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SEXUAL VIOLENCE IN ARMED CONFLICT: RAPE AS A TOOL OF TORTURE AND VIOLATION OF HUMAN RIGHTS

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Abstract:

This study critically examines the legal treatment of sexual violence, with a focus on rape, and its impact on victim's bodily integrity and agency. Despite being among the most severe forms of violence during wartime, rape often inadequately addressed within both mainstream human rights law and gender-specific legal framework. Feminist scholars argue that international human rights law, traditionally androcentric, marginalizes women's right, leading to a failure in recognizing gender-specific abuses as sexual violence as torture. This research explores the gaps in legal recognition and protection, particularly how the separation of institutional bodies-those addressing women's rights and those dealing with human rights violation- contributes to insufficient reporting and categorization of gender-based crimes. The study employs a doctrinal legal research methodology, analyzing primarily legal sources such as statutes, case law, and international treaties, alongside secondary sources including academic articles and feminist legal theory. A comparative legal analysis is also undertaken to assess how different jurisdiction address rape and its implications for human dignity and personal autonomy. The research further incorporates insights from critical legal studies to evaluate how legal frameworks represent and respond to rape as torture. Findings suggest that existing frameworks fall short in adequately protecting women from gender-specific violence, particularly in conflict situations. Therefore, the study argues for a more integrated and gender-sensitive approach within international human rights law to effectively address and prevent sexual violence like rape, ensuring that the dignity and autonomy of women are upheld.

Keywords:

Feminist Legal Theory, Human Rights, Rape, Torture

Introduction

The right to bodily integrity is a frequently mentioned fundamental human right, but it is frequently violated through practices like torture and sexual violence, especially targeting gender-based victims. Immanuel Kant, a German philosopher, secularized rights in the late 18th century, emphasizing human responsibility to respect others' dignity. He argued that all humans are rational and autonomous moral agents, regardless of sex, and should not be used as a means to others' ends (Jackson, 2000). Modern human rights law incorporates dignity into international documents, reaffirming fundamental human rights and equal rights for men, women, and nations. The United Nations Charter and the Universal Declaration of Human Rights affirm these rights, stating all individuals are born free and equal in dignity. The expression "respect for the inherent dignity of the human person" is found in several international legal instruments. For instance, Article 10 of the International Covenant on Civil and Political Rights states that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

Similar clauses can be found in the American Convention on Human Rights (1969) and the African Charter on Human and Peoples' Rights (1981). Human dignity and integrity are not specifically mentioned in the European Convention on Human Rights. Rather, the European Courts have refined these principles through case law, especially when it comes to how they have interpreted Articles 3 and 8, which have been used to uphold the right to integrity. Judge Tulkens, for example, noted in her dissenting opinion in **M.C. v. Bulgaria (2003)** that rape violates human integrity and the right to autonomy, stating that "Rape infringes not only the right to personal integrity (both physical and psychological) as guaranteed by Article 3, but also the right to autonomy as well" a component of the right to respect for private life as guaranteed by Article 8.

The phrase "dignity of the human person" is not defined explicitly, despite the fact that international conventions frequently mention human dignity. "Worth" is the translation of the Latin word "dignitas." Dignity is the quality by virtue of which human beings possess moral rights or moral standing (Beyleveld, 2001). Raz (2009) emphasizes how important it is to protect human dignity, arguing that doing so "entails treating humans as persons capable of planning and plotting their future. Consequently, upholding people's autonomy and right to decide their own fate is part of honoring their dignity" (Raz, 2009). The more general ideas of human dignity and personal freedom are strongly related to personal autonomy. Self-governance, or behaving in accordance with one's own desires and regulations, is what is meant by autonomy (Fastrich, 2007).

Humans are entitled to the autonomy over their own course in life as well as the ability to maintain their moral and physical integrity. According to Fabre, the philosophical concept of ownership is intimately related to the idea of bodily integrity (Fabre, 2006). All people do, nevertheless, have the right to be free from unauthorized physical interference. Such intrusions, which violate a person's psychological and physical integrity and are based in the idea of ownership of one's body, include torture and other severe bodily injury, including sexual abuse. Nonetheless, men frequently try to restrict women's autonomy when it comes to their sexual and reproductive lives under patriarchal societal structures, interpreting social standards in a way that serves their demands. Heterosexism typically supports men's sexual relationship initiating and controlling behaviors, including using contraception (Heise, 2018).

