

**RAPE: THE LESSER KNOWN CASUALTIES OF WAR**

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**INDEX**

**ABSTRACT ..... 3**

**INTRODUCTION..... 4**

**HISTORY OF WAR RAPE ..... 5**

**RECOGNITION AND APPLICATION ..... 7**

**THE ILLEGITIMATE USE OF THE SUPERPOWER STATUS ..... 12**

**CONCLUSION ..... 14**

**ABSTRACT:**

During war, there is one community that is always affected, and that is the common man. The locals residing in such war ridden areas are the centre of almost every human rights crime, and this cannot be changed. One of the most hateful impacts of war would be rape. A brutal psychological (and physical) torture which breaks (down) not just the victim, but those related to the victim also. Subjected to immense mental pressure, the trauma would haunt them forever such that it cannot escape even a pugilist. However, the wars were fought since centuries but the recognition and justice was reviewed and recognized in such contemporary times, with the society evolving towards the notion of not just justice, but rightful justice, which would intend to bring back the dignity and life of such a person who has been scarred so deeply. This paper, will specifically deal with rape as a war crime, and analyze contemporary issues regarding the same.

## **INTRODUCTION:**

Justice Richard Goldstone, the Chief Prosecutor at the International Criminal Tribunal for the former Yugoslavia stated that, “*Rape has never been the concern of the International Community.*”<sup>1</sup> And with this, the International Criminal Tribunal for Rwanda (ICTR, 1994) declared rape to be a crime against humanity which later led to the conviction of the first accused person in 1998 by the ICTR the tribunal found him guilty.<sup>2</sup>

Rape is the most dreadfully silent crime perpetrated by a regime in the most barbaric way that relies on deep-rooted taboos of a barbaric society and on the silence of the victims, convinced that they will be rejected by their own society. The United Nations investigators and NGOs, have on several counts stated that they were not able to get correct statistics on the widespread account of systematic rape on the account of the silence of these victims.<sup>3</sup> Reviewing these acts and divulging all the relevant information, one assumption can be safely given, that no one is safe, and the thought of such heinous crimes simply means that no act is impossible.

This article would henceforth impress upon the reader the innumerable counts of rape, and related crimes against humanity which were suppressed, and later disposed without anything more than a thought given to this act. These acts are the lesser known casualties of war.

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<sup>1</sup>June 1996 report in New York Times by Marlise Simons- For first time, Court defines Rape as War Crime.

<sup>2</sup>The Prosecutor against Jean Paul Akayesu (ICTR-96-13)

<sup>3</sup>Cojean, A., ‘*Syria’s Silent War Crime: Systematic Mass Rape*’, Worldcrunch, 11<sup>th</sup> March 2014, available at <http://www.worldcrunch.com/syria-crisis/syria-039-s-silent-war-crime-systematic-mass-rape/human-rights-prison-torture-assad-free-syrian-army/c13s15245/#.UyaPsfmSyDs>

## **HISTORY OF WAR RAPE:**

The Explanatory note in the Rome Statute, which officially binds the International Criminal Court, defines rape as follows:

*‘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.’<sup>4</sup>*

Ancient Greeks considered rape of women (during times of war) ‘a socially acceptable behaviour well within the rules of warfare’ and warriors considered the conquered women ‘legitimate booty, useful as wives, concubines, slave labour or battle-trophy’. Such was the condition keeping in tune with the conditions, the development and the education in those periods. The more one knows how safe a crime is, the more it is implemented it to its fullest extent.

Rape as a crime has always been recognized in international customary laws. Such recognition was first provided in the Lieber Code (1863) which was the first codification of the international customary laws that emphasised on laws which would punish rape as an act with its objective being protection of the state and all entities in the state.<sup>5</sup>The Lieber Code, which is also known as the Instructions for the Government of Armies of the United States in the Field or Lieber Instructions, was signed by Abraham Lincoln during the American Civil War that specified how soldiers should conduct themselves during wartime. This code was used extensively during the America-Philippine war, but later became a defence for actions against the native population.

