforts made by different forums in regulating the laws for protecting people against sexual violence.
- Study of how sexual violence is responsible for refugee generation.

Literature Review:

On the topic of sexual violence in armed conflict, there are plethora of books, journal articles and documents of legal cases available which helped me to gather knowledge about the issue. I reviewed few of the literature on the topic below. These are the literature which helped me in understanding the role and dilemmas of international community persistent at the times of war. There is abundance of work available however, I have reviewed these works based on its effectiveness and pioneering effect.

Dead Reckoning by Sarmila Bose-

The book has given a pioneering account in showing the sexual atrocities in the 1971 East Pakistan's War of Liberation. A clear account of discriminations faced by East Pakistan in the hands of West Pakistan on the basis of ethno-linguistic difference and other grievances have been mentioned by the author in very precise term, it left me convinced that the demand for independence by East Pakistan was justified. The author started the book with a formal pledge that she has not been

biased in writing the book because she herself belonged to East Bengal before the partition of India. However, in the middle one can sense that she has tilted towards the Bangladesh's cause, specially when she explained her meeting with General A.A.K. Niazi. Just for the fact that Niazi refused to give an interview to the author thinking that she was a Bangladeshi agent, the author presumptuously thought that it must be because he has committed some serious crime. This kind of an interpretation is likely to be erroneous. However, Bose has provide us a detailed account of political negotiation acting in the backdrop which is quite meaningful in understanding the maneuver used by Sheikh Mujibur Rahman who used high sense of fervent nationalism for his own cause of becoming Prime Minister. The book articulately described that the violence was used from both sides in the beginning of the outbreak of conflict but the author has also summarised that West Pakistan abused women as a strategy of war. The atrocity was mainly focused on the conduct of West Pakistan and none was mentioned about the crime committed by the Bengali side. Nothing much have been discussed about the Razakars (Bengalis supporting united Pakistan), their organizational capacity, their role in the entire fiasco of West Pakistan. The method employed was both quantitative and qualitative. She used data by varied sources to prove her point that systematic violence against women was used to suppress the independence movement. Sarmila Bose also explored the truth by interviewing war victims and deriving conclusions from there. For instance when a ten year old boy was allowed to leave the death camp because the name of his mother was same as that of the officer, who granted him the permission, the author concluded that the ethical piece of human ability was not all missing, might be the officer was just obeying the superior's order and he himself was not supportive of mass murder.

“The 1971 Genocide: War Crimes and Political Crimes” by Jalal Alamgir and Bina D’Costa. Economic and Political Weekly, Vol. 46, No. 13

The article is powerful reading intended to prove that 1971 breakdown was an act of Genocide. Prior to this, concept of genocide was not used in any war and neither any discussion on the subject had taken place. The Bangladesh case is assumed by the authors to be the first case of genocide. The statistics of mass rape and killing were cited with utmost confidence however the puzzling scenario of data collection under Bangladesh is a well known fact. Nonetheless, the authors seemed diligent about the data of killing and rape. The article is short and subtle, gives a clear overview of what happened during the war as well as with the post-war scenario.

“Losing the Victims: Problems of Using Women as Weapons in Recounting the Bangladesh War”, by Sarmila Bose, in Economic and Political Weekly, Vol. 42, No. 38 (Sep. 22 - 28, 2007), Pp. 3864-3871-

The insight in this article provided by the author is commendable leaving no doubts in the mind of readers. However the author seemed somewhat biased towards East Pakistan. The article gives a laudable picture of war scenario in which rape was used blatantly. Numbers in most cases are cited presumptuously. The article talks about the entire fooling of the title “Birangona.” Even though it has not fully discussed about the rehabilitation program in the post-war era, anyway came to the conclusion that it wasn’t very efficiently handled. The falsity in the government behavior is seen to be depicted by the author without giving much account of the socio- cultural setting of the society. The author tried to convince the readers that the conflict was pre-planned and the systematic use of

sexual violence was pre-fixed by citing hate speeches from the Pakistan government. The testimonies of victims are also cited, giving fair account of doubts whether it was intentional or opportunistic.

Women2000: Sexual Violence and Armed Conflict: United Nations Response, Published to Promote the Goals of the Beijing Declaration and the Platform for Action, April 1998, United Nations, Division for the Advancement of Women, Department of Economic and Social Affairs.

The article has shown the inclusive affect of sexual violence in armed conflict on both men and women, but also clearly stated that women are most liable to such violence because of the cultural setting. The intricate detail on the role and responsibilities of United Nations is discussed. The article has thrown light on the making of International Criminal Tribunal of Yugoslavia (ICTY) and International Criminal Tribunal of Rwanda (ICTR) and framing of International law, the dilemmas, the challenges, the different conventions for the protection of laws and preventions of abuses. However, not much of debates surrounding the clash of interest at the time of policy framing are discussed. Study of sexual violence from the standpoint of refugee crisis is not given proper attention.

Methodology:

The dissertation is in the nature of qualitative analytical research. The dissertation involves historical approach along with comparative analysis with two case studies. It involves an extensive reading of primary and secondary sources on the subject.

Case study constitutes an integral part of this research. The study takes the case of Bangladesh and Bosnia and Herzegovina to exhibit how women were weaponised during armed conflicts. For this it has relied on international agencies' reports, policy papers, conventions' reports, articles and eminent academic works on the subject.

Chapterisation:

Different chapters would include points mentioned below:

Chapter 1:

- Introduction to the thesis.

Chapter 2:

- Definitions of Armed Conflict and Sexual Violence
- Its nature and consequences
- Relationship between Armed conflict and Sexual Violence
- Debate on Genocide.
- International norms on the subject of sexual violence in armed conflict

Chapter 3:

- How sexual violence is used as an instrument of war examples from history and feminist point of view.
- The legal framework
- Historical procedure on the evolution of law on sexual violence in armed conflict

- Role of International Criminal Tribunal of Yugoslavia, International Criminal Tribunal of Rwanda and International Criminal Court.

Chapter 4:

- UN role and responsibilities towards sexual violence
- The developments in 1990s
- The Vienna Conference
- Reports on the sexual violence in Yugoslavia and Rwanda
- Role of major agencies under UN for eg. UNDP, UNHCR, ICRC etc.
- International Conventions, Gender Empowerment Conventions Provisions Guidelines, UN Secretary-General Initiative.

Chapter 5:

- Case study on the sexual violence in armed conflict in East Pakistan, 1971 War of Liberation.
- Genesis of the conflict
- Major actors involved in the conflict
- Consequences which shall include Refugee Generation, Refugee outflow, Internal Displacement problem, Impact of such conflicts on life and livelihood of civilian population
- The debate on whether the conflict is supposed to be the first act of Genocide.
- Post- conflict situation
- The controversial aspect of the title of Birangona

Chapter 6:

- Case study on the sexual violence in armed conflict in Bosnia and Herzegovina
- Genesis of the conflict
- Major actors involved in the conflict
- Historical background and outbreak of war
- International response and the creation of International Criminal Tribunal of Yugoslavia, International Criminal Tribunal of Rwanda: Three landmark judgements.
- Feminist approach
- Whether it is taken to be a case of Genocide or not.
- Legal investigation report against the war criminals.

Followed by- Conclusion or observation.

CHAPTER 2

SEXUAL VIOLENCE IN ARMED CONFLICTS: NATURE AND CONSEQUENCES

The international opinion has arrived at the consensus that, an armed conflict comes into existence whenever there is a resort to armed force between states and even within the nation states. Common Article 2 of the four 1949 Geneva Conventions provides that the law of armed conflicts ‘apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them’.⁷ ‘Armed conflict’ is the preferred legal term over the term ‘war’ because law of armed conflict applies irrespective of whether there has been a formal declaration of war.

There are two types of armed actors – state actors and non- state actors. State actors are military, police, paramilitary organizations under the direct command of other state actors and non-State actors are mainly rebel and militia organizations. According to a survey about 59% of armed actors involved in civil wars engaged in sexual violence or other form of sexual violence between the years 2000 to 2009 in Africa.⁸ According to which twelve rural communities in Cote d’Ivoire (country located on the south coast of West Africa) during the 2000–2007 conflict, 4% of women and 2.2% of men endured forced or coerced

⁷ Geneva Academy (2017), “International law applicable to situations of armed conflict” [Online web] Accessed 5 Jan. 2019 URL: <http://www.rulac.org/Classification/International-Armed-Conflict>.

⁸ Nordas, Ragnhild (2011), *Sexual Violence In African Conflicts, Prio Policy Brief No. 1*, 2011

sex by perpetrators other than intimate partners; less than a tenth had been forced or coerced by combatants or uniformed officials.⁹

The term sexual violence refers to many different crimes including rape, sexual mutilation, sexual humiliation, forced prostitution, and forced pregnancy. These crimes are induced by a number of factors. Throughout history women have been considered as the ‘spoils’ of war to which soldiers are entitled. Another reason that sexual violence occurs is to destroy male ego, and thereby community pride to showcase their failure as protectors. This is mainly because men who have failed to ‘protect their women’ are considered to be weak. Sexual violence can also be used as a form of punishment, particularly where women are politically active. Sexual violence can further be used as a means of inflicting terror upon the population at large.¹⁰

The law of armed conflict means the body of International legal principles found in treaties and in the practice of states, that regulates hostilities in situations of armed conflict.¹¹ International Humanitarian Law (IHL) distinguishes two types of armed conflicts: First, international armed conflicts, opposing two or more States; and second, non-international armed conflicts, between governmental forces and non- governmental armed groups, or between non-international armed groups only. International Humanitarian Law (IHL) distinguished different types of non-international armed conflicts (NIAC) in the meaning of common Article 3 of the Geneva Conventions of 1949. The definition of Non-international armed

⁹ Stark, Lindsay and Alastair Agair. (2011), “Trauma, Violence and Abuse: A systematic review of prevalence studies of Gender based violence in complex emergencies”, *Sage Journal*.

¹⁰ Anholt, Rosanne Marrit (2016); “*Understanding Sexual Violence in Armed Conflict: Cutting Ourselves with Occam’s Razo*”, *Journal of International Humanitarian Action* 2016.

¹¹ Women 2000 (1992), United Nations: *Sexual Violence and Armed Conflict: United Nations Response*, published to promote the goals of the Beijing declaration and the platform for action.

conflicts falls within Article 1 of Additional Protocol II.¹² Article 1 of Additional Protocol II explains non-international armed conflicts as:

"which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol".¹³

IHL Treaties defined international armed conflict (IAC) under Common Article 2 to the Geneva Conventions of 1949 states that:

"In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance".¹⁴

A Commentary of the Geneva Conventions of 1949 added that:

¹² ICRC opinion paper (2008), *How the termed "Armed Conflict" defined in International Humanitarian Law?*, International Committee of the Red Cross.

¹³ United Nations of Human Rights, Office of the High Commissioner, "Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of victims of Non-International Armed Conflicts(Protocol II)", [Online: web] Accessed on 20 URL: <https://www.ohchr.org/EN/Professional Interest /Pages/ProtocolII.aspx>

¹⁴ Ibid

"Any difference arising between two States and leading to the intervention of armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place."¹⁵

IHL treaties emphasized on two main legal sources that must be examined in order to determine what a non-international armed conflict under international humanitarian law Common Article 3 to the Geneva Conventions of 1949 mention, "Armed conflicts not of an international character occurring in the territory of one of the high contracting parties".¹⁶

In order to distinguish non-international armed conflict from less serious breaches, such as riots, acts of banditry or internal tensions, the two conventions have set two criteria for the conflicts to be recognised as non-international armed conflict.¹⁷ They are: firstly, the hostilities must reach the minimum level of intensity.¹⁸ Secondly, non-governmental groups involved in the conflict must be considered as 'parties to the conflict', meaning that they possess organized armed forces.¹⁹

¹⁵ J. Pictet (1952), *Commentary On The Geneva Convention For The Amelioration Of The Condition Of The Wounded And Sick In Armed Forces In The Field*, ICRC, Geneva, P. 32.

¹⁶ United Nations, "Geneva convention relative to the protection of civilian persons in time of war of 12 august 1949", [Online: web] Accessed on 20 Jan, URL: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf

¹⁷ The Prosecutor V. Dusko Tadic case; It-94-1-T, UN, ICTY 1997.

¹⁸ The Prosecutor V. Fatmir Limaj, It-03- 66-T, UN, Para. 135-170, November 2005, Judgment, ICTY, 2005.

¹⁹ Schindler, Dietrich. "The Different Types of Armed Conflicts According To the Geneva Conventions and Protocols", *LSE Library*, Vol. 163.

The definition of sexual violence by difference sources:

The International Criminal Tribunal for Rwanda (ICTR) Trial Chamber defined sexual violence as 'any act of a sexual nature which is committed on a person under the circumstances which are coercive'²⁰. The Trial Chamber further said that "sexual violence is not limited to a physical invasion of human body and may also include acts which do not involve penetration or even physical contact".²¹ The Statute of the International Criminal Court (ICC) criminalised sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity. World Health Organisation (WHO) defined sexual violence as any 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.²²

The ICC further included elements of crime and provided an even more refined definition of rape: First, 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 sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. Second, 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

²⁰ Prosecutor V. Jean-Paul Akayesu, ICTR-96-4, Judgment, ICTR, 2 September 1998.

²¹ Prosecutor v Akayesu, ICTR- 96-4, ICTR, 1 June 2001.

²² World Health Organisation (2002), "World report on violence and health", *WHO*

the invasion was committed against a person incapable of giving genuine consent.²³

The International Committee of the Red Cross (ICRC) has recently produced fact sheet summarising the definition of sexual violence in international law that mentions, “sexual nature imposed by force, threat of force or coercion, or by taking advantage of a coercive environment or a person’s incapacity to give genuine consent.”²⁴ It encompasses acts such as rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization.

Gender-based violence is described as a form of discrimination against women exclusively. Nowadays, the term ‘gender-based violence’ is usually understood as covering not only women and girls but also men and boys. The Committee on the Elimination of the Discrimination against Women (CEDAW) defined gender based violence in its General Recommendation number 19 in 1992 as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”²⁵ While CEDAW’s definition is broad in terms of acts covered, it seems limited regarding the persons covered. The Inter-Agency Standing Committee (IASC) provides a broad definition of gender-based violence as ‘an umbrella term for any harmful act that is perpetrated against a person’s will, and that is based on socially

²³Assembly at state parties to Rome Statute of ICC, “Elements of Crimes”, [Online: Web], Accessed 5 Jan, 2019 URL:<http://www.Icc-Cpi.Int/Nr/Rdonlyres/336923d8-A6ad-40ec-Ad7b-45bf9de73d56/0/Elementsofcrimeseng.Pdf>

²⁴ The ICRC, *Prevention And Criminal Repression Of Rape And Other Forms Of Sexual Violence During Armed Conflicts*, ICRC, 11 March 2015.

²⁵CEDAW Committee, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) General Recommendation, 1992.

ascribed (gender) differences between males and females.²⁶ Similarly, the ICRC defines gender-based violence as an, overall term, including sexual violence and other types of gender-specific violence that are not necessarily sexually based.²⁷ The ICRC defines ‘gender’ as culturally expected behaviour of men and women based on roles, attitudes and values ascribed to them on the basis of their sex, whereas the term ‘sex’ refers to biological and physical characteristics of a person. Gender roles vary widely within and between cultures and it depends upon the particular social, economic and political context.²⁸ Arguments are often made that sexual violence is always a form of gender based violence, therefore the link between sex and gender are too intricate to be distinguished.²⁹

The consequences of sexual violence in wartime have equal implications on both men and women from psychological and societal standpoints. However, women, due to stereotyping and stigmatization in society become more vulnerable, it is not often they come out and speak of their experience as this would lead to rejection by their families and abandonment by the communities. Armed organisations take advantage of this handicapped feature of society. J.T. Kelly along with other scholars, in their study in Eastern Congo reported that 29% of raped women were rejected by their husbands and 6% of them were rejected by their communities. They concluded that widowhood, gang rape and rape-related pregnancy were associated with rejection.³⁰ Yet there are also several accounts of victims who were accepted and received support. Inger Skjelsbaek presents

²⁶The European Institute for Gender Equality, 2014. [Online: Web] URL: <https://eige.europa.eu/gender-based-violence/what-is-gender-based-violence>

²⁷Lindsey, Charlotte (2001), “*Women Facing War Study*”, Geneva, ICRC, 2001.

²⁸ Lindsey, Curtet Et Al., “*Addressing The Needs Of Women Affected By Armed Conflict: An ICRC Guidance Document*”, ICRC 2004,

²⁹ Gaggioli, Gloria (2014), “Sexual Violence In Armed Conflicts: A Violation Of International Humanitarian Law And Human Rights Law”, *International Review of the Red Cross*, 2014.

³⁰ Kelly Et Al. (2011); “*Experiences of female survivors of sexual violence in eastern Democratic Republic of the Congo: a mixed-methods study*”, Conflict and Health 2011.

narratives from Bosnian rape survivors who were not stigmatised but rather supported by their husbands, which contributed to their speedy recovery.³¹

Men, on the other hand, are taken as a protector but when they get raped, they also face rejection from the society and they feel that they have lost their male honour, power and supremacy over women. Rape of men is described as ‘torture’ and not given any full-blown protection because of the stigma of women victimisation and the belief that men only can be predators and not victims. The phenomenon of rape of men did not receive any significance as compared to that of women. From the standpoint of gender, masculinity is associated with men hence; it is generally assumed that they can either be protector or predator but they can never be victims.