When we think of torture, the image that often comes to mind is that of a male detainee in a police cell subjected to electric shocks, repeated beatings, stress positions, mock executions, or similar practices. However, women can also be tortured in their homes, as well as in police or other official custody, and are regularly subjected to torture during conflicts as part of the strategies employed by belligerent parties. In this context, the violation of women's sexuality, such as rape—particularly when used as a weapon of war—is a manifestation of how masculine power and control over women's bodies are asserted.

Therefore, the purpose of this study is to investigate how international human rights legislation treats rape as grave forms of torture during times of war conflict. It also investigates how gender-specific mechanisms and mainstream human rights frameworks address and categorize these crimes, which disproportionately affect women. This study contributes to the Feminist Legal Theory by contending that sexual humiliation to women's bodies breaches their dignity and integrity as human being.

Conceptualization of Torture

The human right to personal integrity is commonly defined as the right not to be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. According to Edward Peters (1996), torture was condemned because it represented "the institutional antithesis of human rights, the supreme enemy of humanitarian jurisprudence and of liberalism, and the greatest threat to law and reason."

Torture encompasses a range of abuses, from verbal assaults to physical and psychological suffering or humiliation, all of which are inflicted intentionally upon the victim (Sloane, 2008). David Sussman argued that a person who is tortured is forced to surrender their autonomy by inflicting suffering on themselves (Sussman, 2005). Although the prohibition of torture is a *jus cogens* norm from which no derogation is allowed, torture continues to be used during war or armed conflict due to the lack of accountability of government authorities or private individuals acting on behalf of the government.

Defining Torture

The Declaration against Torture introduced the first international definition of torture. According to Article 1, torture is defined as:

"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for purposes such as obtaining information or a confession, punishing for an act committed or suspected, or intimidating the individual or others. It excludes pain or suffering that results solely from, or is inherent in, lawful sanctions in line with the Standard Minimum Rules for the Treatment of Prisoners."

Furthermore, Article 3 of the Declaration against Torture prohibits justifying torture or inhuman treatment under any exceptional circumstances, including political instability or public emergencies. The Torture Convention builds on the Declaration against Torture by providing a broader definition of torture. It describes torture as:

"Any act that intentionally inflicts severe physical or mental pain or suffering on a person, for purposes such as obtaining information, punishment for an act committed, intimidation, or for reasons based on discrimination, when inflicted by or with the consent or acquiescence of a

public official or someone acting in an official capacity. Lawful sanctions, however, are not considered torture (McDonald & Swaak-Goldman, 2000).”

The Convention introduces several modifications compared to the Declaration against Torture. For example:

The Declaration limits torture to acts by or instigated by public officials, while the Convention expands this to acts committed "with the consent or acquiescence" of a public official or someone acting in an official role. The European Commission of Human Rights (ECHR), in the **Greek Case (1969)**, noted that torture is an "aggravated form of inhuman treatment." This notion was echoed in the Declaration against Torture, but not in the Torture Convention, which only refers to "severe pain and suffering." The Rome Statute of the International Criminal Court defines torture as "the intentional infliction of severe pain or suffering, whether physical or mental, on a person under the control of the accused, excluding lawful sanctions.”

Elements of Torture

According to the International Criminal Tribunal for the Former Yugoslavia (ICTY), the key elements of torture are now generally accepted. These include:

Deliberate Infliction of Injury

The Torture Convention requires that acts of torture are committed for specific purposes, such as obtaining information, punishment, intimidation, or discrimination. Torture, under the Torture Convention, must be inflicted deliberately. Unintentional neglect by authorities does not qualify. Both the ICTY and the ECHR uphold the need for intent. The ECHR has also shifted the burden of proof onto the government, as seen in **Selmouni v. France (1999)**, where the court concluded that if a person in police custody is injured upon release, the state must explain the injuries. Similarly, the Inter-American Convention to Prevent and Punish Torture, as interpreted by the Inter-American Court of Human Rights (IACHR) in **Morales v. Guatemala (1998)**, examines the circumstances to infer intent, rather than relying solely on the perpetrator's true intent.