In the early 20<sup>th</sup> century, punishment and justice was given to the guilty and the victims respectively simply because of the existence of the laws of war in the Lieber Code and the Hague Convention which asserted that the ‘family honour and rights must be respected’. Next, came the most drastic times in the world history- the world wars. The rise of Nazi Germany and Hitler’s assertion of the extermination of the Jews and the rise of the Aryan Germans lead to the extermination of approximately 6 million Jews, and millions of other soldiers, and civil population. The Nazi Army would often capture the prisoners of war (POW) and repeatedly rape them. One particular account was given by one of the most noted

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<sup>4</sup>Elements of Crimes, International Criminal Court

<sup>5</sup>War Crimes against Women: Prosecution in International War Crimes Tribunals by Kelly Dawn Askin (1997)

writers to tell his tale about his capture and subsequent torture in the Auschwitz and Buchenwald extermination camps, in his book, Night trilogy, Elie Weisel writes that after his battle with life and death, when he was liberated by the Red Army (Soviet Army) he later chose to live in France, and there he met a woman. A woman who was so carried away with the act of prostitution that she tried everything to cover up the rest of her life forgetting the past. She says to Elie,” Did you ever sleep with a twelve year old girl?”

Bemused and speechless Elie understood that she was one of the victims, and she was abused, and was battling with the moral dilemmas of life when an SS Officer of the Gestapo chose this then twelve year old girl over the bunch of other women to satisfy his needs and also of his fellow officers.

But this is just one particular story, one story among thousands of others who are trying to build their lives after such a horrific past, being a pugilist.

After the war, came the birth of the fourth Geneva Convention in 1949 in which Article 27 explicitly prohibited wartime rape and enforced prostitution. This still could not make any difference, since an estimation of 500,000 women were reportedly raped during the 1994 Rwandan Genocide.<sup>6</sup> UN agencies also estimated rape counts for other civil wars such as, more than 60,000 women raped during the civil war in Sierra Leone (1991-2002), more than 40,000 in Liberia (1989-2003), around 60,000 in the former Yugoslavia (1992-1995), and at least 200,000 in the state of Democratic Republic of Congo since 1998.<sup>7</sup>

Judge Navanathen Pillay, who is now the United Nations High Commissioner for Human Rights made a statement after the verdict of the trial of Jean-Paul Akayesu, the mayor of Taba Community in Rwanda,

*“From time immemorial, rape has been regarded as spoils of war. Now it will be considered a war crime. We want to send out a strong message that rape is no longer a trophy of war.”*

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<sup>6</sup>Violence Against Women: Worldwide Statistics

<sup>7</sup>[www.un.org/en/preventgenocide/rwanda/about/bgsexualviolence.shtml](http://www.un.org/en/preventgenocide/rwanda/about/bgsexualviolence.shtml)

## **RECOGNITION AND APPLICATION:**

The application of these laws, laid down articles in the International law and conventions started with the birth of ICTY (International Criminal Tribunal for former Yugoslavia) and ICTR (International Criminal Tribunal for Rwanda).

### **ICTY:**

The Yugoslav wars were ethnic conflicts fought between 1991 to 1999 on the territory of former Yugoslavia which eventually lead to the break-up of Yugoslavia into different states. All these conflicts were separate, however they were inter-related to each other in form of region, war in Slovenia (1991), Croatian War of Independence (1991-1995), Bosnian War (1992-1995), and Kosovo War (1998-1999).

Out of all these wars the Bosnian War is said to be the bloodiest of them all, resulting in deaths of millions and crimes against humanity committed across the war torn regions of Bosnia, Serbia and Croatia. One of the main features of the Bosnian conflict was the highly organised and systemic rape of Bosnian Muslim women by the Bosnian Serb Army. It has been estimated that in 1993 approximately 20,000 Bosnian Muslim women were raped by Bosnian Serb army in what was known as rape camps.<sup>8</sup> The rape of women was used as *a weapon of war*<sup>9</sup> and as a deliberate military strategy to spread terror, destabilizes the civilian population and reward the soldiers.<sup>10</sup> It was a tool of ethnic cleansing where sexual violence against women, in particular Muslim women, was used to humiliate their ethnic group.<sup>11</sup> The International Criminal Tribunal for former Yugoslavia was henceforth created to indict such persons guilty of crimes against humanity and the first case which convicted a person for the offence of rape under crimes against humanity would be Dragoljub Kunarac in the case of The Prosecutor of the Tribunal against *DragoljubKunarac* and *RadomirKovac* in 1999 before the ICTY.<sup>12</sup>

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<sup>8</sup> Thoman D., & Ralph R., "Rape in War: The case of Bosnia", in Ramet, above and 18, 203, 204. See also, the European Community Investigative Mission into the treatment of Muslim women in the former Yugoslavia: Report to European Community Foreign Ministers, UN Doc S/25240, annex I, 3<sup>rd</sup> February 1993.