The concepts of sexual violence used as a strategy, opportunity, and as a practice are important to understand for policy measurement. According to the International Review of the Red Cross and Red Crescent there is a need to understand when rape is being used as a strategy and when it is being used opportunistically because only after the process of knowing the unknown, we can provide assistance. Elisabeth Jean Wood refers to sexual violence as:

“As a practice, to describe violence tolerated by commanders encouraged, for example, by peer pressure. This is to be distinguished from sexual violence occurring opportunistically: not as a strategy or policy, but by taking advantage of the surrounding chaos, or of increased vulnerabilities of victims such as displacement or loss of means of subsistence. This variation in the forms of and reasons for

³¹ Skjelsbaek, Inger. “*Victim and Survivor: Narrated Social Identities of Women Who Experienced Rape During the War in Bosnia-Herzegovina*”, *Feminism and Psychology*, 2006.

sexual violence precludes any prospect of a ‘one size fits all’ model of prevention.”³²

In sexual violence as a practice, the frequency of violence can be high to low, there can be either narrowing down or broadening of the target. It can be a result of a combination of factors strategy, opportunity and practice. Whereas the frequency of sexual violence as a practice can continue to alter from high to low, sexual violence in strategy is lower than sexual violence as opportunity.³³

In another setting, sexual violence can be institutionalised as a form of compensation or reward. It is when the army is rewarded to victimise women, for their exemplary work. Here women are used as sex slaves, sometimes they are even forced to marry officers.³⁴ In certain circumstances, sexual violence is also used by multi-perpetrator. This was seen in the case of Rwanda, Guatemala and Bosnia. Michele Leiby analyzes sexual violence as a counter-insurgency strategy on the part of states engaged in irregular warfare. This happens when there are frequent attacks by rebel groups but these are not strong enough to break the state’s authority. Therefore, they use sexual violence not only to extract information but also to punish and terrorise the population to create an uncanny system in which the rebel group can rule.

Sexual violence as a practice has various vantage points for armed groups. Sometimes a dismissal of orders by the subordinate does not attract punishment because the punishment seems to be too costly. Therefore the commanders are

³² Bernard, Vincent and Helen Durham, “Sexual Violence In Armed Conflict: From Breaking The Silence To Breaking The Cycle”, *International Review Of The Red Cross*, 18 August 2015.

³³ Wood Elisabeth Jean (2014), “*Conflict-Related Sexual Violence And The Policy Implications Of Recent Research*”, *International Review of the Red Cross* 2014.

³⁴ Ibid

faced with the only option of tolerating the crime of the subordinates as a form of compensation to combatants. Maria Eriksson Baaz and Maria Stern analyse how soldiers of the Democratic Republic of Congo (DRC) state military understand the widespread sexual violence of civilians by the organization.³⁵ The two scholars have captured the combatant frustration and anxiety under a system where they have failed to prove their masculinity thus by raping women they feel their masculinity restored.

Approximately, 200 soldiers who were interviewed said, sexual violence is the escape from their miserable life, reflects the state of hopelessness of better living standards to their families. “Lust sexual violence” is known as evil sexual violence because it demands sexual intercourse with a person due to frustration. The former were sexual violence that was “somehow more morally defensible, ethically palatable and socially acceptable, while the latter were those that are ‘evil,’ and not acceptable – but still ‘understandable’”.³⁶ The current need of the hour is effective policy implementation of the existing laws and to address the issues of victims on an urgent basis.

Horror of World War II

Post World War II, war crime tribunals was established by the allies group in order to prosecute the war criminals. One was in Tokyo and the other one was established in Nuremberg. According to the statistics, additional war crime trials were held to control Council Law number 10 which was adopted by the allies in

³⁵ Baaz, Maria Eriksson and M. Stern , “*Why Do Soldiers Rape? Gender, Violence and Sexuality in the DRC Armed Forces*”, Peace and Conflict Management Review 2012.

³⁶ Ibid

1945, to provide a basis for the trial of suspected Nazi war criminals, for those who were not dealt with at Nuremberg.³⁷ The document stated that Nuremberg Trial comes under the Council Law number 10, however no report for further investigation was submitted. Control Council Law No.10 Article II(1)(c) gave the council jurisdiction over:

"Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated."³⁸

Despite the fact that rape and other forms of sexual violence had been prohibited by the laws of armed conflict for centuries, no reference was made to sexual violence in either Nuremberg or Tokyo Tribunal³⁹. Some evidence of sexual violence was received by the Nuremberg Tribunal that sexual crimes were committed against women, though they were not expressly charged nor referred to in the final tribunal judgement. Indictment before the Tokyo tribunal did mention rape charge, however, the victims were not treated properly and also their testimonies were not collected.

³⁷Women 2000 (1992), United Nations: *Sexual Violence and Armed Conflict: United Nations Response*, published to promote the goals of the Beijing declaration and the platform for action.

³⁸ Ibid

³⁹ Ibid

Rape as a Crime against Humanity, Genocide and War Crime:

International law has come a long way, earlier it understood sexual violence as the violation of men's property right over a woman however, after a considerable period of time, it moved closer to respecting the human dignity and bodily integrity of the women. In the 20th century the crime of sexual violence is recognized under three major category- war crime; crime against humanity and an act of genocide.

Crime against humanity includes moral extermination, enslavement, deportation, forcible transfer of population, violation of fundamental rules of international law for rape, sexual slavery; enforce prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence.

Genocide included crime which intends to destroy whole or in part racial or religious group by killing the members of the group causing serious mental harm to members of the group. Deliberately inflicting terror upon the group by creating difficult conditions of life meant to bring about physical destruction in whole or in parts.⁴⁰

War crime is prohibited under Geneva Convention of 1949 and the Additional Protocols II of 1977, both are universally accepted. The Rome Statute has jurisdiction over war crime committed in international or non-international armed conflicts. It includes killing, torture and different human treatment including biological experiment with fully causing great suffering or serious injury to body

⁴⁰ Chile Eboe-Osuji (2012), "International Law and Sexual Violence In Armed Conflicts", Volume 35, *International Humanitarian Law Series*, 2012.

or health, along with sexual slavery, forced pregnancy, enforced prostitution, sterilization prosecution based on gender and other sexual violence⁴¹.

Prosecuting sexual violence through the International Criminal Court:

There are certain rules of undertaking the case under ICC: firstly, only if the case falls within the category or conditions of genocide, crime against humanity or war crime; secondly, the case must have taken place within the boundary of the nation that has accepted the courts' jurisdiction and it must have taken place after the enforcement of the Rome statute; thirdly, it must satisfy the principle of complementarities, that is, court cannot replace national enforcement system. National proceeding must be given a priority over the ICC and it has the ability to dismiss the case if it is being investigated by or prosecuted by a state which has jurisdiction over it. If the state where the crime has taken place is unwilling to investigate, the ICC will take the matter into its hand and proceed further. Fourthly, court will also see whether the case is of sufficient gravity because it has so many cases pending that it does not want unnecessary cases to take the court's time. Here, gravity means both cases of quantitative and qualitative weightage. Finally, the court has the jurisdiction of denying the case if there is substantial reason to believe that an investigation would not serve the interest of justice.⁴²

⁴¹Assembly at state parties to Rome Statue of ICC, "Elements of Crimes", [Online: Web], Accessed 20 Jan, 2019 URL: <http://www.Icc-Cpi.Int/Nr/Rdonlyres/336923d8-A6ad-40ec-Ad7b-45bf9de73d56/0/Elementsofcrimeseng.Pdf>.

⁴² Rome Statue of ICC, "Jurisdiction and Admissibility" [Online Web], Accessed 5 Jan 2019 URL: <https://www.casematrixnetwork.org/cmn-knowledge-hub/icc-commentary-clicc/commentary-rome-statute /commentary-rome-statute-part-2-articles-11-21/>

The Rome Statute also recognised Joint Criminal Enterprise as:

“As for joint criminal enterprise, article 25(3)(d) states: A person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: (a) commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible... or that ; (d) in any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose.”⁴³

Problems dealing with Sexual Violence in Armed Conflict:

In the 1949 Geneva Conventions and Additional Protocol I, designated certain crimes as ‘grave breaches’. The effect of the grave breach is to create a hierarchy, with some violations of the law of armed conflict considered to be more grave and some as trivial. ICC prosecutes sexual violence of only certain gravity but then this doesn't mean if sexual violence of certain gravity which may not reach the minimum standard is not an international crime. Another problem with provisions of the Geneva Conventions and Additional Protocols is that they characterise rape and other forms of sexual violence as attacks against the ‘honour’ of women, or at most as an outrage upon personal dignity. The implication is that ‘honour’ is something lent to women by men, and that a raped woman is thereby

⁴³ Assembly at state parties to Rome Statute of ICC, “Elements of Crimes”, [Online: Web], Accessed 25 Jan, 2019 URL:<http://www.Icc-Cpi.Int/Nr/Rdonlyres/336923d8-A6ad-40ec-Ad7b-45bf9de73d56/0/Elementsofcrimeseng.Pdf>.

dishonoured.⁴⁴ Instead of creating a sustainable environment for women in armed conflict the focus was directed towards protecting women in armed conflict.

Is sexual violence in armed conflict an act of Genocide?

The most important progress that has taken place in the jurisprudence of modern international criminal law is the declaration by the International Criminal Tribunal for Rwanda (ICTR) that sexual violence can be an act of genocide. Article 2 of the Geneva Convention of 1949 defines genocide as follows:

“Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.”⁴⁵

What generates debate is the idea of destruction of a group in part or in whole, the question emerges then, what number prescribes the act of genocide. The usual question here is whether the maximum number of members of the group needed to be murdered or raped as a precondition to qualify for the proper application of

⁴⁴ Women2000 (1992), United Nations: *Sexual Violence and Armed Conflict: United Nations Response*, published to promote the goals of the Beijing declaration and the platform for action.

⁴⁵ Chile Eboe-Osuji (2012), “International Law and Sexual Violence In Armed Conflicts”, Volume 35, *International Humanitarian Law Series*, 2012.

the label of genocide. Quantification had been an issue but now it has changed. In early 2009 another Trial Chamber of the ICTR attempted to extend the notion of sexual violence as an act of genocide with the inclusion of less aggressive forms of sexual assaults. In the jurisprudence of the international criminal law, the chamber clarified that regardless of the number of people, any degree of destruction to a group usually generates application of the genocide label.

Vienna Convention of 1948 contributed greatly to this aspect, Article 31(1) addressed few of the compelling questions:

“What are the relevant terms of the Genocide Convention? The relevant terms appear in the phrase ‘destroy ... in part’ contained in the statement of the *dolus specialis* of genocide, regarding the intent to destroy a protected group. What is the ordinary meaning of those terms? For one thing, their ordinary meaning does not contain any adjectival qualifier to the phrase ‘in part’. In other words, there is an appreciable distinction in meaning between the phrases ‘in part’ and ‘in substantial part’. The ordinary meaning, then, of the former is that there is no language in the provision which indicates that a minimum aliquot was intended to constitute a ‘part’. That makes one person a part of the group to which (s)/he belongs. It is important to recall, in this connection, that it has been settled that the point of genocide is that it is a crime against a group and not merely a crime against a plurality or several of its part.”⁴⁶

⁴⁶ Prosecutor v Akayesu, ICTR-96-4-T, ICRC, ICTR Trial Chamber, 1998.

This feature distinguished genocide from an ordinary case of murder or mass murder, regardless of the mass of the part of a group that was targeted for destruction.⁴⁷ According to Bill Schabas, the killing of one member of the protected group would support account of genocide provided the killing was done with the genocidal intent. In the elements of crime of genocide under international criminal law, the following elements are indicated in respect of killing:

“The perpetrator killed one or more persons; such person or persons belonged to a particular national, ethnical, racial or religious groups; the perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; the conduct took place in the context of a manifest pattern of similar conducted directed against that group or was conduct that could itself effect such destruction.”⁴⁸

Also, there is stigma related to sexual violence, nobody speaks about it, nobody comes out in open and nobody relates their experience due to stereotyping and taboo exist in society. Efforts therefore must be taken to enhance the public consciousness towards the issue. However, the dynamics and its toll over individuals and society have been better understood these days. Particularly after Yugoslavia and the Rwanda case which benefitted us to bring about the international laws preventing sexual violence against men and women; boys and girls.

⁴⁷ Chile Eboe-Osuji (2012), “International Law and Sexual Violence In Armed Conflicts”, Volume 35, *International Humanitarian Law Series*, 2012.

⁴⁸ Ibid

Today is the time we need to understand that the sexual violence does not only hamper physical health or the risk of sexual transmitted diseases or unwanted pregnancy but we must understand how it affects the mental health of people because it is apparently affecting society and community which have a dramatic role in causing mental health of a person. It enforces shame and stigma and fear of rejection from the society. Very few people have means of subsistence, in such conditions it is quite insurmountable to think that victim will sustain on their own unless international community as whole do not provide the sense of justice to them. The testimonial also indicated the urgent need to provide financial stability for economics survival of the victim so that they do not feel the pressure of being rejected from the society and feel confident about their livelihood. Therefore, the task is to understand what actually the victims want; what is the requirement of victims in an unfortunate situation of sexual violence; after being raped what is the mental situation and how can we provide assistance to those requirements also simultaneously we must make efforts to prevent sexual violence in armed conflict. The current concern of the scholar is to create a system of better coordination in providing assistance. All the efforts are futile unless states take upon themselves the responsibility of saving the victims in their regions by following the norms under international law.

Article 28 of ICC declares that the military man who is superior and the commanders must be held accountable if under his jurisdiction the subordinate has done any mistake or any crime. There lies the risk of misuse of this law because sometimes the person who has committed the crime became unaccountable for his own crime and the one person just because he is a senior is held accountable. However, historically it has been seen that sexual violence is used as a tool of war where a strategy is planned under the supervision of the senior officer; giving order to the subordinates to use rape or other forms of

sexual violence as a weapon of war. However the chances are high that those who have committed opportunistic violence will be free from such accountability.

CHAPTER 3

RAPE AS A WEAPON OF WAR: EMERGING LEGAL FRAMEWORK

Sexual violence in armed conflict, particularly rape, is qualified as a ‘weapon of war’ or as a ‘method of war’⁴⁹. Method of warfare is generally understood as the way in which a weapon is used, or as any specific tactical or strategic way of conducting hostilities that is intended to overwhelm the adversary.⁵⁰ A cursory analysis of different definitions adopted at the national and international levels reveals the existence of two common elements in the understanding of the notion ‘weapon’, it refers to an object, material, instrument, mechanism, device or substance that is used to kill, injure, damage, threaten or destroy.⁵¹

Rape carries with itself severe pain and suffering⁵² which is most often intentionally inflicted. It is used for obtaining information, humiliating community, targeting people due to enmity, individual or opportunistic motive and so on. Some scholars like Laura Heaton believes that sometime it is detrimental to give so much attention to the issue of sexual violence as a weapon

⁴⁹ United Nations, Office Of The High Commissioner For Human Rights , Rape: Weapon Of War, [Online: web] Accessed on 3 Feb., URL: https://www.ohchr.org/en/newsevents/pages/rape_weaponwar.aspx

⁵⁰ International Committee of the Red Cross. (2011), “How Does Law Protect In War?”, Volume 1

⁵¹ ICRC, 2006, *A Guide To The Legal Review Of New Weapons, Means And Methods Of Warfare: Measures To Implement Article 36 Of Additional Protocol I Of 1977*, ICRC, Geneva.

⁵² Goggioli, Gloria. (2015) “Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law”, [online: web] Accessed on 30 March. URL: <https://doi.org/10.1017/S1816383115000211>

of war because it will obscure other aspects of sexual violence which are more important than sexual violence as a weapon of war.⁵³

The prohibition of rape and other forms of sexual violence is one of the areas where International Humanitarian Law (IHL), Human Rights Law and International Criminal Law worked together in the same direction of framing laws, complementing and reinforcing each other. It can safely be said that the prohibition and criminalization of rape and other forms of sexual violence at the international level is strong and fairly adequate.⁵⁴ However, IHL treaties have been criticised for allegedly not prohibiting and criminalising sexual violence in a sufficiently robust way.⁵⁵

The Legal Framework:

The first law regarding the prohibition of sexual violence in armed conflict was the Lieber code of 1863 in which it was explicitly mentioned that the rape predator has to be punished by death and this was the first modern code of law. Article 44 of the code provided that:

“All wanton violence committed against persons in the invaded country ... all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other

⁵³ Bernard, Vincent and Helen Durham (2015), “Sexual Violence In Armed Conflict: From Breaking The Silence To Breaking The Cycle”, *International Review Of The Red Cross*, Vol. 96, Issue 894.

⁵⁴. Ibid

⁵⁵ Goggioli, Gloria. (2015) “*Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law*”, [Online: web] Accessed on 30 March. URL: <https://doi.org/10.1017/S1816383115000211>

severe punishment as may seem adequate for the gravity of the offense. A soldier, officer or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior.”⁵⁶

Post-Second World War Control Council Law No. 10 was the first international legal instrument that expressly included rape in the list of crimes against humanity.⁵⁷ Control Council Law No.10 Article II (1) (c) of, gave the Council jurisdiction over,

“Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.”⁵⁸

There were two major developments followed by this: first, Geneva Convention of 1949 and The Additional Protocol I and II. Both prohibited rape and they have dealt with many aspect of sexual violence such as cruel treatment, torture, outrages upon personal dignity, indecent assault and enforced prostitution.⁵⁹

⁵⁶ Lieber, Francis. (1863), *Instructions For The Government Of Armies Of The United States In The Field*, Government Printing Office, Washington.

⁵⁷ Human Rights Library, (1946), *Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity*, University of Minnesota.

⁵⁸ Ibid

⁵⁹ Bernard, Vincent and Helen Durham (2015), “Sexual Violence In Armed Conflict: From Breaking The Silence To Breaking The Cycle”, *International Review Of The Red Cross*, Vol. 96, Issue 894.

The 1949 Geneva Convention on prisoners of war provides that prisoners of war are entitled to respect for ‘their persons and honour’ and that ‘women prisoners of war shall be treated with all consideration due to their sex’.⁶⁰

In non-International armed conflicts, common Article 3 to the four Geneva Conventions – which has been described by the International Court of Justice (ICJ) as reflecting ‘elementary considerations of humanity’ applicable in all types of armed conflicts⁶¹ – implicitly also prohibits sexual violence when it outlaws ‘violence to life and person, in torture’ as well as ‘outrages upon personal dignity, in particular humiliating and degrading treatment.’⁶² It is complemented by Additional Protocol II of 1977, which prescribed circumstances for laws to prevail, circumstances such as where/when/which. The protocol defined sexual violence as:

“outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault...all persons who do not take a direct part or who have ceased to take part in hostilities”.⁶³

The Geneva Conventions of 1949 and their Additional Protocols of 1977 though did provide the necessary protections and prohibitions against rape and other forms of sexual violence. This was done in different ways: first, rape is expressly

⁶⁰ ICRC (1929), *Convention relative to the Treatment of Prisoners of War*. ICRC.