The Rome Statute, however, does not require a specific purpose for torture to qualify as a crime against humanity but emphasizes that the victim must be under the control of the perpetrator. The ICTY has consistently required this purposive element, especially in cases linking rape to torture, as seen in **Prosecutor v. Delalic (1998)**, where the purposes listed in the Torture Convention were considered representative. In the case of **Prosecutor v Furundzija (1998)**, the trial chamber upheld the list of purposes outlined in the Torture Convention, but further emphasized that "humiliating the victim" should also be considered among the possible purposes of torture. This conclusion was based on the overarching principle of international humanitarian law, which aims to protect human dignity.

In regional human rights protection, the European Court of Human Rights (ECHR) has consistently adhered to the Torture Convention's definition. In **The Greek Case (1969)**, the ECHR defined torture as inhuman treatment with a specific purpose, such as obtaining information, confessions, or inflicting punishment. In more recent cases like **Egmez v. Cyprus (2000)** and **Denizci v. Cyprus (2001)**, the ECHR concluded that, although officials subjected victims to varying degrees of intentional ill-treatment, the acts did not amount to torture as the

victims were unable to prove that the officers' intent was to extract a confession. Similarly, Article 2 of the Inter-American Convention also highlights the purposive element of torture. The purposive element has been particularly relevant in cases of rape. For example, in **Mejia v Peru (1996)**, the court determined that rape by a state official constitutes torture when its purpose is to punish or intimidate the victim.

Public Official as Actor

In order to establish an act of torture under the Torture Convention, it must be shown that the act was "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." Consequently, even severe abuses will not be classified as torture under the Torture Convention unless there is state involvement. This approach is based on the premise that when a private individual commits acts of torture without the involvement of state authorities, the domestic legal system traditionally handles the prosecution and punishment of the perpetrator (Burgers, 1988).

However, the Human Rights Committee has interpreted the protection offered by Article 7 of the International Covenant on Civil and Political Rights (ICCPR) more broadly, stating that it is not limited to acts committed or instigated by public officials. The Committee has emphasized that states are responsible for acts of torture committed by private parties when they fail to take effective measures to prevent or address such abuse. The UN Special Rapporteur on Torture has similarly affirmed that the state action requirement is satisfied when public officials are "unwilling to provide effective protection from ill-treatment," which includes ill-treatment carried out by non-state actors.

The Committee Against Torture (CAT) has highlighted numerous specific instances of torture experienced by women, particularly expressing concern over sexual violence and assault against female detainees and prisoners by law enforcement personnel. In 2008, the CAT indicated that, in cases involving non-state actors, its work was guided by the "due diligence" standard rather than the traditional analysis of the elements of torture.

In its General Comment No. 2, the CAT clarified that when state authorities, or others acting in an official capacity or under the color of law, are aware or have reasonable grounds to believe that acts of torture or ill-treatment are being perpetrated by non-state officials or private actors, and they fail to take appropriate measures to prevent, investigate, prosecute, and punish those responsible, the state bears responsibility under the Convention. In such cases, state officials may be considered as authors, accomplices, or otherwise responsible for consenting to or acquiescing in these impermissible acts. The Committee further noted that when a state fails to exercise due diligence in stopping, sanctioning, and providing remedies for victims of torture, it enables non-state actors to commit such acts with impunity, thus rendering the state's indifference or inaction a form of encouragement or de facto permission.

The European Court of Human Rights (ECHR) adopted this broader understanding of the state action requirement in **Z and Others v. United Kingdom (2002)**, where the court held the government accountable for inhuman and degrading treatment inflicted upon four children by their parents. The court ruled that, beyond the requirement of state involvement articulated in the Torture Convention, states must take measures to ensure that individuals within their jurisdiction are protected from torture or ill-treatment, even when the harm is inflicted by private individuals.