<sup>9</sup> Copelon R., "Surfacing Gender: Reconceptualizing Crimes against women in time of War" in Lois Ann Lorentzen and Jennifer Turpin (eds), *The Women and War Reader*, (New York University Press, 1999) 64

<sup>10</sup> *Ibid.*,

<sup>11</sup> *Ibid.*, Turpin, "Many face: Women confronting War" 1, 5.

<sup>12</sup> IT-96-26-P3

In this particular case, the Serbian forces supported by heavy weaponry invaded the city and took over it eventually gathering all the Muslim and Croat inhabitants into prison facilities where they were subjected to torture and other forms of crimes against humanity. The women were kept in a place called the Partizan where the Serb army soldiers entered in groups of 3 or 4 and took women with them for sexual assault and rape. The commander of the Army of the Serbs then was Kunarac and he was fully aware of the acts by his soldiers and himself was included in many acts such as these. Kovac was the second in command and equally was aware of the actions. Hence, Kunarac was found guilty of crimes against humanity and mostly importantly mass rape of women under Article 7(1) and Article 7(3) of the Statute of the International Criminal Tribunal of former Yugoslavia.

The Statute of ICTY includes rape as under crimes against humanity under Article 5 which states:

*‘The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population.’<sup>13</sup>*

*(g) Rape’*

Article 7 provides for Individual Criminal Responsibility where clause 3 states:

*‘(3) The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.’<sup>14</sup>*

Due to this regulation, rape would be now accounted for in the crimes against humanity and swift justice would be provided to the rape victims who had been subjected to torture through the years. Interestingly, since the ICTY was set up in 1993, the first indictment for rape came only in 1999 in the Kunarac case.

There are several cases in the Court which are the main markers of the Tribunal’s progress including the indictment in the Tadic case, where another accused, Drazen Erdemovic had

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<sup>13</sup> The Statute of International Criminal Tribunal for the former Yugoslavia (Resolution 808, 1993)

<sup>14</sup> *Ibid.*, at 12

been sentenced by the Tribunal, the cases of Celebici and Blaskic had started and finished within a year in 1995-96. In these cases, there were indictments against several persons alleging numerous violations of customary and statutory laws and for crimes against humanity such as torture, extermination, enslavement but not rape. Even though rape was rampant in all the areas since the commencement of the war.

This was because of the reason that the rape statistics were difficult to gather. The rape victims were either dead or faced such psychological and mental trauma that they would not speak of the incident. However, the scenario changed in the Kunarac case here the ICTY Appeals Chamber held that;

*'While proof that the attack was directed against a civilian population and proof that it was widespread or systematic were legal elements of the crime, it was not necessary to show that they were the result of the existence of a policy or plan. The existence of a policy or plan could be evidentially relevant, but it was not a legal element of the crime.'*<sup>15</sup>

### **ICTR:**

The Rwandan genocide witnessed mass rapes and sexual violations throughout the country for years.<sup>16</sup> Every part of the Rwandan environment was a location for rape, often multiple gang-rapes.<sup>17</sup> Women were not just raped behind closed doors; they were raped in every area in the country possible, from the streets to cultivated plots and government buildings and offices.<sup>18</sup> The objective of the war which basically was a communal divide among the people fuelled them to do such acts and, as the Media trial judgement noted in convicting three media executives for publicly inciting to genocide lead to the attack on the Tutsi women completely foreseeable.<sup>19</sup>

Shortly after the genocide, the United Nations set up the International Criminal Tribunal of Rwanda to hold accountable those with the greatest responsibility for the atrocities that took place during the Rwandan genocide.<sup>20</sup> The task of the ICTR is to provide justice to those who

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<sup>15</sup>IT-96-23&23/1, 2002, para. 98

<sup>16</sup>Nowrojee B., "Your Justice is too Slow" Will the ICTR Fail Rwanda's Rape Victims?, United Nations Research Institute for Social Development, 2005

<sup>17</sup> Ibid., at 15

<sup>18</sup> Ibid., at 16

<sup>19</sup> Ibid., at 17

<sup>20</sup> Ibid., at 18

seek due to such inhuman acts and violation by the guilty. However, the rate of progress has been disappointing and tensions with Rwanda have surfaced from time to time.<sup>21</sup>

The statistics of rape convictions in the ICTR are abysmal since there were no rape charges brought by the government in 3/4<sup>th</sup> of the 21 judgements given in the Tribunal. In that the 30 percent that included rape charges, only 10 percent were found guilty. 20 percent were acquitted due to lack of evidence submitted before the court which was beyond reasonable doubt.<sup>22</sup> In real numbers, this means that, at the tenth anniversary of the genocide, only two defendants have been held to be responsible for the role of mass rapes and genocide of thousands of people.