⁶¹ Nicaragua V. United States of America, Para 80-07, ICRC, ICJ Reports 1986.

⁶² ICRC, (1977), “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)”, [Online: web] Accessed on 30 Dec. URL: <https://ihl-databases.icrc.org/ihl/WebART/475-760008?OpenDocument>

⁶³ Ibid.

prohibited; and second, the prohibition of rape and other forms of sexual violence is encompassed in less explicit provisions.

The Special Rapporteur against Torture had noted in 1986 that sexual abuse is one of various ways of physical torture. The European Court of Human Rights reached a similar conclusion, notably in the *Aydin v. Turkey* case of 1997. Not only rape but also other forms of sexual abuse can amount to torture or cruel, inhuman or degrading treatment or punishment. At the regional level, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women of 1994 prohibits ‘violence against women’, which included not only physical and psychological but also sexual violence, whether it is committed in public or private sphere.⁶⁴

The major development in this sphere took place with the creation of the International Criminal Tribunal of Yugoslavia (ICTY) statute, International Criminal Tribunal of Rwanda (ICTR) statute and the International Criminal Court (ICC) statute, which further carried the onus of framing international law on sexual violence in armed conflict. The latter added to the list of sexual acts constituting crimes against humanity and war crime.

Crime against humanity is defined as, sexual crimes must however be committed as ‘part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’.⁶⁵ And war crime is described as,

⁶⁴ Department of International Law (1994), *Inter-American Convention on The Prevention, Punishment And Eradication Of Violence Against Women*, Arts 1–3, The Organisation of American States.

⁶⁵ *Prosecutor v Dragoljub Kunarac*, Vol. No. (IT-96-21), United Nations, International Residual Mechanism for Criminal Tribunals, ICTY, 2007.

‘sexual slavery, enforced prostitution, forced pregnancy enforced sterilization, or any other form of sexual violence of comparable gravity’⁶⁶.

Regarding prosecutions, International criminal law has made immense progress in the last two decades. However, international prosecutions of sexual violence remain rare in practice. The international community has been very active in recent years in its efforts to combat sexual violence in various and complementary ways. It is to be hoped that these efforts will bear fruit in future.

Three major landmark judgements in the evolution of international norms:

In the evolution of framing International law of armed conflict to prevent sexual violence, the case Akayesu and of Kunarac is of dire importance. In both the cases it was concluded that rape can be constitutive of crime against humanity. The International Criminal Tribunal of Yugoslavia (ICTY) and International Criminal Tribunal of Rwanda (ICTR) found that rape and sexual violence can constitute genocide if they are committed with the specific intend to destroy in whole or in part a particular group targeted as such.

First, Prosecutor v Akayesu Case: In this case, Akayesu was the top-ranking public official in a particular commune. He was found guilty of several instances of sexual violence which occurred under his nose. So his crime was considered as a crime against humanity and also as an act of genocide. Akayesu was the first case in which the judges of the ad hoc tribunal had to grapple with both the issue

⁶⁶ Goggioli, Gloria. (2015) “Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law”, [Online: web] Accessed on 30 March. URL: <https://doi.org/10.1017/S1816383115000211>

of sexual violence and the absence of its definition in international war. Hence, a broad and general definition of rape was given. Sexual violence was defined as ‘a physical invasion of a sexual nature, committed on a person under circumstances which are coercive’.⁶⁷ After this the International Criminal Tribunal of Rwanda, trial chamber insisted that ‘sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.’⁶⁸

Few of the major development took place in the Akayesu case:

It discussed a relationship between rape, sexual violence and genocide and the discussion concluded with the articulation of what the genocide would intend to mean. Genocide is usually understood to mean the intent of killing members of a particular group or community, constituting serious bodily or mental harm or measures intended to prevent birth within the group or amount to forcibly transferring children of the group to another group.

The tribunal also distinguished rape from sexual violence. Sexual violence was broadly defined as any act of sexual nature which is committed on a person under circumstances which are grave. The significant aspect was that it did not consider rape as an attack on personal dignity.

The two issues the tribunals tackled were regarding the role of consent by the victim. In this the tribunal established two dimensions first, to ensure whether the victim is forced into sexual behaviour, which was very difficult to prove in the

⁶⁷ Prosecutor v Akayesu, ICTR- 96-4-A , World Courts, ICTR (Trial Chamber).

⁶⁸ Ibid.

court and therefore it was very difficult to proceed further on the case. Secondly, to prove whether the accused person successfully defended himself by establishing that the consent was given by the victim. The case further clarified that in the presence of coercion, the need to prove a lack of consent was obviated.⁶⁹

Second important case was the Prosecutor versus Furundzija at the Yugoslavia tribunal. It was the special unit of the military police of the Croatian Defence Counsel.⁷⁰ He was accused for being a silent suspecter while sexual violence was taking place. Witness A (anonymous) was being interrogated by Furundzija, along with other soldiers. ‘Witness A’ had been interrogated in a custody by holding a knife to her inner thigh and threatening to insert it into her vagina if she did not truthfully answer their questions.⁷¹

Also Witness A and Witness B were forced to have oral and vaginal sexual intercourse. The tribunal had to address the issue of torture and decide whether it should be called rape or not. The tribunal ultimately defined sexual violence as the sexual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator; the use of coercion or force or threat of force against a victim or third person.⁷² Following this both personal dignity and torture had come under war crime under common article 3 of the Geneva Convention and it was also incorporated under article 3 of the statute of the Yugoslavia tribunal.⁷³

⁶⁹ Sellers, Patricia Viseur. “The Prosecution of Sexual Violence in conflict: The Importance of Human Rights as Means of Interpretation”, [Online: web] Accessed on 17 January, URL:https://www.ohchr.org/Documents/Issues/Women/WRGS/Paper_Prosecution_of_Sexual_Violence.pdf

⁷⁰ Prosecutor V. Furundzija, Judgment, It-95-17/1-T, United Nations, ICTY, Dec. 10, 1998.

⁷¹ Ibid.

⁷² Ibid

⁷³ Sellers, Patricia Viseur. “The Prosecution of Sexual Violence in conflict: The Importance of Human Rights as Means of Interpretation”, [Online: web] Accessed on 17 January, URL:

The third important case was that of the Prosecutor versus Kunarac. The Yugoslav trial chamber here maintained part one definition of Furundzija definition but went one step ahead by broadening part two of it. It said any act of sexual penetration constitutes rape not only if accompanied by ‘coercion’, force or threat of force against the victim or a third person but also other factors which would render the act as ‘non-consensual’.⁷⁴ It was the first Yugoslavian tribunal case which prosecuted and convicted individuals for rape as a constituent of offence of crime against humanity. The difference between crime against humanity and war crime is that of the armed conflict both of them do not necessarily have nexus with armed conflict.

Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic, the military personnel, who took part in a Serb Military campaign in the municipality of Foca in the Republic Sprska. The purpose of this military group was to cleanse the community by targeting Muslim women for the purpose they launched a campaign which was known as ‘rape camp’ case. Three of the defendants had taken part in systematic sexual violence against Muslim women in Bosnia that included planning, designing and maintaining a detention centre and other facility in which women and girls were brutally raped.⁷⁵

All of them found guilty under article 5(g) and 3 of the Yugoslavia tribunal statute. The remarkable aspect was that unlike Furundzija case, consent was not

https://www.ohchr.org/Documents/Issues/Women/WRGS/Paper_Prosecution_of_Sexual_Violence.pdf

⁷⁴ Goggioli, Gloria. (2015) “*Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law*”, [Online: web] Accessed on 30 March. URL: <https://doi.org/10.1017/S1816383115000211>

⁷⁵ *Judgment Of Trial Chamber II in The Kunarac, Kovac And Vukovic Case*, United Nations | International Residual Mechanism for Criminal Tribunals, ICTY, 2001.

taken as a factor to prove the perpetrator guilty. The court said non-consensual or non-voluntary element of the crime needed to be calibrated to reflect the appropriate scope of the norm against rape under International law.⁷⁶

Therefore, both ICTY and ICTR agreed on the definition of rape as: 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; where such penetration occurs without the consent of the victim.⁷⁷ Consent for this purpose, consent must be given voluntarily, as a result of the victim's free will, assessed in the contents of the surrounding circumstances.⁷⁸ The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.⁷⁹ On appeal, the defendants challenged the trial chambers' definition of rape, arguing that the standard should be that victims must show 'continuous' or 'genuine' resistance to demonstrate non-consent.⁸⁰

The Gacumbitsi case was an appeal to examine the lack of consent element in order to clear out the ambiguity persistent in the jurisprudence.⁸¹ On the basis of appeal, the prosecutor argued that lack of consent should not be considered an element of the offense neither that the prosecutor has to prove it, however the

⁷⁶ Prosecutor v Dragoljub Kunarac, Vol. No. (IT-96-21), United Nations, International Residual Mechanism for Criminal Tribunals, ICTY, 2007.

⁷⁷ Goggioli, Gloria. (2015) "Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law", [online: web] Accessed on 30 March. URL: <https://doi.org/10.1017/S1816383115000211>

⁷⁸ American Journal of International Law. (2007), *Genuine consent to sexual violence under International Criminal Law*, Jstor, Vol. 101, No. 1, Pp 121-140.

⁷⁹ Ibid.

⁸⁰ Prosecutor V. Dragoljub Kunarac, Radomir Kovac And Zoran Vukovic, It-96-23-Aand It-96-23/1-A, Legal-tools, ICTY Appeals Judgment 2002.

⁸¹ Koenig, K.A. et al (2011), "*The Jurisprudence of Sexual violence*", Berkeley, University of California.

defendant could attempt to show consent by the victim as a defense against the charges, effectively shifting the burden of proof from the prosecutor to the defense, and thereby facilitating a conviction.⁸² The Appeals Chamber affirmed that both the victim's non-consent and the accused knowledge of lack-of-consent are elements that must be proved by the prosecution.⁸³

The appeals chamber did, however, elaborate that non-consent may be proven if circumstances can be demonstrated 'under which meaningful consent is not possible.'⁸⁴ As per this standard, the prosecution does not need to produce evidence of the victim's conduct or evidence indicating use or threat of force, but rather non-consent may be inferred from examining relevant and admissible evidence of the background circumstances, such as an 'on-going genocide campaign' or detention of the victim.⁸⁵ The ICC also clarified the fact that in certain situation consent cannot be implied as a defence by the accused person.

The Gacumbitsi Chamber made the first attempt to reconcile the two schools of thoughts that is Kunarac and Akayesu definition. It says, the Chamber is of the opinion that any penetration of the victim's vagina by the rapist with his genitals or with any object constitutes sexual violence, although the definition of sexual violence under Article 3(g) of the statute is not limited to such acts alone.

In the Muhimana case another attempt was made to marry the two schools of thought.⁸⁶ This development to reform sexual violence definition however failed to establish the central element of the debate on whether to view sexual violence

⁸² Prosecutor v Sylvestre Gacumbitsi, Case No. ICTR-2001-64-T, World Courts, ICTR, 2004.

⁸³ Ibid

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Osuji, C.B. , (2012) "*International Law and Sexual violence in Armed Conflicts*", Brill.

primarily as an act of sex or an act of violence. One cannot deny that the violence is a dominant context of sexual violence in armed conflict therefore sexual violence is necessarily a violent act rather than a sexual act. This is an important shift that has taken place from traditional view of sexual violence as a crime of sex without consent. The traditional inquiry has focused on the conduct of the victim to see whether or not the victim has given consent to the sexual activity. The modern view says, whether the language in question is ‘by force,’ ‘against her will,’ ‘without her consent,’ or combination of the three, the focus of sexual violence law and practice must be on the victim’s mental state and behavior. The fact about the law of sexual violence has struck many reformers, liberal and radical alike, as misplaced, unjust, and intolerable, and has led to the enactment of statutes that eliminate non-consent as an element of the offense.⁸⁷ Many domestic jurisdictions have amended their law in the line of modern view.

Commander-Combatants Dilemma:

There is a belief that in case of tug between commander and combatants, the commanders are held responsible for the acts of combatants however, one must understand the reality that sometimes and in most cases, commanders have no idea about what is happening on the ground, it has been seen the individual motive of combatants surpasses the orders of commanders. The law provides the case of service detention of the commanders if any case of sexual violence is registered under his supervision it would mean that the military forces suffer from what social scientists term a ‘principal–agent’ problem.

⁸⁷ Jackson, B. (2001) “*A History of Sexual violence Law*”.

Amelia Hoover Green has provided solution to this ‘commander’s dilemma’⁸⁸. She wants institutions to indoctrinate both commanders and combatants so that they inherit the ethical behaviours and norms. As a result, the pattern of targeting will narrow down, which will lead to the control of violence. However, some suspects this formula will hamper the purpose of war. Second solution according to Hoover is that the commander must instil fear within combatants to not disobey the order and the order must be based on the correct flow of information leading the war to the fruitful end. The commander must follow the rule of accountability against the combatants, if he finds any rule broken by the combatant.⁸⁹ Henceforth, a disciplinary measure must be taken. The LTTE insurgency in Sri Lanka is the greatest example of disciplinary measures and ethical indoctrination within the armed organisation where other forms of violence were demonstrated except sexual violence as a weapon. Hoover Green believes that organizations based on communist ideologies are less likely to commit sexual violence in conflicts, this shows how different political indoctrination works differently in using violence.⁹⁰

Many a times, the question of ordered and unordered violence come up because it is alleged that when rape is used as a strategy, it is commander who gives the order to commit mass scale violence which are predominantly responsible for setting the narrative of the war. Hence, one must understand whether the violence was ‘opportunistic’ or whether it was ‘strategic’ to take appropriate legal action. The literature on sexual violence creates confusion with using ‘strategic’ as the synonym of massive victimization, completely obscuring pattern, purpose and

⁸⁸ Green, Amelia Hoover (2015), “The Commander’s Dilemma: Creating And Controlling Armed Group Violence”, *Journal of Peace Research*.

⁸⁹ Wood, Elisabeth Jean (2015), “Conflict-related sexual violence and the policy implications of recent research” *ICRC*.

⁹⁰ Green, A. H. (2015), “The Commander’s Dilemma: Creating And Controlling Armed Group Violence”, *Journal of Peace Research* 53 (5).

frequency of violence.⁹¹ In Rwanda, the statute of the International Criminal Tribunal, and also in former Yugoslavia, did not permit superiors to escape criminal responsibility for the crime of a subordinate, specially in cases when the superior knew subordinate was about to commit criminal act but he failed to not take any steps, deliberately or in deliberately, to prevent the sexual abuse.

⁹¹ Wood, E. J. (2015), "Conflict-related sexual violence and the policy implications of recent research", International Review of the Red Cross.

CHAPTER 4

CHALLENGES OF SEXUAL VIOLENCE IN ARMED CONFLICT: UNITED NATIONS' RESPONSE

The first step of United Nations for the prevention of sexual violence came in 1969 with the Commission on the Status of Women, it was discussed whether special protection should be granted to the vulnerable section of society mainly women and children during armed conflict or not. Following this, the Economic and Social Council (ECOSOC) asked the United Nations General Assembly (UNGA) to adopt a declaration on the topic. Thereafter, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict in 1974 was adopted. Until this point, the policies adopted by UN did have somewhat patriarchal leaning because it demarcated the 'vulnerable' section on the basis of the role of women in society, mainly upbringing of children, taking care of family etc. On the basis of which women were accorded special protection. This continued till mid-1980s.

In 1985, the Forward- looking Strategies for the Advancement of Women was a new advancement in the field with reference of women's vulnerability during armed conflict was clearly accepted. However, the threat of sexual abuse only accorded in the general situation and not the special situation of armed conflict.⁹²

⁹² United Nations (1986), "Report Of The World Conference To Review And Appraise The Achievements Of The United Nations Decade For Women: Equality, Development And Peace" , [Online: web] Accessed 15 Jan. 2019 URL: [https://www.un.org/documents /ga/conf177/nfls /thirdwew1985-nfls.htm](https://www.un.org/documents/ga/conf177/nfls/thirdwew1985-nfls.htm)

Sexual violence in armed conflict varies significantly in forms and patterns. There have been instances of targeting both men and women in some conflicts nonetheless in most cases women due to gender inequality persistent in societies women are mostly targeted. It is also because women carry the dignity which is the embodiment of national honour and enemy wants to use their bodies to weaken the nation by demolishing the state-society nexus based on patriarchal setup. The different forms of sexual violence are sexual torture, sexual slavery, non-penetrating assault, sterilization, forced prostitution and pregnancy as deployed by armed groups. Sometimes, the particular set of people is targeted so that it would weaken the state machinery for example in case of East Pakistan's War of Liberation, the intellectual belonging to Dhaka University were targeted by the West Pakistan's army to destroy the war spirit, by adopting the method of ethnic cleansing. Sometimes, indiscriminate targeting is followed.

The most crucial targeting has been known as collective targeting where the group of people are identified as members of certain religious or ethnic groups known as genocide. Much of the debate surrounds this final type of targeting for addressing what are the determinants of genocide. Elisabeth Jean Wood believes, one reason can never lead to the sexual violence in armed conflict however there are combination of reasons work together for example 'militarized, masculinity and opportunity'.⁹³

Some people believe the conflict is bound to have a gender impact, i.e. against women or girls or against men or boys. Men use sexual violence against women for power, expressing the rights over women clearly establishing the patriarchal

⁹³ Wood, Elisabeth Jean. (2014), "Conflict-Related sexual violence And The Policy Implications Of Recent Research", *International Review of the Red Cross*, *IRRC No. 894*

notion of treating women as a property which had been also the case during peacetime.⁹⁴

The Development in 1990s:

When Iraq invaded Kuwait in 1990, sexual violence against women was the frequent occurrence. United Nations conducted a research on the matter and found that the Iraqi soldiers raped Kuwaiti women ceaselessly and extensive use of sexual violence was prevalent. Till this point sexual violence in armed conflict against women had not been well recognized by the International Community.⁹⁵ Hereafter, United Nations Compensation Commission (UNCC) was created to compensate the victims. After the banter between United Nations and Iraq, they reached to an agreement known as the ‘oil for food’. The UNCC determined that Iraq would compensate ‘serious personal injury’ which expressly includes physical or mental injury arising from sexual assault.⁹⁶

The Conflict in the Former Yugoslavia:

The conflict in the Former Yugoslavia changed the entire narrative of whether special protection should be granted to women in times of armed conflict. After reports of sexual violence being prevalent in the former state of Yugoslavia,

⁹⁴ Ibid.