The Committee Against Torture, which monitors state compliance with the Torture Convention, has also somewhat relaxed the state action requirement, particularly in cases involving states with ineffective governments. In **Elmi v. Australia (1998)**, for example, a Somali citizen challenged Australia's decision to deport him to Somalia. The Committee, noting the lack of effective government or legitimate state actors in Somalia, held that severe ill-treatment by groups that had established "quasi-governmental institutions" and were exercising prerogatives comparable to those of legitimate governments constituted torture.

Under the Geneva Conventions, criminal responsibility for acts of torture and inhuman treatment is determined by the status of the perpetrator, and Article 11 of Additional Protocol I prohibits torture under all circumstances, whether committed by military personnel or civilians (Imseis, 2003). However, the Rome Statute of the International Criminal Court emphasizes the "[i]rrelevance of official capacity," stating that the statute applies "equally to all persons without any distinction based on official capacity."

In contrast, the International Criminal Tribunal for the Former Yugoslavia (ICTY) has shown some inconsistency regarding the requirement of state action in torture convictions. In **Prosecutor v. Delalić (1998)** and **Prosecutor v. Furundžija (1998)**, both the trial and appeals chambers required the involvement of a public official. However, in **Prosecutor v. Kunarac (2002)**, the Appeals Chamber held that the involvement of a public official is not a requirement under customary international law for establishing individual criminal responsibility for torture outside the framework of the Torture Convention.

Severe Pain

The concept of "severe pain or suffering" under the Convention Against Torture refers to the infliction of intense physical or mental distress on a person, excluding pain or suffering that arises naturally from lawful sanctions. The Convention itself is recognized as reflective of customary international law. Under this framework, physical torture may encompass acts causing pain or suffering that is less severe than "extreme pain or suffering" or "pain...equivalent in intensity to the pain associated with serious physical injury, such as organ failure, impairment of bodily function, or even death." However, the Convention does not explicitly define the term "severe."

Given this lack of clarity, international courts have broadly interpreted the term "severe" in the context of torture. It has been observed that determining the threshold for inhuman treatment qualifying as torture is "virtually impossible." Nevertheless, in **Prosecutor v. Brdanin (2004)**, the International Criminal Tribunal for the former Yugoslavia (ICTY) examined the level of suffering or pain required to meet the threshold of torture. The tribunal assessed not only objective factors such as the "nature, purpose, and consistency of the acts committed," but also subjective elements, including the victim's "physical or mental condition, the effect of the treatment, the victim's age, sex, state of health, and position of inferiority."

In the same case, the trial chamber emphasized that a permanent injury is not required to establish torture. Further, in another case, the ICTY considered the "specific social, cultural, and religious background of the victims," noting that suffering could be exacerbated by certain social and cultural conditions. It is important to recognize that purely mental torture also falls within the definition of torture. The threat of torture, in particular, can constitute psychological torture if it reaches the requisite level of severity.

Problem Statement

Sexual violence against women frequently takes many different forms, such as forced prostitution, forced pregnancy, forced rape, abduction, strip searches, and other atrocities. These crimes are frequently carried out by members of state organizations, regular military forces, security forces, paramilitary groups, aid workers, peacekeepers, and even ordinary citizens (Nwotite, 2023). Surprisingly, during armed conflict a woman is used as bait by a mercenary soldier, she is reduced to an object or war prize, which undermines her dignity and raises ethical concerns about such actions. Feminist authors contend that because modern international human rights law is frequently viewed as androcentric and prioritizes men's rights, women's rights are devalued within it (Peterson & Parisi, 1998).

Consequently, women with limited autonomy and agency are typically excluded from the concept of personhood. Because of this division, there is little reporting of gender-specific violations, which frequently fall under broader areas of human rights. Because of this, problems like female rape and other sexual assault have not been adequately acknowledged as types of torture under conventional human rights frameworks, especially instruments that are gender-specific (Baaz & Stern, 2013). Furthermore, the impact of sexual humiliation on the agency and bodily integrity of victims is not sufficiently examined in the legal setting (Halley, 2008).