The first case out of the two is important, the case of *The Prosecutor against Jean Paul Akayesu*<sup>23</sup> where the accused was found guilty of 3 out of 15 charges which also included rape and other crimes against humanity under Article 3 and Article 6 of the Statute of the International Criminal Tribunal for Rwanda which is similar to that of the Statute of ICTY. In this case, for the first time an international tribunal was called upon to interpret the definition of genocide in the Genocide Convention, 1948 and to define the crime of rape in international law.<sup>24</sup> The requirement of ‘widespread or systematic’ was examined in Akayesu, where the Trial Chamber declared that the concept of widespread could be defined as ‘massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims’,<sup>25</sup> while ‘systematic’ could be defined as ‘thoroughly organized and following a regular pattern on the basis of a common policy involving substantial public or private resources.’<sup>26</sup>

The most recent judgement is the *Prosecutor v. Pauline Nyiramashuhuko* in 2011, where the accused, a Rwandan politician was a Minister for Family welfare and the Advancement of Women was found guilty of inciting troops and militaries to rape women. She was the first woman to be brought to trial to the ICTR and first woman to be convicted for incitement to rape.

<sup>21</sup> As of May, twenty-seven judgements, involving thirty-three accused, has been rendered; see ICTR Annual Report 2007, A/62/284 – S/007/502

<sup>22</sup> Musema, Alfred (ICTR-96-13): Life sentence for rape (2000), overturned on appeal and acquitted of rape (2001), Niyitegeka, Eliezar (ICTR-96-14): acquitted by prosecution; and Kamuhanda, Jean de Dieu (ICTR-99-54): acquitted of rape (2004), acquitted of rape (2004), rape acquitted not appealed by Prosecution.

<sup>23</sup> (ICTR-96-13)

<sup>24</sup> Shaw, M., “International Law”, Cambridge, 6<sup>th</sup> Edition, 2008, pg. 409

<sup>25</sup> ICTR-96-4-T, 1998, para. 576

<sup>26</sup> *Ibid.*, at 577

Rwandan women express deep concerns that the ICTR is not prosecuting the crimes that occurred against them properly they have demanded justice, in the form of imprisonment for those who were responsible for the ethnic cleansing and the mass rape. This sentiment was summed up most articulately by one woman who lived on the outskirts of Kigali in housing co-operative set up to place and help rape victims contracted with HIV/AIDS. Her horrific incident of contracting HIV or even her plan about her children after her death did not make her cry. She broke down in tears once when she was asked whether there was justice delivered to her and the people affected around her. She said:

*‘For those of us on the road to death, this justice will be too slow. We will be dead and no one will know our story. Our families have been killed and our remaining children are too young to know. What happened to us will be buried with us. The people for whom this tribunal was set up for are facing extinction- we are dying. We will be dead before we see any justice.’<sup>27</sup>*

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<sup>27</sup> Supra at 12, pg. 18

## **THE ILLEGITIMATE USE OF THE SUPERPOWER STATUS:**

The most recent issue regarding rape in war crimes would be from the United States of America. The George W. Bush speech of whether 'you with us or against us' fuelled the Americans with anger and disgust and the relations between the Americans and the Muslim world resulted in a major rift filled with magnificent misunderstandings.

The United States invaded Iraq and Afghanistan with the reason to fight war on terror, and has since been on war with Afghanistan. The reason to invade Afghanistan was to remove all the insurgents, the Taliban and the Al- Qaeda which has resulted in countless, unestimated deaths. The United States has been accused of countless number of civilian deaths and rapes of women in Afghanistan and also in their own military troops. This has been unaccounted for simply because of two reasons- (a) The United States is currently the only superpower in the world and none can hence go against them, (b) The United States is not a member of the ICC since the country has signed but not ratified and hence the Statute which includes punishment for war crimes does not apply to the United States.