⁹⁵ UN Commission on Human Rights, (1992) “Situation of human rights in Kuwait under Iraqi occupation”, [Online: web], Accessed 5 Jan. 2019, URL: <https://www.refworld.org/docid/3b00f11c10.html>

⁹⁶ United Nations, (1998), “sexual violence and Armed Conflict: United Nation response” , [Online: web] Accessed 15 Jan. 2019 URL: <https://www.un.org/womenwatch/daw/public/w2apr98.html>

United Nations Security Council (UNSC) adopted Resolution 798 on 18 December 1992 referred to the ‘massive, organized and systematic detention and rape of women, in particular towards Muslim women, in Bosnia and Herzegovina.’ Followed by this, Commission of Experts (Yugoslav Commission) was established by the Security Council to investigate sexual violence in armed conflict in the region.

The Interim report presented data which astonished everyone. The data showed how women had been systematically used as the weapon of war.⁹⁷ The sexual occurrence was based in Bosnia and Herzegovina. What makes the conflict in Bosnia and Herzegovina different from all other conflicts was that almost all sides of opponents were using rape and other forms of sexual violence as a method of warfare against each other. However, mostly Bosnian Muslims were targeted and the predators were seen to be Bosnian Serbs. It registered the case of ethnic-cleansing.⁹⁸

The United Nations Commission on Human Rights appointed Mr Tadeusz Mazowiecki as Special Rapporteur on the Situation of Human Rights in the Territory of the Former Yugoslavia. In January 1993, the Special Rapporteur dispatched an International Team of Medical Experts to investigate rape,⁹⁹ and in February 1993, he endorsed the team's findings that rape had been used as an instrument of ethnic cleansing in Bosnia-Herzegovina, and that people in

⁹⁷Bassiouni, M. Cherif (1994), “The United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)”, *The American Journal of International law*, Vol. 88, No. 4

⁹⁸ Ibid

⁹⁹ Commission on Human Rights (1993), “Rape And Abuse Of Women In The Territory Of The Former Yugoslavia, Report Of The Secretary- General”, (E/Cn.4/1994/5), [online: web] Accessed 15 August, 2019 URL: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/141/36/PDF/G9314136.pdf?>

positions of power appeared to have made no effort to prevent these abuses.¹⁰⁰ Thereafter, an ad hoc War Crime Tribunal (Yugoslav Tribunal, ICTY) was established by United Nations to prosecute suspects who committed crime. It was a subsidiary body of the Security Council, and was located in The Hague, The Netherlands. This tribunal reflected that rape constitutes a crime against humanity.

An effort has also been made to structure the Office of the Prosecutor (OTP) of the Yugoslav Tribunal in a manner that it responds efficiently to crimes committed against women in the region. The position of legal adviser for gender issues was created to ensure that the large number of sexual violence allegations would be properly addressed. Patricia Sellers was appointed to fill this position.¹⁰¹

In addition, one Investigation team had been established specifically to investigate sexual violence taking place worldwide.¹⁰² Nonetheless, there had been problem with investigations. A case in point is the indictment issued against Dragan Nikolic in relation to events which took place at the Sušica detention camp in Eastern Bosnia and Herzegovina.¹⁰³ Although, originally the indictment contained no charges of sexual violence however during a reconfirmation of the indictment before the trial chamber, several witnesses gave evidence about sexual violence that had occurred at the Sušica camp.¹⁰⁴ On the basis of this evidence, the trial

¹⁰⁰ Commission on Human rights (1995) “*Situation of human rights in the territory of the former Yugoslavia*”, (E/Cn.4/1993/50), [Online:web] Accessed 10 Jan 2019 URL: <http://hrlibrary.umn.edu/commission/country52/9-yug.htm>

¹⁰¹ Women2000 (1998), “ sexual violence And Armed Conflict: United Nations Response”, [Online: web] Accessed 15 Jan. 2019 URL: <https://www.un.org/womenwatch/daw/public/w2apr98.htm>

¹⁰² United Nations General Assembly (1996), “Rape And Abuse Of Women In The Areas Of Armed Conflict In The Former Yugoslavia”, (A/51/557), [online:web] Accessed 15 Jan. 2019 URL: <https://www.un.org/documents/ga/docs/51/plenary/a51-557.htm>

¹⁰³ The Prosecutor V Dragan Nikolic, Vol. No. (It-94-2), United Nations, ICTY, 1994.

¹⁰⁴ Ibid.

chamber invited the prosecutor to amend the indictment to include charges of sexual violence. The question must be asked as to why these charges of sexual violence were not investigated earlier. In June 1996, the first indictment of sexual violence was registered which took place in the Municipality of Foca, under Yugoslavia Tribunal. Two months after the first indictment, The Tadic case was issued which was heard at the international level for the first time.

Despite many odds and limitations, UN along with the support of International Criminal Tribunal of Yugoslavia (ICTY) stood the test of time in changing the mindset of the International Community towards the issue. Over the course of half a century, the issue of women and armed conflict has developed within the United Nations framework from a limited concern with the situation of women as mothers and care-givers to the recognition that sexual violence against women and girls is a violation of International Human Rights and Humanitarian Law must address this issue.¹⁰⁵

The Vienna Conference on Human Rights and Further Development:

In 1993 United Nations World Conference on Human Rights was held for the recognition of women's human rights and prevention of abuses of these rights during armed conflict. Most importantly, domestic abuses came under the purview of human rights abuses, earlier it was considered as the private matter.¹⁰⁶ At the Vienna Conference, a tribunal organized by NGOs heard testimonies regarding violations of women's human rights around the world, including sexual

¹⁰⁵ Women2000 (1998), "sexual violenceAnd Armed Conflict: United Nations Response", [Online: web] Accessed 15 Jan. 2019 URL: <https://www.un.org/womenwatch/daw/public/w2apr98.htm>

¹⁰⁶ Ibid.

violence during armed conflict. These testimonies included statements from former ‘comfort women’, Palestinian, Somali, and Peruvian women, as well as women from the former Yugoslavia, who had been invited by the organisers to testify for the crime against the suspects.¹⁰⁷

In addition, in 1992 the Committee on the Elimination of Discrimination against Women (CEDAW), the body created to monitor the women's convention which adopted a general recommendation on ‘Violence against Women’.¹⁰⁸ In 1993, The Declaration on the Elimination of Violence against Women by United Nations was adopted. It recognised three main areas of violence against women, namely Physical, Sexual and Psychological. It explicitly recognised that women in conflict situations are especially vulnerable to violence.¹⁰⁹

In 1994, the Commission on Human Rights appointed the Special Rapporteur on violence against Women. Radhika Coomaraswamy of Sri Lanka was named to fill the position. The Special Rapporteur has divided her reports to reflect the three main categories of violence identified in the Declaration on the Elimination of Violence against Women. In her preliminary report, the Special Rapporteur identified sexual violence against women during armed conflict as one of the areas to be given serious consideration under the third category, namely violence perpetrated or condoned by the State.¹¹⁰

¹⁰⁷ Bunch, C. and N. Reilly (1994), *“Demanding Accountability: The Global Campaign and Vienna Tribunal for Women's Human Rights”*, East Brunswick, NJ, Lithoid Printing Corp.

¹⁰⁸ *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, (1992), CEDAW General Recommendation No. 19: Violence against women [Online:web] Accessed 17 Dec. 2019 URL: <https://www.refworld.org/docid/52d920c54.html>

¹⁰⁹ United Nations General Assembly (1993) “Declaration On The Elimination Of Violence Against Women”, (A/Res/48/104), [Online: web] Accessed 1 July. 2019 URL: <https://www.un.org/documents/ga/res/48/a48r104.htm>

¹¹⁰ Women: 2000, (1998), “sexual violence And Armed Conflict: United Nations Response”, [Online: web] Accessed 15 Jan. 2019 URL: <https://www.un.org/womenwatch/daw/public/w2apr98.htm>

The Special Rapporteur on the situation of systematic rape, sexual slavery and slavery-like practices during armed conflict was undertaken by United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. In September 1993, Ms. Linda Chavez, became a member of the Sub-Commission.¹¹¹ On the basis of the report submitted by the sub-Commission, decided that the topic warranted further consideration. Accordingly, Ms. Chavez was appointed as the Special Rapporteur on the situation of systematic rape, sexual slavery and slavery- like practices during periods of armed conflict. In July 1996 Ms Chavez submitted her preliminary report.¹¹²

At the fourth World Conference, held in Beijing in November 1995, sexual violence against women in armed conflict was its main theme. Major policy measurements were taken and Beijing Declaration and Platform for Action was created to identify twelve grave areas where women face extreme subjugation including sexual violence in armed conflict.¹¹³ Beijing Platform for Action, 1995, para. 135, states:

"While entire communities suffer the consequences of armed conflict and terrorism, women and girls are particular affected because of their status in society and their sex. Parties to the conflict often rape women with impunity sometimes using systematic rape as a tactic of war and terrorism. The impact of violence against women and violations of the human rights of

¹¹¹ Ibid

¹¹² United Nations General Assembly (1996), "Special Rapporteur on The Situation Of Systematic Rape, Sexual Slavery And Slavery-Like Practices During Periods Of Armed Conflict", [Online:web] Accessed 15 Jan. 2019 URL: <https://www.un.org/documents/ga/docs/51/plenary/a51-557.htm>

¹¹³ United Nations (1995) "Report Of The Fourth World Conference On Women" [Online: web] Accessed 10 Jan. 2015 URL: <https://www.un.org/documents/ga/conf177/aconf177-20add1en.htm>

women in such situations is experienced by women of all ages, who suffer displacement, loss of home and property, loss or involuntary disappearance of close relatives poverty and family separation a disintegration, and who are victims of acts of murder, terrorism, torture, involuntary disappearance, sexual slavery, rape, sexual abuse and forced pregnancy in situations of armed conflict, especially as a result of policies of ethnic cleansing and other new and emerging forms of violence...’’¹¹⁴

Sexual violence in Rwanda:

Despite the advancement of laws related to sexual violence in armed conflict, sexual violence was again used shortly after the armed conflict in Bosnia. However, unlike Bosnia, there was strong reaction from all over the world to end the strategic use of violence against women. Rwandan conflict had been strongly reported as the genocidal conflict. Thousands of women had been reported to be sexually enslaved, raped, mutilated, forced into sexual slavery, and taken as ‘wives’ by their captors. There were also reports of women being bought and sold amongst the Interahamwe (the term used for collective militia groups in Rwanda).¹¹⁵ There was the humungous breach of the International Humanitarian Law. In January 1996, the Special Rapporteur reported that,

¹¹⁴ Reilly, Niamh. (2009), “Cosmopolitan Feminism and Human Rights”, *Hypatia, a Journal of Feminist philosophy*

¹¹⁵ Nowrojee, B. (1996), “Shattered Lives: Sexual Violence during The Rwandan Genocide And Its Aftermath”, UNHCR, New York, Human Rights Watch.

"Rape was systematic and was used as a 'weapon' by the perpetrators of the massacres...according to consistent and reliable testimony, a great many women were raped; rape was the rule and its absence was the exception."¹¹⁶

The ad hoc war crimes tribunal for Rwanda was established to investigate the matter of systematic use of women in armed conflict in Rwanda. However, very few steps were taken to address the issue. Consequently, no indictments were registered charging rape or other crimes of sexual violence until 1997.¹¹⁷ On 23 October 1997, a 35 year old Tutsi woman known as Witness JJ took the stand and gave evidence in the trial of Jean Paul Akayesu, one of the first defendants to be tried before the Rwanda Tribunal.

Akayesu was bourgmestre (mayor) of the Taba commune in Rwanda during the genocide. She told how the Interahamwe would come in and take away young girls and women into a nearby forest and rape them. Witness JJ described a series of occasions on which she herself, along with others was raped multiple times. She also explained how she escaped from massacre along with the other women in the commune purely by chance, because she was out buying food for her baby when the killings begun.¹¹⁸

¹¹⁶ Commission on Human Rights (1996) "Report On The Situation Of Human Rights In Rwanda Submitted By Mr René Degni-Ségui, Special Rapporteur Of The Commission On Human Rights", [Online: web] Accessed 15 Jan. 2019 URL: <http://hrlibrary.umn.edu/commission/country52/68-rwa.htm>

¹¹⁷ International Criminal Tribunal for Rwanda (1997), "*Pauline Nyiramasuhuko facing fresh charges of encouraging sexual violence*" [online: web] Accessed 15 Jan. 2019 URL: <http://unictr.irmct.org/en/news/pauline-nyiramasuhuko-facing-fresh-charges-encouraging-sexual-violence>

¹¹⁸ Women2000 (1998), "sexual violenceAnd Armed Conflict: United Nations Response", [Online: web] Accessed 15 Jan. 2019 URL: <https://www.un.org/womenwatch/daw/public/w2apr98.htm>

The original indictment against Akayesu did not allege sexual violence. The trial commenced, and when other witnesses began to make consistent references in their testimonies of widespread sexual violence in the Taba Commune it became clearer the issue of sexual violence could no longer be disregarded.¹¹⁹ There was a break in the trial, and when it resumed in October 1997, Akayesu was facing an amended indictment which included charges of sexual violence against displaced women who sought refuge at the Taba commune.¹²⁰

Women's NGOs have been instrumental in insisting that steps should be taken to address crimes of sexual violence.¹²¹ NGOs Assisting women in the former Yugoslavia include:

- B.a.B.e. (Zagreb)
- Center for Women War Victims (Zagreb)
- Humanitarian Law Fund (Belgrade)
- Kareta (Zagreb)
- SOS (Belgrade)Tresnjevka (Zagreb)

NGOs assisting women in Rwanda include :

- Association de solidarité des femmes rwandaises (Asoferwa)
- Association des veuves du génocide d'Avril (AVEGA)
- Association des volontaires de la paix (AVP)

¹¹⁹ Ibid

¹²⁰ The Prosecutor V Jean Paul Akayesu, (1996), Vol. No. (96-4-T), World Courts, ICTR

¹²¹ Women2000 (1998), “ sexual violenceAnd Armed Conflict: United Nations Response”, [Online: web] Accessed 15 Jan. 2019 URL: <https://www.un.org/womenwatch/daw/public/w2apr98.htm>

- Benishyaka Group Kamaliza Isangano
- Pro-Femmes/Twese

Discrepancy and challenges:

Rwanda failure proved that the constant vigilance is important to prevent sexual violence in armed conflicts, also there are layers of complexity in understanding sexual violence in armed conflicts and, international community as a whole has still failed to reach to the complete understanding of it. Rwanda also exhibited that culture play a dramatic role because women due to their cultural role did not speak their experiences hence very less number of cases were issued. Necessary measures include the use of female investigators and interpreters, and guarantees of appropriate protection for women who testify in court should be available. The absence of adequate witness protection has been a significant impediment to women testifying in tribunal. With regard to witness protection measures, ICTR provided same treatment as ICTY, but witness protection was not achieved, it required the upright collaboration between local authorities and between domestic principles and tribunals' Witness Protection Program.¹²²

A report called Witness Protection, Gender and the ICTR, has been prepared by the Centre for Constitutional Rights, International Centre for Human Rights and Democratic Development and International Women's Law Clinic. It asked for the provision of trauma counsellors for women, support persons to accompany witnesses travelling going for testimony. The international community should take responsibility for the safety of those willing to testify before international

¹²² Ibid.

tribunals to ensure effective administration of justice. Special care of children in the times of war still need to be accorded, as case of children's abuse has also started resurface demanding the need of special protection of children. All throughout the process, NGOs have been at the heart of efforts to incorporate gender perspective into the negotiations surrounding the ICC.¹²³ In September 1997, the United Nations Secretary-General appointed Mr Olara Otunnu as his Special Representative for Children in Armed Conflict. Sexual violence perpetrated against children falls within the terms of his mandate.¹²⁴

Current situation demanding training, dissemination, education, professional support and gender training should be provided by the ICC. Participation, gender-balance in International Judicial Posts should be an explicitly stated goal.¹²⁵ The conflict of the former Yugoslavia acted as the catalyst that brought the issue of sexual violence in armed conflicts to the attention of the world that women and children are its most affected community.

25th November is dedicated by the United Nation as International day for the Elimination of Violence against Women. In February 2008 the UN secretary General launched the campaign 'UNiTE to end Violence against Women'.¹²⁶ In view point of its jurisprudence any crime committed 'under the guise of the armed conflict' does not mean simply 'at the same time as an armed conflict' and/or 'in

¹²³ International Criminal Court, "*Summary of Recommendations Composition & Administration of the Court Crimes Against Humanity*", Women's Caucus for Gender Justice in the International Criminal Court.

¹²⁴ Ibid

¹²⁵ Women2000 (1998), "sexual violenceAnd Armed Conflict: United Nations Response", [Online: web] Accessed 15 Jan. 2019 URL: <https://www.un.org/womenwatch/daw/public/w2apr98.htm>

¹²⁶ United Nations Secretary-General Ban Ki-moon (2008), "*UNiTE to End Violence against Women*" [online: web] Accessed 9 Jan. 2019 URL: <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/take-action/unite>

any circumstances created in part by the armed conflict.’¹²⁷ For example, if a non-combatant ‘takes advantage of the lessened effectiveness of the police in conditions of disorder created by an armed conflict to murder a neighbour he has hated for years, that would not, without more, constitute a war crime ...’.¹²⁸ The crime is a war crime when troops take advantage of their military position to use sexual violence against individuals.

The major landmarks in the process of creating public awareness happened in June 2014, Global Summit to end sexual violence and conflict were its agenda and it was participated by 1700 delegates and 123 country delegations.¹²⁹ Inspired by the vision of Women2000: Sexual Violence and Armed Conflict: United Nations Response, Published to Promote the Goals of the Beijing Declaration and the Platform for Action, April 1998, under United Nations Division for the Advancement of Women and Department of Economic and Social Affairs.