Method

This essay employs a doctrinal legal research methodology that integrates both primary and secondary sources of law. Primary sources include statutory law, case law, and international treaties, while secondary sources consist of academic articles, legal commentaries, and scholarly books. By analyzing these sources, the essay aims to provide a comprehensive examination of the legal treatment of sexual violence and its impact on victims' bodily integrity and agency.

Torture in Custody with Reference to Women's Experiences

Gender-based violence against women has been a widespread practice during wars, taking many forms, including rape, forced sexual intercourse or other sexual acts with family members, forced impregnation, forced pregnancy, sexual humiliation, sexual mutilation and medical experimentation on women's sexual and reproductive organs, forced abortion, forced sterilization, forced prostitution, being compelled to exchange sexual favors for essential items, being compelled to exchange sexual favors for the return of children, trafficking in women, pornography, and forced cohabitation or marriages.

In 1995, the Fourth United Nations World Conference on Women highlighted the vulnerability of women to violence from public officials (including police, prison officials, and security forces) in both conflict and non-conflict situations. Women in custody may face the same or similar abuses as men, but are particularly at risk of rape and other forms of sexual torture and humiliation. To punish them for their activities or to weaken their resistance, threats of rape, actual rape, and sexual humiliation are often used to elicit information or a confession during interrogation. The UN Special Rapporteur on Torture has noted that custodial violence against women very often includes rape and other forms of sexual violence, such as threats of rape, inappropriate touching, "virginity testing," being stripped naked, invasive body searches, and insults and humiliations of a sexual nature (Nowak, 2007).

During war, the sexual violation of enemy women is often seen as a means of satisfying the conquerors (Brownmiller, 2018). Women's bodies frequently become battlegrounds in men's wars, where they are maimed, sexually mutilated, enslaved, and repeatedly raped as part of the warring parties' strategy to break the will of the civilian population (Peterson, 1998). Kaminsky (1993) notes that in the experience of arrest and internment in prison, power is stripped from the victim and transferred to the interrogators. The victim becomes entirely dependent on the interrogators for basic necessities like food, clothing, and shelter. The torturers exercise control over every aspect of the victim's life, including sleep, movement, speech, and even life and death.

Torture leaves victims with deep psychological trauma and physical injuries, with women often suffering more acutely than men in such situations. For instance, during apartheid in South Africa, pregnant women were subjected to electric shocks; medical care was withheld, leading to miscarriages; invasive body searches and vaginal examinations were carried out; and women were raped, forced to have intercourse with other prisoners, and subjected to foreign objects, including rats, being inserted into their vaginas. In some cases, women's fallopian tubes were flooded with water, sometimes permanently damaging their ability to bear children (Gardam & Jarvis, 2001).

Ana Guadalupe Martinez, a political activist, was arrested and imprisoned by the Salvadoran army in 1976 during the El Salvador liberation. In her writings as a political prisoner, she describes how she was tortured in the Secret National Guard Prison. She spent months without clothes, which left her feeling disempowered, unprotected, and more vulnerable to abuse. She also describes physical torture, including being beaten with fists, boots, wooden paddles, whips, and chairs, with electrical shocks being the worst (Martínez, 1992). Probes were placed on various parts of her body, including her vagina, water was splashed on her, and she was electrocuted (Lorentzen & Turpin, 1998).

During the 1971 Liberation War of East Pakistan, the International Commission of Jurists reported that young girls and women were kept by Pakistani troops for sexual pleasure, with rape often seen as a sexually motivated crime rather than a politically motivated one (Blatt, D. (1991). Conversely, during the war in the former Yugoslavia, allegations of forced impregnation were part of a larger policy of ethnic cleansing in Bosnia (Fisher, 1996). Women were subjected to sexual atrocities, with reports indicating that women were raped "at least 10 times a day for 21 days or until impregnated, and then held for too long to safely obtain an abortion."