One of the few incidents which have occurred are in the war-torn Afghanistan, where the residents of a village in northern Afghanistan stated that the American troopers raped several women during a nighttime raid in a rural community. This incident took place in a village in the Chahar Bolak district of Afghanistan's Balkh Province where the US Forces carried several searches in every house against such directions. Despite this activity, the villagers said they had been threatened by the commander of the US forces with "consequences" in case of complaining about the issue. During the operation, the troopers separated the men and women of about 15 families and raped several women, the locals said. Since the beginning of the US-led invasion of Afghanistan in 2001, American soldiers have subjected the locals in the area to torture and acts which would conspicuously violate the basic human rights.<sup>28</sup>

In March 2006, 4 United States soldiers from an infantry Division abused and gang raped a 14 year old minor girl and murdered her including her entire family who also consisted of a 5 year old child. The complete incident was tried to cover up by another soldier and one of the killers was found guilty on May 07, 2009 in the US District Court of Paducah who is now awaiting his sentencing.

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<sup>28</sup> Duff, G., "*US forces rape women in Northern Afghanistan village: Locals*", Veterans Today, December 2012

A CBS news release of these photographs showing such heinous sexual abuse and torture of Iraqi POWs at the notorious Abu Gharaib prison raised a lot of questions in the minds of the people after seeing the incident; this was written by journalist Ernesto Cienfuegos in *La Voz de Aztlan* on May 2<sup>nd</sup>.

To add more to the development of this particular area of the casualties of war, on 24<sup>th</sup> June 2013, the United Nations Security Council unanimously adopted a resolution which provides for stopping all kinds of sexual violence and rape, where the laws were made more stringent with a more efficient regulation.

In this Resolution, the Security Council recognized the ‘Declaration on Preventing Sexual Violence in Conflict’ which was adopted by the G8 foreign ministers in London on 11<sup>th</sup> April 2013. When rape is used as a weapon in war, this unnecessarily exacerbates the time period of the conflict and causes more casualties which leads to loss in human life and rights. The Resolution further went on to note that sexual violence can constitute a crime against humanity or a constitutive act with respect to genocide.<sup>29</sup>

This would be one more step towards the development of rape, which in fact is still one of the lesser known casualties of war. But as optimists as humans always tend to be, we would always strive towards the perceivable future to make sure the women live in a society where they are not viewed as objects, and this is happening at a large extent, and would thus generate more convictions of this act and bring in justice. However, the most effective way to curb such a human right violation would be to prevent the same from its inception and to create awareness as it is meant to do, which would lead to more cautious approach. The creation of awareness is important because when war strikes in a country, the most affect people are the civilians, whether there are soldiers or not.

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<sup>29</sup>[www.rapeinwar.org/the-un-security-council-resolution-2106/](http://www.rapeinwar.org/the-un-security-council-resolution-2106/)

**CONCLUSION:**

Rape has been one of the highest levels of crime to be inflicted on a human, which takes away their dignity and the will to live. In such a situation, health care professionals have a unique role to play in the investigation and documentation of rape in war as well as in treatment of survivors. Collecting and presenting solid evidence will help hold perpetrators accountable, restore the rule of law, and limit future violations. Furthermore, increasing medical and social knowledge about rape in war will facilitate the development of strategies that foster the recovery of survivors of rape and their communities.

The Yugoslav wars and the Rwanda genocide were just two of the worldwide incidents however, that was the period during which rape as a crime was genuinely accepted and accounted for. This in turn provided swift justice to many of the victims who had been subdued and tortured. The American wars have led the world to think whether they are doing the right thing in eradicating what they term as 'terror'. But the role of being a superpower certainly comes into picture when such blatant war crimes are not punished.

This being a highly sensitive topic, to try to gain the trust of the victims subjected to such atrocities, there should be a separate council dealing with such issues under the International Committee of the Red Cross. The medical professional shall have the expertise to talk to the victims; the biggest help that this community can receive is simply by more truth, more statistics and the ability to work on them. Such acts cannot be made extinct completely but can be prevented to the utmost level and that should be the peace-keeping of the countries in order for a better future. The International Criminal Tribunal has slowly acceded to a bigger role in convicting all the guilty and this should remain consistently upwards. Rape should be known all around the world and such atrocities should be well accounted for and spreading the knowledge in all the four corners of the world. Every individual life should be counted and accounted for and valued.