Many of the undertakings addressing the issue of sexual violence in armed conflict had been taken under the framework of the United Nations. The Issue of Women 2000 focused upon some of the developments which have United Nations achieved so far, firstly UN has successfully established the fact that sexual violence can occur to both men and women. Sexual violence victims are both men and women but women are more vulnerable to it. This has always been the case and it is still prevalent in armed conflict regions such as Central African Republic, Columbia, Syria, etc.

¹²⁷ Presecutor v Kunarac, Judgement of 12 June 2002, ICTY, ICTY Appeals Chamber.

¹²⁸ Prosecutor V Rutaganda, (Dated 26 May 2003), Volume no. ICTR-96-3-A, United Nations, ICTR Appeals Chamber.

¹²⁹ UNSCR, (2015), “*Women, Peace and Security: Keeping the Promise*”, Oxfam Briefing Paper.

CHAPTER 5

SEXUAL VIOLENCE AND CONFLICT IN EAST PAKISTAN: CASE STUDY

Women's bodies are often portrayed as the symbol of the nation. Women have been reduced to the idea of objects, they are treated as cultural beings, the pride of the entire nation emanates from women vagina's. In war, this pride of the nation becomes vulnerable because women try to protect someone, that someone is the nation. Due to the threat of outsider's invasion on the bodies of women, the integrity of the nation is lost, especially in conservative societies like that of Bangladesh. According to Liz Kelly, the targeting of women in military conflicts results from misogyny combined with the fact that women are seen as carriers of culture, and their bodies are seen "as both territory to be conquered and vehicles through which the nation/group can be reproduced."¹³⁰ Rape in such sectarian conflicts as that in Bangladesh thus also becomes a tool of ethnic cleansing, used to either impregnate women so that they bear the 'enemy's' children, or prevent them from becoming mothers in their own communities by making them socially unacceptable or physically unable to bear children.

Bangladesh's social set up is intensively backward where the acceptance of women is based on her sexual purity. With the war, this cultural setup was used to devastate their social structure thereby weakening East Pakistan war of liberation.

¹³⁰ Kelly, Liz. (2001), "Wars Against Women: Sexual Violence, Sexual Politics and the Militarised State." *Zed Books*, London, Pp 45-65.

There are many forms of sexual violence used against women in times of armed conflict. In the case of Bangladesh, it was the first and foremost case where rape was used grotesquely in spite of the existence of Geneva Convention and Additional protocol II. East Pakistan was grossly cultural society where the sexual purity was higher than anything else. Hence, sexual violence was used as a method to suppress the war of liberation by West Pakistan.

Lisa Sharlach in her study on rape as genocide in Bangladesh, Bosnia, and Rwanda, attributes the significance of women as symbols of honour in their role as ‘mothers of the nation and transmitters of culture’. Such communities then stigmatise rape victims/survivors doubly for having brought dishonour upon both themselves and the community. The actual rape is followed by a ‘second rape’, that is, the ostracism of the women from the communities and their own families, where they become pariahs. From the available evidence it appears possible to estimate with reasonable confidence that at least 50,000-1,00,000 people perished in the conflict in East Pakistan in 1971 war, including combatants and non-combatants, bengalis and non-bengalis, hindus and muslims, Indians and Pakistanis.¹³¹ The strategy to use sexual violence as a weapon of war was low-cost hence used extensively.

There had also been instances of ethnic cleansing in the case of Bangladesh. In the famous work “Breaking Down the *Birangona*: Examining the (Divided) Media Discourse on the War Heroines of Bangladesh’s Independence Movement” by Kajalie Shehreen Islam, the author has given an elaborate account of how women were used strategically in East Pakistan war of liberation by Pakistan Army. Rape was used to terrorize the situation. It is estimated over 1.5 and 3

¹³¹ Bose, Sarmila. (2011) “*Dead Reckoning: Memories of the 1971 Bangladesh war*”, Oxford University Press, London.

million were killed and over 30 million left homeless, however, in the dearth of records confirming this heavy causality the issue was not given serious attention at that time. When it came to rape approximately 2,00,000 – 4,00,000 (generally accepted by many) women had been raped.

Backdrop of war:

The distinctive behaviour towards East Bengal was visible from the nascent stage of Pakistan's existence. The tension, due to cultural distinctions in both the sides was evident. The racist behaviour towards East Pakistan was also visible in the policy implementation. East Bengal, since it became a part of Pakistan after partition, (earlier it was an integrated part of India, known as 'East Bengal') had grievances in terms of partial economic growth and programme, discriminatory practices and disparity issue towards the West Pakistan. West Pakistan found East-Pakistan as ethno-linguistically different and hence, also perceived them closer to the Hindus than Muslims due to the higher value they put in poetry, culture, language and literature. According to G.W. Chaudhury, a Bengali serving during Yahya and Ayub Khan regime, the instances of discrimination were real. The controversy whether the discrimination was systematic or unintentional was hotly debated and scrutinised. Nonetheless, the mutual hatred between the two sides of Pakistan was apparent. Sheikh Mujibur Rahman took advantage of Bengali's grievances of alienation and victimisation in his political campaign. In his effort to receive support for the declining position of Bengalis he added Six Points Demands for constitutional changes.

In 1969, General Ayub Khan was replaced by General Yahya Khan and since then the democratic force had emerged in Pakistan. Interestingly Zulfikar Ali Bhutto,

the Former Foreign Minister during the Ayub Khan regime formed a new party named, Pakistan People's Party. However Ayub Khan had shown unwillingness to transfer the power of authority to the civilian form of government. Since the beginning Yahya Khan had shown some form of consideration towards the economic grievances of East Pakistani.

In the Democratic election in the year of 1970 Sheikh Mujibur Rahman's formed a political party namely Awami League and concentrated his campaigns in East Pakistan only. On the other hand, Zulfikar Ali Bhutto's 'Political Peoples Party' focused mainly on West Pakistan. Thus the country got divided between East Pakistan and West Pakistan in terms of voting.

The country remained united until December 1970 when, for the first time free and fair elections took place under the military leadership of General Yahya Khan. Rahman's Awami League won the election with high majority. Awami League won 160 of the 162 seats in East Bengal with this Awami League got the clear majority with 53% of the total seats. Pakistan's People Party (PPP) won 81 out of 138 seats in West Pakistan.¹³² Yahya Khan assured Sheikh Mujibur Rahman that he would be the next Prime Minister but fate had different things in store. After an overwhelming victory of Sheikh Mujibur Rahman especially in the East Pakistan region, he was put in an inconspicuous spot of becoming the next Prime Minister.

After the victory of Awami League, the results were postponed till March 1971. At no point, Rahman had ever thought of creating a new independent state. During his election campaign until the end of 1971, there seemed to have efforts

¹³² Bose, Sarmila. (2011), "*Dead Reckoning: Memories of the 1971 Bangladesh war*", Oxford University Press, London.

been made for political negotiations by both the sides, however it failed to provide any concrete solution and when all modes of negotiation failed the civil war was announced on 23rd March. The final force for the liberation movement started on 25th of March 1971 by Sheikh Mujibur Rahman.

After Rahman's political failure of becoming Pakistan's Prime Minister he appealed for vandalism of the situation to the East Pakistan. Dhaka became the centre of violence. Rahman compared the movement with Gandhi's non-violent non cooperation, however in reality the movement was a dastardly attack on human rights.¹³³

United States' Consular General, Archer Blood, was present when violence started in Dhaka. Although, he was sympathetic towards the Bengali's grievances, was in absolute shock seeing Bengali people butchering.¹³⁴ Another important figure who witnessed the ferocious unravelling of Bengali hatred was Anthony Mascarenhas, a Pakistan journalist, who fled to England and exposed the brutal military attack by West Pakistani armed force as well as the Bengali's brutalisation in Sunday Times.¹³⁵

At one point the massacre became so humongous that even Rahman was not able to control it. Soon began the intimidation by Pakistan armed forces. Bengali Women also participated in the liberation movement and were often seen carrying rifles. A more organised military training had also started leading to the secession as the only way out. With the arrest of Sheikh Mujibur Rahman, the chaos became uncontrollable leading to a high number of death tolls.

¹³³ Ibid

¹³⁴ Mascarenhas, Anthony. (2011), "Genocide", *Sunday Times*, UK 13 June 1971.

¹³⁵ Bose, Sarmila. (2011) "*Dead Reckoning: Memories of the 1971 Bangladesh war*", Oxford University Press, London.

In the words of Sarmila Bose “on the night of 26 March, the Pakistan regime decided to go for a military solution to a political problem. Arguably it had never been the right policy choice under any circumstances; therefore it proved catastrophic for Pakistan.”¹³⁶ In the middle of the political negotiation, ‘Operation Searchlight’ begun with General Yahya Khan abruptly left the meeting with Rahman in Dhaka and returned to West Pakistan. The only aim of operation searchlight was to crush the movement by arresting its leaders; looting the militant elements, disarming Bengali Police with maximum use of force. With this, Bengali officers, even the high rank holders were threatened by the Pakistan army. Operation searchlight failed but managed to arrest Rahman.

During the night of 25-26 March, one of the gruesome attacks by military took place which attracted worldwide criticism, the attack was on the Dhaka University. The University had been used to give shelters for military activities which came to the notice of Pakistani army. ‘In reality, there were both two-way battles and one sided massacres in Dhaka University.’¹³⁷ In this crusade both civilians who were armed and unarmed, hindus and muslims, bengali and non-bengali were attacked. More than 300 people had been killed. General A.A.K. Niazi recalled the act and compared it with Jallinwalabagh Massacre in 1919. The military actions spread to the areas of Shankharipara, Jinjira, Joydevpur, Khulna, Mymensingh, Santahur, Tangail, Chittagaon, Kushtia and Comilla.

Despite a lot of persuasion by the Archer Blood, the U.S. never openly criticized the West Pakistan army that had undertaken violent measure to suppress the

¹³⁶ Ibid

¹³⁷ Choudhury, G.W. (1974). “The last days of United Pakistan”, *American Policy Science Review*, Vol 71, No. 3

independence movement. This was because the U.S. always doubted that Pakistan had been backed by China in its military measures. Anthony Mascarenhas reported as much as 8000 men, women and children had been killed by army in Shankatipatti¹³⁸. He also exposed the West Pakistan's military mission of 'kill and burn' on 13th June in Comilla in the Sunday Times. In the paranoia between the two parties, Biharis and other non-Bengali Muslims and Hindus could not escape the brutalities of Bengali and Pakistan army.

Lieutenant Imamuz Zaman was alleged of murdering bengali soldiers in the cantonment. In May 1971, few of the foreign journalists were allowed access to East Pakistan. Financial Times wrote "Pakistan has not yet spent its full urge towards self destruction. More violence seems certain."¹³⁹ The largest mass killing is said to have happened in the Chuknagar, which was the single transit point and it was mainly a Hindu province.

Amartya Sen in his book, "Identity and Violence" called himself as the 'Bengali with Bangladeshi ancestry'.¹⁴⁰ Sen said, 'the identity division were along the lines of language and politics, not religion, with Muslim soldiers from West Pakistan brutalising and killing mainly Muslim dissenters in East Pakistan,' emphasising the fact that the equal amount of force had been applied by bengali to non bengali and that both side was composed of bengali Muslims .

For the coming months, there was seemingly no political solution to the crisis with Bengalis fighting an unconventional war, and when the stories of rape being used as a weapon became exposed, Indira Gandhi, the then Prime Minister of

¹³⁸Bose, Sarmila. (2011), "*Dead Reckoning: Memories of the 1971 Bangladesh war*", Oxford University Press, London.

¹³⁹ Ibid

¹⁴⁰ Ibid

India, decided to intervene. Hence, the lurking of Indian Army at the door ended up with full blown war between India and Pakistan. Indian force joined the Bangladesh force and dropped air bombs on certain locations. All the major operations were done by the Indian army. By August 1971, the huge involvement of Indian forces was evident.

In the last phase of war, in the desperate attempt of Pakistan to create a spineless country, the Pakistan army's last stroke came with killing of intellectuals supporting Bangladesh who had relentlessly contributed to the independence movement of East Pakistan. They were therefore presumably going to hold an important position after the victory and independence of East Pakistan into Bangladesh. Between 14th to 15th December, all of the persons were picked up from their houses by the group of bengali armed force known as Al-Badr.¹⁴¹ Al-Badr was the group created by Bengali Rajakars. The Bengali Muslims supporting United Pakistan was known as Razakars. Ali Badr was also accused of supplying women to the Pakistan soldier.

The dead bodies of these intellectuals were found after a week of declaration of independence. The major General Rao Farman Ali of the Pakistan army was accused of the killing the intellectuals primarily because the list of people killed was found written in his handwriting. The people who had been killed were journalists, professors of Dhaka University, Doctors and the like.

The Hamoodur Rahman Commission was set up by Pakistan government in the aftermath of the war, in order to punish the war criminals. However, they were

¹⁴¹ Bose, Sarmila. (2011), *“Dead Reckoning: Memories of the 1971 Bangladesh war”*, Oxford University Press, London.

freed without any charge later. After the victory of Bangladesh in 1971, there had been three countries but Bihari Muslims of the former East Pakistan had no home.

The Casualty:

The report of women between the age of 7-75 being raped and brutally killed had been evidenced. Sometimes they were tied to the trees their breasts were chopped off; they gang raped and killed. There is concrete evidence showing many elite women being taken into the Police Headquarters to be used as sex slaves and for personal pleasures. The report that the Muslim army used to bring trucks loaded with bengali women who had been used as a weapon by impregnating them and demolishing the spirit of the independence movement has been invariably cited by many scholars. Women were also abducted for the nightly use by the Pakistan army and then were kept naked in the barracks so that they couldn't run.¹⁴²

Khadiga, a thirteen years old Bengali girl had been abducted from the road while going to school with four other girls by Pakistani soldiers. They were kept in the military brothel in Mohmadpur and held captive for around six to seven months. Khadiga experienced abuse regularly by two men a day sometimes six to seven or even seven to ten men daily. Some accounts have mentioned as many as eight or so in a single night. At first, Khadiga said the soldiers tied a gag around her mouth to keep her from screaming as the months wore on and the captive's spirit was broken the soldiers devised a simple quit pro quo, they withheld the daily ration of food until the girls had submitted fully.¹⁴³ Each victim was held captive in the

¹⁴² Brownmiller, Susan. (1975), *Against Our Will: Men, Women and Rape*, New York: Ballantine Books.

¹⁴³ Ibid

strength of a group range from 5 to 6 and 20 to 25. Only a few of them could go to rehabilitation centre for help, whereas almost 90% of women chose to stay outside the periphery of state's help.

Many of the women were abducted in the beginning of the rebellion which started on March 25, this shows that it was pre-planned. In the case of Pakistani forces raping the Bangladeshi women, all of these victims ended up as comfort women used by the Pakistani armed forces. Sarmila Bose stated that many women had reported to be rescued by the Indian military force.¹⁴⁴ As the Indian authority did have some information about the wide extend of the rape phenomenon.

A debate on the case of Genocide, the number game:

The war lasted from March 26 to December 15, a period of about nine months. Figures of alleged rape victims ranged from 2,00,000 to 4,00,000 on the basis of Bangladeshi literature of 1971.¹⁴⁵ In 1971, the population of East Pakistan was about 75 million and the number of West Pakistani armed forces personnel in East Pakistan was about 20,000 at the beginning of the conflict.¹⁴⁶ Another 11,000 West Pakistani including both civil police and non combat personal also held arms in the months of march-april. It is reported that in the nine months of liberation war in 1971 the Pakistan army and their local collaborators killed 3 million Bengalis while more than 2,50,000 helpless women became victim of

¹⁴⁴ Bose, Sarmila. (2011) *“Dead Reckoning: Memories of the 1971 Bangladesh war”*, Oxford University Press, London.

¹⁴⁵ Bose, Sarmila. (2007), “Losing the Victims: Problems of Using Women as Weapons in Recounting the Bangladesh War”, *Economic and Political Weekly*, Vol. 42, Issued no. 38.

¹⁴⁶ Hathaway, Robert M. and Russell Jack S. (1993), “Richard Helms: As Director of Central Intelligence 1966-1973”, *Centre for the study of Intelligence, Central Intelligence Agency*, Washington, D.C..

their animal life torture.¹⁴⁷ Susan Brownmiller claimed that 2,00,000 to 3,00,000 women were possibly raped. It is hard to think that the army of 34,000 people could rape so extensively.

The Hamoodur Rahman commission set up by the government of Pakistan after the war and headed by a Bengali judge was dismissive of the Bangladeshi claim. It mention,

“The commission added that the falsity of Sheikh Mujibur Rahman's repeated allegation that Pakistani troops had raped 2,00,000 Bengali girls in 1971 was borne out when the abortion team he had commissioned from Britain in early 1972 found that its workload involved the termination of only a hundred or more pregnancies.”¹⁴⁸

Therefore the figure of 2,00,000 to 4,00,000 that are cited in Bangladesh and repeated worldwide have no accounting basis. Even the rehabilitation centres do not have any record on the matter, it is also not clear as to how many centres were there, how long they operated in, how many rape victims were treated under them. It was the crucial means of documenting the statistics of violence of 1971 which now appears to have lost hence no one will know whether it was intentional or the figure was blown out of proportion. The lack of public documentation from the rehabilitation centre has also laid Bangladesh open to the charge that they have something to hide and the rhetoric of rape is not supported by the experience of the rehabilitation centre.

¹⁴⁷ Bose, Sarmila. (2007), “Losing the Victims: Problems of Using Women as Weapons in Recounting the Bangladesh War”, *Economic and Political Weekly*, Vol. 42, Issued no. 38.