Feminist Critique on International Law Regarding Gender-Based Violence and Torture

According to Alice Edwards, the adoption of the law prohibiting torture indicates a 'gendered' perspective, emphasizing men's experiences over women's (Edwards, 2010). Feminist critics, particularly of the Torture Convention, argue that the definition of torture stresses "severe pain and suffering" done by public officials or anybody acting in an official capacity. Feminists contend that this focus ignores the fact that women are more likely to encounter abuse at the hands of private individuals, leaving such crimes largely outside the purview of international law.

In this perspective, women are typically shown as the wives, mothers, or daughters of male victims, rather than as autonomous torture victims. Rhonda Copelon (1993) criticized this privatized conception, stating that "When stripped of privatization, sexism, and sentimentality, private gender-based violence is no less grave than other forms of inhumane and subordinating official violence". According to Catharine MacKinnon, the fact that torture is used on both men and women distinguishes it from other forms of domestic or sexual abuse (Mahoney & Mahoney, 2023). She calls this a "double standard," arguing that whereas domestic or sexual abuse is largely ignored because it is viewed as a "women's problem," torture draws international attention since it affects both men and women. The vulnerability of women to sexual abuse has long been overlooked within the UN framework, reflecting women's subordinate place in society and within the international community. Sexual violence is frequently portrayed as an assault on personal dignity, rather as a violation of fundamental human rights. However, MacKinnon (1987) contends that torture and sexual assault serve similar purposes—control, intimidation, and elimination—and finds little difference between the two. She acknowledges the need to establish a state connection to prove torture and argues that the state cannot be immune to crimes against women. She believes rape and sexual violence are indications of systemic power structures, with the state either allowing or participating in these abuses.

Byrnes observes that, even within these established frameworks, international legal laws frequently fail to accurately reflect the scope of abuses suffered by women in public places (Byrnes, 2000). She also underlines the significance of tackling these inequities using a more intersectional approach that takes into account the various forms of discrimination that women encounter.

Regarding women's autonomy, dignity, and bodily integrity, feminist legal theory emphasizes that consent is a critical concept in law, serving as an expression of self-determination (MacKinnon, 1987). Consent ensures that individuals maintain control over their bodies and sexual capacities, safeguarding their autonomy. In cases of sexual assault, the issue of consent is crucial in protecting bodily integrity. However, in situations like rape, there is no need to question consent, as it is evident that the woman did not have the freedom to make an autonomous choice about her body.

In the **Furundzija case (1998)**, the International Criminal Tribunal for the former Yugoslavia (ICTY) highlighted the importance of upholding human dignity regardless of gender. The definitions of rape and forced pregnancy are based on principles of bodily integrity and human dignity, emphasizing that individuals should be treated as autonomous agents. The ability to control who can touch one's body and how is fundamental to both human dignity and autonomy. In this context, consent serves as a representation of agency, a concept that is increasingly central in international law (Covell, 1998).

Rape in Armed Conflict

In all forms of armed conflict, whether internal or external, women are sexually abused regardless of whether the main causes of the conflict are nationalist, religious, ethnic, or political. In times of conflict, men from all sides—including the enemy and allies—rape and sexually assault women. Women continue to be vulnerable to sexual violence even from those tasked with restoring international peace and security, as seen by the allegations of sexual abuse and rape made against members of United Nations peacekeeping operations. Women do not

become victims of rape solely due to coincidence or being in the wrong location at the wrong time.

Judith Gardam contends that sexual violence against women during armed conflict is more the rule than the exception (Gardam & Jarvis, 2001). The issue is not just about gender; it's about power and control, influenced by male soldiers' perceptions of their privileges, the strict military hierarchy, and existing disparities among women. Coomaraswamy notes that "to rape a woman is to humiliate her community," signifying a collective defeat for the victim's community in failing to protect their women (Coomaraswamy, 1992). Michael Walzer argues that rape is a crime both in war and peace because it violates the rights of the woman attacked. Treating a woman as bait for a mercenary soldier reduces her to an object or trophy of war, negating her personhood and undermining our moral judgment of such acts. According to Coomaraswamy (1992), "to rape a woman is to humiliate her community," denoting the victim's group's collective failure to defend its women. According to Walzer (2015), rape is illegal in both times of peace and war because it violates the rights of the victimized woman. Although sexual violence was acknowledged as a weapon of war—rape was, for instance, "massive, organized, and systematic" in the former Yugoslavia—the Special Rapporteur on Human Rights observed it as a method of ethnic cleansing intended to dehumanize, shame, and terrorize entire ethnic groups (Wieruszewski, 1998). Gender stereotypes that further subjugate women are exacerbated by war.