¹⁴⁸ Ibid

The Pakistani commander of the Eastern Command General A. K. Niazi wrote that he found the troops in a state of indiscipline with reports of them looting killing people without reason and committing rape when he arrived in East Pakistan in April 1971. In his confidential directive to senior officers, he issued a stern warning,

“It is not uncommon in history when a battle has been lost because troops were over indulgent in loot and rape, I therefore direct that the troops must be got hold of and the incidence of indiscipline misbehaviour and indecency must be stand out ruthlessly”.¹⁴⁹

The hatred can be traced from the Ayub Khan, Pakistan's first military dictator's statement, who says that “East Bengali have been and still are under considerable Hindu cultural and linguistic influence...they have all the inhibition of downtrodden race.”¹⁵⁰ He also explicitly stated a poisonous racism towards Bengalis, Yahya Khan in Asia times reported to have given statement, ‘To kill 3 million of them and the rest will eat out our hands.’¹⁵¹

Therefore, with Pakistan citing extremely different numbers appears to be in dissenting position when the number of killing and sexual assault is concerned between the two sides.¹⁵² There is no exact data on how many women had been raped but around 2,50,000 is the figure accepted by many. Nayanika Mookherjee

¹⁴⁹ Bose, Sarmila. (2007), “Losing the Victims: Problems of Using Women as Weapons in Recounting the Bangladesh War”, *Economic and Political Weekly*, Vol. 42, Issued no. 38.

¹⁵⁰ D’Costa, Bina and Jalal Alamgir. (2011), “The 1971 Genocide: War Crimes and Political Crimes”, *Economic and Political Weekly*, Vol. 46, no. 13

¹⁵¹ Ibid

¹⁵² Islam, Kajalie Shehreen. (2012), “Breaking Down the Birangona: Examining the (Divided) Media Discourse on the War Heroines of Bangladesh’s Independence Movement.” *International Journal of Communication*.

has cited that almost 2,00,000 women were raped during Liberation war without disclosing the basis of numbers.

Pakistan proclaims an overall 26,000 fatalities in the war. Whereas Bangladesh claimed, only the number of women impregnation was 25,000 in war. Also in genocide the problem of quantifying the matter in order to prove it a case of genocide remains crucial. Debates still exist about the numbers of people killed or women raped in Bangladesh. In the end in defining war crime, the number debate is a deception as the UN convention on genocide stipulates the meaning of genocide is, 'the intent to destroy in whole or in part.' The definition of genocide matches the Bangladesh scenario where the West Pakistan singled out Bengali Muslims and killed them mercilessly apparently making the case of ethnic-cleansing. By June 1971, the Global News was filled with Genocide attack on the East Pakistan by the West Pakistan.¹⁵³ Newspapers like the Sunday Times and The Statesman had already begun to use the word 'genocide' by June 1971. In July 1971, a mission by the World Bank stated, "it was horrified to find that entire cities had been flattened, it was like the morning after the nuclear attack."¹⁵⁴

Mass graves, eyewitness account reportage combined with memoirs, films and academic work indicate that Bengali men and women were targeted for belonging to the other community. Many authors have cited the genocidal aspect from witnesses that the Pakistani army used rape to terrorise the population; to extract information about the insurgency; to boost the morale of soldiers and to degrade the increasing bengali national identity.

¹⁵³ Bose, Sarmila. (2011) *Dead Reckoning: Memories of the 1971 Bangladesh war*, Oxford University Press, London.

¹⁵⁴ New York Times, (1971). "Excerpts From World Bank Group's Report on East Pakistan", *New York Times*, Washington, July 13 1971.

Some figures suggest (from Bangladesh side) approximately 3 million people had been killed in the war in which 2,00,000 Bengali women were raped and 25,000 forcefully impregnated. Pakistan's side of the story reflects something else, nonetheless 2,70,000 casualties is somewhat unlikely to believe. Some people doubt the statistics because the rate of rape is unbelievably higher than one could think of, given the size of Pakistan army force. This becomes clear when the abortion team exposed the termination of pregnancies involved only about a hundred of pregnant ladies.¹⁵⁵ The number therefore is utterly misleading. The data is not confirmed by any source as there was hardly any process of data collection at the time of conflict, neither it was backed by any agency to support the claim of either side, however 1.5 million casualties come closer to mark. Global News highlighted recklessly Bangladesh's backed data of mass- murder, killing and raping strategically only to gather publicity and sensitize the issue. There is no denying that the rapes had happened but only the true extent of rape will entail whether it was used as a weapon of war and that it should come under the genocide motive or whether it was opportunistic or unintentional. There is no clear data showing the extent of war rape because of Bangladesh government post-independence was had not taken any initiation to collect the data. The government was only concerned about global attention and hyping the issue to portray the torture it faced by West Pakistan. The tone of the liberation was therefore ought to become a one sided story of Pakistani army relentlessly torturing the other side of the Army. The Pakistan army as the predator and the Bangladesh people were its victim.

¹⁵⁵ Mookherjee, Nayanika. (2012), *"Mass rape and the inscription of gendered and racial domination during the Bangladesh War of 1971"* , Pp. 67-78

Bangladesh an overwhelmingly backward state invoked a situation where rape victims could not come forward and talk about their experience. Women did not speak about it because of the stigma attached to it, because it would lead to dishonour them from the community and rejections by their families. However, Pakistan's claim that no harm had been done to women and children is also totally unacceptable. According to the testimonies of West Pakistan Army, rape happened occasionally during patrolling or so.

In almost all the discourse of Bangladesh liberation war the narrative of sexual violence by Pakistan army is well known. Even though such instances of rape is not denied by Pakistan, however, the true extent of rape is yet to be discovered. One also needs to address whether the only Bengali Muslim were the only victims ; as to who were the perpetrators and who were the victim, as in many testimonies the instances of Bengali raping Pakistan women is reported.¹⁵⁶

The above data supports the fact that the rape had taken place but the claim of massive use of rape as a weapon of war by West Pakistan forces is not clearly answered. The cases which have been brought up by Nilima Ibrahim also show some of the instances of opportunistic rapes but do not refuse intentional use of women as the weapon of war. The rape and killing was not one sided though. However, the massive number of women being systematically raped and used for ethnic cleansing had been widely attracted the global headlines.

Nonetheless, the Pakistani army was held accountable for ethnic cleansing of Bengali Muslims. The allegation of keeping 'comfort women' for army's personal use under the Pakistani regime is a serious charge against the merits and ethics of

¹⁵⁶ Ibid

Pakistani army however the number which is claimed by Bangladesh shows no authenticity. Almost every Pakistani officer has declined the instances of rape, they only mentioned occasional rape and said that their role was guided by military ethics. There is an all out denial of rape as a systematic use by the Pakistan Army.

Testimonies of rape survivors:

After the Crusade begun between both sides, Rubeya Khan, the sweeper at the Rajarbagh Police Station and one of the witnesses of the mass scale rape by the Pakistani officers, said she saw trucks loaded with Bengali Women brought to Rajarbagh Police Station every day, she herself had been raped several times by the Pakistan army. The women had been held captive and raped incessantly.¹⁵⁷ Nonetheless it is hard to tell whether the eye witness is telling the truth or whether it is the fabrication because of the insurmountable amount of melodramatic effect. In Rubeya Khan's case even the supporters of liberation movement have opined that it was a fabrication. The testimony of Rubeya Khan is critically sensitive and highly suspicious. The Rajarbagh Police Station being situated at the heart of the capital city, highly chaotic no one would take a chance to do such a notorious thing, as this could lead to make Bangladesh mission easier by highlighting it to the prominent Global News channel. However, two other men said the similar stories like Rubeya Khan. Subedar Khalilur Rahman fully supported the testimony of Rubeya Khan. Therefore, the striking similarity of other Police

¹⁵⁷ Bose, Sarmila. (2007), "Losing the Victims: Problems of Using Women as Weapons in Recounting the Bangladesh War", *Economic and Political Weekly*, Vol. 42, Issued no. 38.

officers stories and Rubeya Khan testimony is also something one cannot neglect.¹⁵⁸

Champa's story had been unveiled by Nilima Ibrahim in her book " Aami birangona bolchi". Her story is important to know because it shows what it takes to be raped and tortured devilishly. Her story was highlighted by almost every newspaper. Champa was around 13 year old girl who had been separated from her family and taken to the army camp. There she was raped so much so that she lost her mental balance and ended up in Pabna Mental hospital. Even now she could not forget the terrific horror and stayed in the hospital till now, which is now known to be her only home. In a recent interview by Mookherjee she said she does not remember anything about her past. Her consciousness allows her to remember only her time in the mental hospital. Her story was highlighted by various newspaper claimed to be an over-dramatization of the event or fabrication by many. There is no evidence as yet supporting the claim that she had been raped.

Nilima Ibrahim's book is the only book which gives substantial analysis of the rape victims. Ibrahim has mentioned the stories of seven rape victims whom she met in the rehabilitation centre. The account given by Ibrahim tells of the brutal attack of Pakistani army on women however, the authenticity of the events is questioned since the location, dates and times ambiguously mentioned. She also failed to criminalize the rape phenomenon by adding ethnic linguistics identity to it. Nevertheless, one cannot deny she was the first woman who presented the case of rape victims and opened a new platform of debate and discussion. She had also

¹⁵⁸ Islam, Kajalie Shehreen. (2012), "Breaking Down the Birangona: Examining the (Divided) Media Discourse on the War Heroines of Bangladesh's Independence Movement." *International Journal of Communication*.

mentioned how rape victims were treated in their society in the aftermath of the war, her book shows the sensitive aspects of women's family life, and how it feels to be thrown away from their own family. She brings to light how rape was systematically used as a weapon.

Post-Conflict Situation:

The systematic use of women in order to win the war by humiliating women in particular and the entire movement of liberation in general; to break the momentum of victory and paralyze the state machinery by attacking on the dignity of women, that showed the State was not powerful enough to prevent sexual violence against women and so conservative at the same time that the opponent could think of using women as the weapon of war in the first place. In the aftermath of the war, conservatism remained the salient feature of the society, women were rejected by their families solely on the ground that they had been raped and their sexual purity was lost. Same was the case with Hindu Bihari.

'Researchers have found that the war itself is gendered and the implication and consequences of violence in battle is different for women and men.'¹⁵⁹ Bangladesh was a conservative region in the even more conservative state where the rape victims had been stigmatised and ostracised. They could not go back to settle in their communities. The sexual impurity devastated the society and state as a whole. The rape torture was followed by the different set of torture that was even worse, ostracisation from the community led them to believe that they had no future ahead; a mental torture was in view. They had been treated as if

¹⁵⁹ Ibid

something is lost in them. Their lives had been completely shattered. After the war they returned to their families expecting to empathize with them; however, on the contrary, they were abandoned by not only the families but by the communities as well. The ‘marry off campaign’ was yet another failed initiation of the state for the reintegration of rape victim.¹⁶⁰

The war babies had been adopted by the people abroad, especially Canada. Many chose to abort the pregnancy, while many could not. An Australian doctor who had been asked to perform the task of termination of babies when almost 1,50,000 to 1,70,000 had aborted the pregnancies.¹⁶¹ Many of those who could not terminate the pregnancy were unhappy and ashamed with the child. Even in the question of sending the war babies abroad, women played an invisible role, nothing was asked to them. Yashmin Saikia suggested that the silence was not the choice it was a state policy.

The absence of reports of women speaking for justice was absolute zero and it sent the idea about how frail the state was that it could not understand what its women wanted. Saikia calls it "politics of active national forgetting" and exposed deep social and cultural misogyny because Birangona was absent in their own discourses.¹⁶²

The silence continued until the 1990s, when the Gano Adalat was established to address the issue. However it was of no help as till then the women were already stigmatized and forgotten. On 25th of March 2010 at the 49th anniversary of the

¹⁶⁰ Islam, Kajalie Shehreen. (2012), “Breaking Down the Birangona: Examining the (Divided) Media Discourse on the War Heroines of Bangladesh’s Independence Movement.” *International Journal of Communication*.

¹⁶¹ Ibid

¹⁶² Ibid

beginning of the war the constitutive body for the trial were announced. A three member International Crime Tribunals composed of High court judges was established in addition to this, a seven member investigation body and the six member prosecution team also established. The investigation team was tasked to probe complaints of war crimes particularly as defined by the humanitarian rules of the 1949 Geneva conventions. However, it was expanded several times since its formation and was not able to probe cases properly.¹⁶³

The savagery from both sides:

The victims of rape were not only just Bengali Muslims but also Hindus Bihari, the most tormented people who had been abused by both the sides because bengali nationalism was based on linguistic. The perpetrators were not only Pakistani but also sometimes and mostly in the beginning of war, civilians and East Pakistani. Bengalis perceived biharis as their enemy even though biharis were mostly the residents of East Pakistan, Pakistan army also saw them as their threat believing that biharis were supporting the nationalist movement of East Pakistan. The biharis had moved to East Pakistan after the partition, originally they were the residents of Northern India. Hence, biharis had always been the target by both the sides. Biharis also sometimes engaged in cases of revenge rape.

The heavy weightage on rape committed by Pakistan had watershed the crucial allegations against the bengalis themselves. Killing of non Bengali specially Biharis had been one of the most heinous crimes they committed. There had been evidence of bengali killing women, men and children in Jessore, Khulna,

¹⁶³ D'Costa, Bina and Jalal Alamgir. (2011), "The 1971 Genocide: War Crimes and Political Crimes", *Economic and Political Weekly*, Vol. 46, no. 13

Mymensingh and Chittagaon. As a result of which many victims united to rebel against Bengalis in general and bengali officers in particular.

Major general of West Pakistan A. O. Mitha present in East Pakistan in march-april 1971 wrote that during his visit to the military hospital at Chittagong,

“as I was walking down the water Bengali officers who was wounded and under guard called out to me I stopped and went to him and he said that he wanted to tell me what's that he and his men head stripe women from West Pakistan and after raping them admit them dance in the mood after done this he was quite happy to die I made no reply and walked on...”¹⁶⁴

Reintegration and Rehabilitation program of the Bangladesh government:

For the purpose of reintegration of rape victim's, the government had conferred the title of 'Birangona' in order to celebrate the sacrifice of women who had been victimized by the Pakistani forces. However the conferring of the title only established the women as strugglers and victims of war rather than war heroines. It did not celebrate their heroism rather there was the threat of isolation if they came forward. Rather than speaking about their heroism, they had been silenced in the fear of society's rejection, which happened anyway therefore, in the aftermath of the war, no effort had been made to collect the data, to count the number of sexual assault victims. The title birangona was supposed to honour the

¹⁶⁴ Bose, Sarmila. (2007), “Losing the Victims: Problems of Using Women as Weapons in Recounting the Bangladesh War”, *Economic and Political Weekly*, Vol. 42, Issued no. 38.

dishonoured women so that they can be reintegrated to their society. However, on the contrary, they were picked out from the crowd and remained living isolated-miserable life. The title had been rejected by many for the fear of being stigmatized. Very few women came up with their experience even after the title being conferred to them and assurance had been granted for better life. Some tried to earn sympathy from her experience but eventually were rejected by the society. In view of Nilima Ibrahim, one cannot deny that the birangonas contributed to the misogyny attitude of the state by obeying the state rules by not disclosing their stories for the fear of being isolated and discarded by communities. They have had the power of setting the narrative of empowerment for the rape victims. In this way they could have motivated the other victims to come forward and address their stories and could have truly brought glorification to the birangona title.

Many of the women had been abandoned by their families. The title only provided pretext behind which the victims became invisible but it had not been able to achieve anything in reality for their acceptance in society. The editorial news hardly referred to them as birangona which had been seen as synonyms of ‘Lanchhita’ (characterless), ‘Biddhosto’ and ‘Bibhranto’.¹⁶⁵

Sheikh Mujibur Rahman, the Prime Minister of newly independent Bangladesh government followed the setting up of the major socio-economic program for their rehabilitation. Rehabilitation program included measures such as training women in different sector in order to make them financially self sufficient and confident enough to start a new life. However with the time it was realized that women needed not only economic support but also socio-economic endeavour to

¹⁶⁵ Ibid

come forward and share their predicaments. Therefore, the policy only showed the false acclamation and the shallow principles on which the state was built. The integration process had never been easy for the rape victims, the societal stigma never allowed them to come out in open and talk of their experience.¹⁶⁶

The government also started ‘marry them off’¹⁶⁷ campaign in order to marry those rape victims who had been unmarried or who had been left by their families, only few bridegrooms from the Mukti bahini came up and the campaign was an absolute failure for achieving its real work.

International Planned Parenthood was organised to deal with the venereal disease rampant among the raped victims. Among those who had been raped, few of them wanted to carry their babies, few of them were speculative, few of them were so close to give birth were indecisive in the matter and clueless about the fate of the child. The bastard children were never accepted by the Bengali community. Doctor Geoffrey Davis who conducted the abortion of the raped victim work for many months in Bangladesh reported that he had heard of numerous incidents where the rape victims had committed suicide eating rat poison and drowning. Mother Teresa met with these women in Dhaka and offered their babies for overseas adoption¹⁶⁸.

After the creation of Bangladesh, the turn of events was astounding. In 1975, Mujib and most of his family was brutally assassinated by the unsatisfied section of Bangladesh Army, and Awami League was ousted from power. Awami League

¹⁶⁶ Brownmiller, Susan. (1975), *Against Our Will: Men, Women and Rape*, New York: Ballantine Books.

¹⁶⁷ Islam, Kajalie Shehreen. (2012), “*Breaking Down the Birangona: Examining the (Divided) Media Discourse on the War Heroines of Bangladesh’s Independence Movement.*”

¹⁶⁸ Brownmiller, Susan. (1975), *Against Our Will: Men, Women and Rape*, New York: Ballantine Books.

would not re-assume power until 1996.¹⁶⁹ In many ways the issues of the liberation war and the spirits and aspirations of independence was seen as exclusive to the Awami League because it had led the East Pakistani in the nationalist struggle but even with the re-assumption of power, economic hardship and everyday politics dominated the agenda and war crimes tribunal was simply not a priority.¹⁷⁰

¹⁶⁹ Ibid

¹⁷⁰ Ibid

CHAPTER 6

SEXUAL VIOLENCE IN BOSNIA AND HERZEGOVINA: CASE STUDY

There is an underlying presumption in every battle that someone from abroad attacked their state and the population of the state revolts against it. However, at times they are engaged in a fight amongst themselves. Some of them organize groups within the State and start a war among them. This is referred to as a 'Civil War'. This is exactly the case with Bosnia and Herzegovina with an additional backdrop of ethnicity.

In 1941, Germany invaded Yugoslavia. Before the fall of Yugoslavia, Bosnia and Herzegovina were made part of Nazi-controlled Croatia. During the fascist reign of German and Italian occupation in Croatia, guerrilla war was started by Bosnia and Herzegovina against the Croatian Fascists troops. With the end of World War II, the Socialist Federal Republic of Yugoslavia was re-established. Bosnia and Herzegovina became one single state and were one of the six republics of the Yugoslavia under Marshal Tito. The ethnic diversity of the state was in control under the authoritarian rule of Tito. Tito's demise lead to economic instability after that full blown ethnic divergence was visible; slowly Yugoslavia began to fall apart. With rising tensions between different ethnic communities, Bosnia and Herzegovina started seeking independence and recognition from Yugoslavia. In March 1992 Bosnia voters chose independence in a referendum, a political activist of Bosnia Alija Izetbegovic declared the nation an independent state. Alija Izetbegovic became the first President of Independent Bosnia. Afterward, he seeks recognition of the newly independent state by the European Union.

To understand the advent of this rather violent and xenophobic rhetoric of these Balkan countries, there is a need to understand the ethnic composition of the said region. The 1991 census for Bosnia found that Muslims constituted 43.7% of the total population of 4.3 million, Serbs accounted for 31.3%, and Croats accounted for 17.3%.¹⁷¹ The remaining portion of the population described themselves as belonging to other groups, such as Gypsies, Jews, Bosnians, and other multi-ethnic groups. They were widely segregated on the basis of major religions, including, Roman Catholics, Serbian Orthodox and Islam. The majority of population makes up of the Islamic population in the Bosnia-Herzegovina. Bosnian Croats were the part of Roman Catholics and as the name suggests Serb believed in Serbian Orthodox.

The religious differences created a visible barrier of standing and opinions among the population. This could perhaps be called as the trigger point for conflicts between the law of the people and the law of the land. Hence, the instigation of hate crimes and the cry for war were evident from the very beginning of Bosnia's independence. A deeper analysis of the matter makes it possible to sense the apprehension of the country that has seen the fall of Yugoslavia and the influx of unwanted immigrants into their territory.

Bosnia is a country that has long been a witness to such crimes. An estimated 20,000-50,000 Bosnian Serbs, and Croat women were raped during the 1992-95 war. The ones affected most because of this disturbance were the civilians of the varied ethnic groups specially the women and children of the Bosnian Muslims. They were the specific targets in this elaborate use of violence

¹⁷¹ Dobbins, James et al. *America's Role in Nation-Building: From Germany to Iraq* Chapter Title: 'Bosnia', RAND Corporation. (2003).

and abuse. The patriarchal set up of the religions followed by these ethnic groups also reflected quite strongly in the onset of war. Male dominance had a huge role to play behind the ploy of rape because society was downrightly backward.¹⁷² War crimes were common and the abuses were seen as a service to the cause they were fighting for.

Bosnian Serbians wanted to create Bosnia and Herzegovina, Serbs dominated nation, Croats envisioned the same. As a result they employed the tactic of ethnic-cleansing to root out the single majority of Muslim population from Bosnia. Bosniaks (Bosnian Muslims) resisted against the Serbs however Serbs have occupied almost three quarter of the territory of Bosnia which made it difficult for them to sustain longer fighting. Bosnian Serb leader Radovan Karadzic set up his own party namely 'Serbian National Assembly' in 1992. By 1993, Karadzic's party had set up their own Republika Srpska in the Eastern region which was earlier used to be dominated by Muslim majority.¹⁷³

An anecdote on the subject revealed the striking aspect of ethnic cleansing and showed the condition of Bosnian Muslim. A Muslim Attorney explained how groups of women, to protect themselves from these atrocities, used to work hand in hand together against the atrocities of war. They were extremely pale, exhausted and tired when they returned from the place of hell, where they were taken on regular basis at night time.¹⁷⁴

¹⁷² Catharine A. MacKinnon. (1983), "Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence", *The University of Chicago Press journals*, Vol. 8 No. 4.

¹⁷³ History (2019), "Bosnian Genocide", [Online: web] Accessed on 5 March, URL: <https://www.history.com/topics/1990s/bosnian-genocide>

¹⁷⁴ Allen, Beverly (March 2002), "Toward a New Feminist Theory of Rape": *A Response from the Field*, *Signs Journal of Women in Culture and Society*.

The fervid nationalism and deteriorating conditions of the victims was unimaginable. The feminists stance on both nationalism in the context of ethnic cleansing of Bosniaks and Croatian and Serbs' politics, to which one replied, "The thing I notice most about that group, the thing that best describes their anger and their nationalism, is that none of them are mothers."¹⁷⁵ The conditions of women were expressed by many people. The American-African poet June Jordan offered a comment in sympathy to the girls raped in the war, "What if there was oil in between those little girls' legs?"

Sebrenica Massacre- Ethnic Antagonism Erupts in War:

Both the Croatian and Serbian Presidents eyed the vulnerability of Bosnia and decided to divide Bosnia between themselves. Thus, in an attempt to wipe out Bosnian habitats the Serbian authorities with help of Serbian Yugoslav army started the offensive and ruthless method of ethnic cleansing which involve massacre and removal of Muslims. Croats also began carving out their own communities. The civil war was an obvious reaction to a crisis like this. In retrospect it can be said that it might not be completely out of hate but also due to fear. A sense of inferiority developed which engulfed the entire State. This feeling of inferiority resulted in the dominance of the stronger over weaker.¹⁷⁶ As a result, three quarter of the Bosnia was under Serbian control by the end of 1992.

¹⁷⁵ Allen, Beverly (March 2002), "Toward a New Feminist Theory of Rape": A Response from the Field, Signs Journal of Women in Culture and Society.

¹⁷⁶ Ahrens, Ambassador Geert (Oct. 6, 1992), "Background Briefing for the Working Group on Ethnic and National Communities and Minorities", The International Conference on the Former Yugoslavia.

Till 1995, three towns in Eastern Bosnia- Srebrenica, Zepa and Gorazde, remained under control of the Bosnian government. The U.N. had declared these enclaves 'safe havens' in 1993, to be disarmed and protected by international peacekeeping forces.¹⁷⁷ However, reports presented the fact that irregular Serb and Bosnian-Serb forces entered a village in one of the areas of safe havens, search out the Muslim habitats, pull out several girls and women, separate them from men, rape them in public and those who try to fight are murdered, creating a sense of terror, chaos and shame in town's population all around¹⁷⁸, they leave and later the regular soldiers, Yugoslav National Army (JNA) arrive and the terrified inhabitants are taken into refugee camps. Watching the conditions the women did not have choice. Thus, the village of non-Serb population was ethnically cleansed. Serbs obtained their territories by using rape as a tool.¹⁷⁹ The males who resisted were tortured and murdered. This had a serious impact on girls and children. The irregular forces irrespective of age or sex, tortured the mass. The health of the victims deteriorates. Most of the girls in the camps were raped and tortured for weeks and months. The torture includes amputations and making them drink urine and swallow sperm. Most of them who did not get pregnant, did not survive. Those who got pregnant were kept alive and raped until the point when safe abortion would be impossible. Then in the eighth month or so, they found the so called, UN safe area, refugee camp and found their way to Zagreb.¹⁸⁰ After this, the force had captured Zepa and exploded bomb in Sarajevo market. This whole process was planned in order to clear out the entire area on the basis of ethnicity. This attracted the international attention because of the growing death toll of civilians.

¹⁷⁷ History (2019), "Bosnian Genocide", [Online: web] Accessed on 5 March, URL: <https://www.history.com/topics/1990s/bosnian-genocide>

¹⁷⁸ Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia* Themes 1-3, Minneapolis: The University of Minnesota Press, 1996.

¹⁷⁹ Ibid

¹⁸⁰ Ibid

When all efforts of International Community met with failure to prevent the violence, it provided the ultimatum to the Serbs Community. In August 1995, after the Serbs refused to comply with a U.N. ultimatum, the North Atlantic Treaty Organization (NATO) joined efforts with Bosnian and Croatian forces for three weeks of bombing Bosnian Serb positions and a ground offensive.¹⁸¹ Due to the crippling economy, the Bosnian Serbs had to enter the agreement after three years of constant warfare. The civil war did not stop until the NATO stepped in, restricting Serbian positions in Bosnian territory in 1995. Serbs entered the UN safe havens of Tuzla, Zepa, and Srebrenica, where they murdered thousands. About 2,50,000 died in the war between 1992 and 1995.¹⁸² Many also fled away to other states as refugees. The disproportionate distribution of multi-ethnic population of Bosnian was the prime reason for the state's internal war after the fall of Yugoslavia.¹⁸³

The Peace talk therefore, started. The General Framework Agreement for Peace in Bosnia and Herzegovina, also known as Dayton Accord was initiated in Dayton, Ohio.¹⁸⁴ It was sponsored by U.S. and this peace talks in Dayton led to an agreement in 1995 that called for an inclusive federation of all ethnic groups of Bosnia. NATO troops were sent to supervise the implementations. Fighting became less frequent and orderly elections were held in September 1996. Bosniak President Izetbegovic won the election for the three member presidency each

¹⁸¹ History (2019), "Bosnian Genocide", [Online: web] Accessed on 5 March, URL: <https://www.history.com/topics/1990s/bosnian-genocide>

¹⁸² Infoplease, "Bosnia and herzegovina : Ethnic Antagonism Erupts in War", [Online: web] Accessed on 20 Feb. 2019, URL: <https://www.infoplease.com/world/countries/bosnia-and-herzegovina/ethnic-antagonism-erupts-in-war>.

¹⁸³ Dobbins, James et al. "America's Role in Nation-Building: From Germany to Iraq" Chapter Title: 'Bosnia', p.87, RAND Corporation. (2003).

¹⁸⁴ Office of the High Representative (OHR) (December 14, 1995): "The General Framework Agreement for Peace in Bosnia and Herzegovina", Dayton, 1995.

member representing one of the three ethnic groups namely, Serbians, Croats and Bosnians.

The Dayton Accord ensured the formal end of the war but it could not assure the end of multi-ethnic disturbance in the state. With infrastructure in ruins, the original habitats had to flee to other places for shelter. The implementation of Dayton Accord had faced obstacles one such example included separation and barring of the ethnic militaries from the region which without the help of the state was not possible. The implementation of Dayton Accord needed authority to support the cause. Thus, to control and co-ordinate the policies according to Dayton Accord, the Office of High Representative (OHR) was established. The first high representative was former Swedish Prime minister Carl Bildt whose responsibilities were to reconstruct, reconciliation, facilitating the parties, and not to become the protectorate at that stage. He was supported by Peace Implementation Council (PIC), and groups endorsed by UN Security Council.¹⁸⁵ The United Nations High Commissioner of Refugee, meanwhile, was designated as the lead agency for the explosive issue of refugee and IDP returns, as well as for providing humanitarian assistance to them. The World Bank and International Monetary Fund assumed responsibility for most of the efforts to create effective economic and financial policy institutions for economic reconstruction in Bosnia.¹⁸⁶

¹⁸⁵G. McGinn, John (Winter 1998) “*After the Explosion: International Action in the Aftermath of Nationalist War*,” National Security Studies Quarterly, Vol. 4, No. 1, 1998.

¹⁸⁶ World Bank and European Commission, “*Bosnia and Herzegovina: 1996–1998 Lessons and Accomplishments*”, Washington, D.C., 1999 and World Bank and European Commission (1999).

Figure and statistics of sexual atrocity in Bosnia-Herzegovina:-

It was generally assumed that close to 20,000 women were raped during the war.¹⁸⁷ The commission was set up by the United Nations Commission to investigate the atrocities as the Cherif Bassiouni its head. According to the Bassiouni Report, named after Bassiouni, it was apparent that rape was vastly used by Serb forces against the Serb Muslims.¹⁸⁸ The Report draws its conclusions from the persons who have survived the atrocities and those who have witnessed the atrocities of others. In 1992, Bosnian Muslim women started arriving in refugee camps after the gruesome attack, in Croatia and they were reported of being raped and tortured again by Serbian men in detentions camps.¹⁸⁹ Even if the feminists overlooked the matter in the beginning of the civil war but after the situations in Bosnia and Herzegovina worsened it became the concentrated topic for feminist's critiques and debates, started resurfacing.

Establishment of International Criminal Tribunal of Yugoslavia (ICTY):

Acting in response to the serious violations of international humanitarian law committed during the breakup of Yugoslavia, the UN Security Council created the International Criminal Tribunal of Yugoslavia (ICTY) on May 25, 1993, when it adopted UN Security Council Resolution 827.

¹⁸⁷ EC Foreign Ministers Report, "*Warburton Mission II Report*", [Online:web], Accessed 5 Jan 2019 URL:[Http://Www.Womenaid.Press/Info/Humanrights/Warburtonfull.Html](http://www.womenaid.press/info/humanrights/warburtonfull.html).

¹⁸⁸ United Nations Document S/1994/674, 27 May 1994, Paragraphs 131, 142, 143, 147, 148, 251.

¹⁸⁹ Salzman, Todd A. (May 1998), "Rape Camps as a Means of Ethnic Cleansing: Religious, Cultural, and Ethical Responses to Rape Victims in the Former Yugoslavia", *The Johns Hopkins University Press*.

The conditions of Bosnia in 1990s brought light to faulty International Criminal Law. The ICTY success can be depicted from the statement, most observers considered the ICTY, human rights and feminist activists who wanted intervention, ‘almost no one knew it would succeed. And yet to some extent, at least for women, it did.’¹⁹⁰

The International humanitarian laws under ICTY violated by the criminals were punished under several charges. The objectives of ICTY were: Firstly, to punish perpetrators responsible for violations of international humanitarian law; secondly rendering justice to the victims; thirdly, deterring further crimes ; lastly, contributing to the restoration of peace by promoting reconciliation in the former Yugoslavia.¹⁹¹

Some sources from International Criminal Tribunal for the Former Yugoslavia ICTY showed involvement of Federal Republic of Yugoslavia and the forces of the Yugoslav People’s Army in massacres, which reads,

"The Trial Chamber finds that the conflict...must be regarded as an international armed conflict throughout 1992. There can be no question that forces external to Bosnia and Herzegovina, particularly the forces of the Yugoslav People’s Army (JNA), participated in hostilities in that State. In mid-May 1992, there was an attempt by the authorities of the Federal Republic of Yugoslavia (FRY) to create the appearance that they were no longer involved

¹⁹⁰ Barkan, Joanne (2002), “As Old as War Itself: Rape in Foca.”, *Dissent Magazine*.

¹⁹¹ International criminal tribunal of former Yugoslavia, “Judicial record and Archive Database” [Online:web], Accessed 15 Jan 2019 URL: <http://www.icty.org/>

(...). The Trial Chamber finds, however, that this was a deliberate attempt to mask the continued involvement of the FRY...”¹⁹²

Landmark cases of ICTY:

When the United Nations proceeded to establish ICTY, all the feminists started working for the rules and procedures, indictment and litigation strategies, they creating the major international judicial apparatus. While looking into the matter what mostly vexed feminists was the condition of Bosnia-Herzegovina rape victims.¹⁹³ Large scale debates on international platforms to seek diplomats’ advice and to bring an end to phenomenon of massive rape in the region took place. After the ICTY establishment the intelligentsia worked together to bring the rules and regulations into an act and to make the perpetrators criminally accountable. The evolving cases were seen to be numerous, after ICTY intervened. Some cases even involved killing and murdering of Bosnian Serbs by Bosnian Muslims.

Some major cases in this context are:

In Celebici case alleges that forces of Bosnian Muslims and Croats took over the villages containing predominantly Bosnian Serbs around the Konjic Municipality in Central Bosnia. It claims that women were captured, tortured and raped in the

¹⁹²The Hague, “Celebici case”, [Online: web], Accessed 5 Jan, 2019 URL: <http://www.icty.org/en/press/celebici-case-judgement-trial-chamber-zejnil-delalic-acquitted-zdravko-mucic-sentenced-7-years>

¹⁹³ Eagle, Karen (Oct. 2005), “*Feminism and Its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina*”, Cambridge University Press.

Celebici Prison-Camp. Four were convicted of the crime and had to face the Jury decision. Zejnil Delalic, Zdravko Mucic, Hazim Delic, and Esad Landzo were amongst the accused. Three of them were found guilty but Zejnil Delalic was not found guilty.¹⁹⁴ Other three were imprisoned for seven, twenty, and fifteen years respectively for their crimes. The other was Furundijja case, in which the defendants were not a Serb. The case involving Kunarac, Kovac[^] and Vokovic,[^] claimed that Serbian men were convicted for raping Bosnian Muslim women. The first case i.e. the Kunarac case is taken to be the crime of Serbian forces as a crime against humanity, torture and human enslavement.

Kunarac was the one holding the highest military command in Foca (an area in the state) unit. In the area the sexual abuse began with entering of Serbian soldiers. They captured women and girls and used to transfer them to places where usually they were raped and many of these commanders visited these places. These locations were terribly unhygienic and women were gang raped.¹⁹⁵ In Foca, in the Partizian Sports Hall, these heinous crimes of abusing women were done in broad daylight. Near these places, was the police station, in some cases they guarded the women, while in other they also forced and raped them. Hence, Dragoljub Kunarac was found guilty of crimes against humanity (torture, rape, enslavement), and war crimes (torture and rape) and, subsequently, sentenced to 28 years of imprisonment. Radomir Kovač was also found guilty of the war crimes of rape and outrages upon personal dignity, as well as the crimes against humanity of enslavement and rape. He was sentenced to 20 years of imprisonment. Zoran Vuković was found guilty of torture and rape as both war

¹⁹⁴ The Hague, “Celebici case”, [Online: web], Accessed 20 Mar., URL: <http://www.icty.org/en/press/celebici-case-judgement-trial-chamber-zejnil-delalic-acquitted-zdravko-mucic-sentenced-7-years>

¹⁹⁵ Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia* Themes 1-3, Minneapolis: The University of Minnesota Press, 1996.

crimes and crimes against humanity. Trial Chamber II sentenced him to 12 years of imprisonment. This is admitted in the International Criminal Database.

The Serbs General, Ratko Mladić, who provoked such shameful cleansing in several areas, was punished under ICTY. He was sentenced for life imprisonment. But what haunts others is that many who were involved are free and not punished. Does punishing a commander justify the whole? ¹⁹⁶

A case of Genocide:

In early 1990s, many feminists disagreed over the acknowledgement, meaning, extent and even naming rapes at the time of war. The most serious issue was whether rape at wartime should be considered as genocidal rape. Those who defended genocidal rape were argued on the basis of normal everyday wartime rape that rape even in larger number was nothing new in the times of war. The resolve and the difference between the two feminists' camps included varieties of decisions; one who viewed rape as genocide and other who insisted that the international criminal system should respond equally to rapes committed on all sides.

The primary issue that split feminists was that the rapes of Bosnia Muslim women in the war should be treated differently to that of Serbian women raped in the war or with the rape that happen in all war or with the rape that happens every day.¹⁹⁷

¹⁹⁶ Prosecutor v. Karadzic & Mladic Amended indictment, Volume no. It-95-5/18, ICTY, (oct. 11, 2002)

¹⁹⁷ Engle, Karen (Oct., 2005), "*Feminism and Its contents: Criminalizing Wartime Rape in Bosnia and Herzegovina*", Cambridge University Press *The American Journal of International Law*, Vol. 99 2005.

Catharine MacKinnon falls within the former category, she believed that Bosnia Muslim was tortured systematically, argued that rape in the Balkans by Serbs was ‘genocidal’¹⁹⁸. Mackinnon understood the root cause of rape and also distinctly knew that it was a part of male dominance in the system.¹⁹⁹

Mackinnon believed rape caused genocide where as those who refused to believe that according to Mackinnon were cover-ups.²⁰⁰ She believed that these cover-ups are useful for the perpetrators and are against the atrocities of the victims which are clearly evident from the series of events, testimonies and reports. The main function of these cover-ups was to exonerate the rapists and further keep the feminists away from intervention.²⁰¹

Rhonda Copelan, believed in the other camp, argued that, “to emphasize the unparalleled, the horror of genocidal rape is factually dubious and risks rendering rape invisible once again.” And Copelan also said, “Women are targets not simply because they belong to the enemy.....they are targets because they are too the enemy.”²⁰² It is also argued that ethnic cleansing differs from genocide in that its primary goal is the expulsion of a group of people from a geographical area and not the actual physical destruction of that group, even though the same methods including murder, rape, torture and forcible displacement may be used.²⁰³

¹⁹⁸ Copelan, Rhonda (Jan 1994), “Surfacing Gender: Reconceptualizing Crimes Against Women In Time Of War”, 1994.

¹⁹⁹ Catharine A. MacKinnon. (1983), “Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence”, *The University of Chicago Press journals*, Vol. 8 No. 4.

²⁰⁰ Ibid

²⁰¹ Catharine A. MacKinnon. (1983), “Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence”, *The University of Chicago Press journals*, Vol. 8 No. 4.

²⁰² Copelan, Rhonda (Jan 1994), “Surfacing Gender: Reconceptualizing Crimes Against Women In Time Of War”, 1994.

²⁰³ History (2019), “Bosnian Genocide”, [Online: web] Accessed on 5 March, URL: <https://www.history.com/topics/1990s/bosnian-genocide>

On the contrary, Mackinnon never suggested that rapist of Serbian women should not be prosecuted. She wanted to bring into attention of the systematic genocide against Bosnia muslim which always led to crime related to the Serb forces. Whereas, Copelan insisted that rape can happen in any war and thus criticizing genocidal rape is not to be confused with ethnicity and war.²⁰⁴ She believed that rape should be recognized as crime against humanity. The recognition of harm should be based on gender not ethnicity.

This disagreement led to partition of the Yugoslavia as nationalists and anti-nationalist. One who supported the women disastrous condition was pronounced as anti-nationalist. Mackinnon in patriot branch published a letter which mentioned the position of the rape as genocide camp. A letter published in 1993 from the 'patriotic branch' in Croatia, in which MacKinnon articulates the position of the rape as genocide, she explains,

“Mass rapes under orders of the Serbian-occupied territories of Bosnia-Herzegovina and Croatia are part of a Serbian policy of genocide against non-Serbs. That means that non-Serbian women most prominently Muslims and Croatians are not only tortured by rape as are all women, but are being raped as a part of a Serbian policy of "ethnic cleansing" on the basis of their sex and ethnicity both; most of these rapes end in murder. And this is not happening to all women.”²⁰⁵

²⁰⁴ Ibid

²⁰⁵ Committee on the Elimination of Discrimination against women (1994), “*Concluding comments of the Committee on the Elimination of Discrimination against Women: Bosnia and Herzegovina*”, Special report, CEDAW.

With the end of war, the end of conflicts of women did come along. Around fifty thousand women were raped at the time of war. The civil societies are taking steps to resolve the trauma of sexual violence in Bosnia-Herzegovina. The rape survivors still are terrified and physiologically disturbed by the incidents in Bosnia-Herzegovina. In 2012, UK foreign Secretary, William Hague started an initiative to spread awareness of preventing sexual violence in conflicts.²⁰⁶ Many women were too afraid to come forward and seek professional support, forcing themselves to endure the effects of the crimes perpetrated against them alone. However, there was little help from the conventions to the survivors had been done to publicly identifying themselves as victims or survivors of sexual violence because it carried high social stigma which lead to isolation and abandonment by the family including economic and social restrictions. Nonetheless, some are still reluctant to come out and share their experience. Thus, to ensure the task of creating awareness British Embassy in Sarajevo, the Organisation for Security and Co-operation in Europe Mission (OSCE) to Bosnia-Herzegovina, the post-conflict research centre, the Peace Support Operations Training Centre, Medica Zenica, the Balkan Investigative Reporting Network and others awareness program was planned.²⁰⁷ It was held in London in the month of June, 2014. The summit focused on to end the conflicts of sexual violence and trauma the survivors without them being coming into public. This sort of campaign supported survivors effectively. The documentation and investigation was recorded internationally over the range of two years to end

²⁰⁶ Foreign & Commonwealth Office, “Foreign Secretary announces UK initiative on preventing sexual violence in conflict”, [Online: web], Accessed 19 Feb, 2019 URL: <https://www.gov.uk/government/news/foreign-secretary-announces-uk-initiative-on-preventing-sexual-violence-in-conflict>

²⁰⁷Peace Insight (November 2014), “Overcoming the stigma of sexual violence in Bosnia-Herzegovina”, [Online: web], Accessed 5 Jan, 2019 URL: <https://www.peaceinsight.org/blog/2014/11/overcoming-stigma-silence-sexual-violence-bosniz-herzegovina/>

sexual violence and to take essential steps towards achieving the peaceful state of mind of the victims after the xenophobia. Other protocols aimed to strengthen the prosecution of sexual violence in conflicts, thus increasing the prospects of successful convictions.

North-Atlantic Treaty Organization's (NATO) Role:

Though even after formation of NATO, it had little success in maintaining the clashes of these ethnic groups. The terms of the Dayton Peace Accord were largely ignored by Bosnian Serbs. NATO proved to be a largely ineffective peacekeeping force. But with help of OHR latter, they got control over the instability progressively. NATO was effective in Bosnia operation but did not deal properly with civil side because US had different strategic stand. Very little co-ordination was visible between NATO and OHR. As a result of which the conflict between internal agencies remained unsolved that prolonged to military presence. However, OHR proved to be an important institution in taking prominent economic decisions. Nonetheless, the Bosnian government resisted the privatisation for political and personal reasons. After Dayton Accord, the economic growth rapidly increased until 2002.

Conclusion or Observation

In my dissertation, I have worked towards gathering all the aspects of sexual violence and understanding its nature in all dimensions. The thesis covers the premature role of international community to even consider women and children as the most vulnerable community and then going on and creating agencies, documenting reports, framing major policies for the prevention of sexual violence in armed conflict regions. The increasing pressure of NGOs had brought the issue of sexual violence to the fore front. They have asserted and emphasised the issue of sexual violence in armed conflicts in order to bring it to the notice of international community. Earlier, Sexual violence was considered a private matter of women and was not given prominence.

The dissertation started with the first chapter i.e. introduction to the concept of sexual violence in armed conflict. The theme of the study is introduced, along with the significance, relevance, research objectives and a clear picture of what chapters are going to be discussed is brought to the notice.

The dissertation dealt with the definition part in the second chapter, the evolution in the framing of the definition of sexual violence. Definitions by major conventions and agencies such as Geneva Convention, Additional Protocol I and II, International Committee of the Red Cross (ICRC), International Criminal Tribunal of former Yugoslavia (ICTY), International Criminal Tribunal of Rwanda (ICTR) and by International Criminal Court (ICC) have been analysed. The study discussed both inter-state conflicts and intra- state conflicts and the types of actors involved in armed conflicts. The study also analysed the difference between rape as the strategy of war or as an opportunity and sexual violence as

the practice. The horror of Second World War and its experience of the sexual violence is briefly discussed. The work also discussed sexual violence as the war crime; crime against humanity and an act of genocide, mainly what are the preconditions of genocide, the debate surrounding genocide and other related and relevant issues.

In the third chapter, the emphasis is given on how and why women have been used as a weapon of war, the objectification issue and how gender inequality persistent in the society plays an active role. The organized groups take advantage of women and make them their prey. The work also provided an elaborate discussion on the major agencies playing active role in making laws regarding sexual violence in war time. The study examined the legal framework of laws, its evolution starting from the Lieber Code of 1863 till date. The features and role of Geneva Conventions and the developmental aspects in the framing of law is elaborated in the study. The three major landmark judgements i.e. Akayesu case, Furundzija case and Kunarac case in shaping the law of sexual violence in armed conflict is elaborated. The chief component of international community's dilemma, as to who to blame for the conduct of sexual violence in armed conflicts zone- either commander or combatants- is also discussed briefly.

The fourth chapter provided an elaborate account of United Nations response to the issue of sexual violence in wartime. The work started with its first step towards recognizing the role of sexual violence in 1969 with the Commission on the status of women. The responsibilities of International agencies in recent times are even greater than earlier, chiefly creating public awareness regarding the issue, guarding the witness against any threat, providing economic assistance to victims so that they become self- sufficient, encouraging local collaborators as the mediator between laws and victims and so on. The dissertation has discussed

many policies and conventions it has undertaken for the prevention on sexual violence. The role of UN in 1990s in recognizing women as the vulnerable community and in creating ICTY, ICTR which proved milestones in the framework of laws regarding the issue is laudable and my work tried to cover these aspects. The study discussed the Vienna convention (1993), Beijing platform for action (1998) and many other initiatives, taken under UN. The dissertation concluded the chapter with a discussion on the challenges UN faces in creating substantial difference for women.

The Fifth chapter is the case study on the sexual violence in armed conflict in East Pakistan's war of liberation, 1971. Firstly, the study approached the backward societal setting under which sexual violence was used extensively by West Pakistan. The study elaborated the backdrop of war i.e. the grievances, discrimination, ethno-linguistic differences etc which led to the war. Substantial part of the chapter is devoted to the historical background of nine months in which sexual violence was used extensively; the repressive measures of the West Pakistan government; the massacre in Dhaka University; sexual violence as a tool; the casualty; the dilemma of statistics; the testimonies; rehabilitation program adopted by the Bangladesh government after independence; the importance of the title 'birangona', and whether the 1971 case should be considered a case of genocide used for the first time is deplored.

The sixth chapter is the case study on Bosnia and Herzegovina. The backdrop of war is discussed in details. What causes led to an armed conflict within the state is explored. The ethnic composition of communities in the state and the differences due to ethnicity between the communities as the major reason behind clash is scrutinised. All in all, the international response to the conflict is studied in detail, the figure and statistics of victims of sexual violence is taken into account. The

reported rape in detention camps is also briefly discussed. Finally, major cases and judgements led to an advancement of laws related to sexual violence is mentioned. All things considered, whether the systematic violence against women should be considered an act of genocide or not is debated. These are few of the points discussed briefly. It is then followed by conclusion of the dissertation.

Undoubtedly, women had been used as the weapon of war. In most cases, their bodies are the battlefield. They face double victimization and torture, generally because of violence and particularly because they are women. The idea is to destroy the very fabric of society because women lie at the centre of society. When sexual purity is given an exceptional attention, women are tended to be objectified and rape and torture become the real scenario. The sexual violence takes place to destroy the community spirit by humiliating women and to ensure that they cannot go back to community because their sexual purity is violated lost. It devastates the state as a whole.

There is division of scholars on the issue of genocide specially in the case of Bangladesh war of liberation of 1971 and Bosnia and Herzegovina in 1993. In the absence of any credible data, the accusation of Bangladeshi government that genocide had taken place, created serious debate among the academicians and law makers. On one hand, Pakistani government denied mass rape and instead put allegations on the people of East Pakistan. Pakistan accused East Pakistan of misleading allegations and garnering sympathy from the international community. However, as per the usual data cited in reports (by UN as well) one can't deny that the mass rape and killing had been the reality, whether it fits within the ICC defined norms related to genocide or not, is still a controversial aspect.

In the Second World War, after seen everything, it did not occur to international communities to give prominent attention to the aspect of sexual violence in armed conflict. It took so long for international communities to realize that the issue of sexual violence is of a top priority, is a failure on the part of international community. This aspect of war was never taken into serious consideration else the genocide committed in 1971, War of Liberation would not have occurred. The horror of Second World War did not invoke people's conscience even when the world was fed up with routine violence. The idea of congenial- humanitarian assistance was not conceded by better action towards the future. Immediately after the end of massive violence when the peace was gaining restoration process, sexual violence was not identified as the grave area deserving international concern, although it was crystal clear that women had suffered a lot as a tool or method of warfare.

What has already been observed was that culture and ethnicity play key role in creating divergence between groups within the nation states. Hence, this often leads to hatred towards each other culminating in sexual violence to prove the superior position over the other, to fulfill their demands and so on. However, one cannot explain why after the ethnic differences between LTTE and Srilanka origin people, the organization still did not use sexual violence as a weapon of war in the ongoing fight. This could be the result of high ethical indoctrination of the superiors and military personnel. The Tamil Tigers had engaged in other forms of violence against civilians but rarely rape them, whereas simultaneously, use of sexual violence in armed conflict was rampant in Former Yugoslavia and Rwanda.

Recently in the case of Rohingya crisis, when the Rohingya people fled from their habitat in order to find a safe haven no country was willing to accept them, they

were moving from one country to another in boats with the hope of getting accepted and even when some countries did accept them, they always suffered from sexual violence in the regional set up.

India is not disparate from other countries. It is alleged that India conducted sexual violence in its most sensitive region i.e. Jammu and Kashmir, soon after its accession with India. The region has faced with many problems religion is the most sensitive of all. The Indian state of Jammu and Kashmir has always been a site of conflict because of historical tensions and religion setbacks. The conflict is between India's security forces and Muslim insurgents who demand independence from India or accession to Pakistan.

On the basis of allegations put by many NGOs such as Asia Watch and Physician for Human Rights, Central government has taken repressive measures towards the civilians, on many occasions, by attacking on the militant civilians or militant sympathizers. Reportedly, custodial violence and meddling of civilians in attacks, shows deliberate attempt by Indian government to harm the innocent civilians in Kashmir. However, nothing is yet proved. The organizations which have noticed the human rights violations in Kashmir were Asia Watch and Physician for Human Rights. Along with other crimes women had been reported to be raped by Indian armed forces. It is alleged that most of the rape had taken place during search operations. However, nothing has been proven so far. Women were reported to be taken into custody for very minor crimes and then they were detained as hostages all the while. Indian government is accused of using rape in Kashmir systematically in order to punish and intimidate the people of Kashmir.

India has ratified the Geneva Convention of 1949 and IV Geneva convention in which the common Article 3 of the Geneva Convention. Rape is clearly

prohibited by common article 3 of Geneva. Article 3 of the Geneva Conventions does not explicitly mention rape or other forms of sexual violence, it prohibits “violence to life and person” including cruel treatment and torture and “outrages upon personal dignity.”²⁰⁸

Sexual violence in armed conflict today has become one of the priority areas of international community. Women issues have started getting its due attention, feminists demand that women issues should be addressed by women representatives for actionable results. However, there are some areas which is still need to be addressed. One of the areas is the consistent degrading attitude of the society towards the rape survivors who chose to express pain and sufferings. The parochial aspect of society must get over with. Today the need to create public awareness is higher than any other era. The society must achieve gender equality in its entirety. The efforts must be made towards this direction; local leaders can be better able to do this job. Simultaneously, we must not forget that the real issue is to prevent sexual violence in armed conflict and not to create congenial environment for the purpose of sexual violence. However, the plight of women who have suffered a lot should be encouraged to come forward and not to feel ashamed for being rape survivors.

One must take note that domestic jurisdiction is highly significant in creating substantial differences for prevention of sexual violence in armed conflict. If only universal applicability of Geneva Convention was regulated strictly, less people would have died in the 1971 war of liberation and thereafter in Bosnian armed conflict. The domestic cooperation is important for the attainment of absolute prevention and protection of women in sexual violence.

²⁰⁸ International Committee of the Red Cross, *Rule 93, Rape and other forms of Sexual Violence*, IHL Database, Volume 2 Chapter 32.

On 10th of December 2018, Dr. Denis Mukwege along with the Yazidi activist, Nazidi Murad, received the Noble Peace Prize for their extraordinary work of uplifting war victims in East Congo and provided medical care to them. Congo as we all know is the battlefield since many years, the civil war never seems to stop. However, even in the threatening situation Dr. Mukwege was determined in his efforts to prevent the use of sexual violence as a weapon of war in armed conflict. We can say it is due to his effort the issue of sexual violence in armed conflict has received tremendous weightage and recognized as one of the significant issues to be dealt by international community immediately.

Dr. Mukwege's contribution to the working for war victims is hugely significant; he founded Panzi Hospital in 1999 in Eastern Congo. Despite the threats from the armed groups, he continued working at the hospital. He worked in areas of Congo which were most affected by sexual violence. He has provided medical care and surgery to thousands of survivors in Democratic Republic of Congo (DRC). The campaign of sexual violence in armed conflict is strengthened even more after the recognition of Mukwege's and Murad's effort towards the issue.

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