Definition of Rape

A broad definition of rape and sexual violence was given by the trial chamber in the **Akayesu case (1998)** as "although rape is generally understood to be non-consensual sexual intercourse in some national jurisdictions, variations on the act of rape may involve the insertion of objects or the use of bodily orifices that are not thought to be intrinsically sexual". Rape is any physical act of sexual assault carried out on an individual under coercive circumstances. The chamber made it clear that coercive circumstances can exist in situations like armed conflict or the presence of threatening military forces without necessarily requiring the use of physical force. Additionally, the chamber recognized that sexual violence could involve acts without physical contact or penetration.

On the other hand, regardless of the use of force or compulsion, rape is basically defined as an unwanted act committed without consent. The definition of rape was expanded by the ICTY. The trial chamber in **Prosecutor v. Delalic** (1998) upheld this concept, in line with the ICTR's interpretation, after first adhering to the Akayesu term. Subsequently, the ICTY included aspects from several penal codes to the legal definition of rape in the Furundzija trial.

The ICTY outlined common elements of rape:

1. Sexual Penetration, however slight:

- Vaginal or anal penetration by the perpetrator's penis or any object.
- Oral penetration by the perpetrator's penis.

2. Coercion or Force: Including threats of force against the victim or a third party.

The tribunal emphasized the need for precise definitions, expanding rape beyond intercourse to include penetration of the vagina or anus with any sexual organ or object. In **Prosecutor v.**

Kunarac (2001), the court highlighted the absence of consent as essential to defining rape, especially in cases where women were held in de facto custody and considered legitimate sexual prey by their captors. The Appeals Chamber concluded that such detentions created coercive circumstances that nullified any possibility of consent.

In 2005, the **Semanza (2003)** ruling noted that the Akayesu definition was "broad," while the ICTY's definition was "narrower," focusing on the non-consensual penetration of the vagina, anus, or mouth by the perpetrator's penis. The trial chamber asserted that the mental element for rape as a crime against humanity involves the intention to carry out prohibited sexual penetration with the knowledge of the victim's lack of consent.

Rape, according to this defining analysis, is defined as an unwanted bodily intrusion that occurs without the victim's consent and is invariably characterized by non-consensual encounters that are frequently violent. At its core, rape is a crime that violates people's personal autonomy and sexual freedom.

Recognition of Rape as a Method of Torture

According to the UN Special Rapporteur to the Human Rights Commission:

"Since it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture."

Rape was considered as torture, according to rulings by the European Court of Human Rights in **Aydin v. Turkey (1997)** and the Inter-American Commission on Human Rights in **Mejia Egocheaga v. Peru (1996)** In the **Prosecutor v. Delalic (1998)** case of the International Criminal Tribunal for the Holocaust, the tribunal determined that rape could qualify as torture, noting that "the violence suffered by [the witness] in the form of rape was inflicted upon her by [the defendant] because she is a woman... This represents a form of discrimination which constitutes a prohibited purpose for the offense of torture." In many cases, rape is an obvious example of torture that falls under the concept of torture.

Severe Pain and Suffering

Article 1 of the Torture Convention states that an act must cause great pain or suffering, either mental or physical, in order for it to be classified as torture. Since that rape is a kind of physical torture according to the Special Rapporteur's list, it satisfies all the requirements for torture. In addition to causing excruciating physical pain and suffering, rape exposes victims to the danger of sexually transmitted diseases, gynecological conditions, and unintended pregnancy (Blatt, 1991). Torturers may inflict lifelong trauma and injury by employing objects or animals (Nash et al., 1986).

Physical and Mental Assault

Rape is defined by Amnesty International as "an assault on women's mental and emotional well-being, as well as a physical violation and injury." Rape, according to Susan Brownmiller (1993) is "a sexual invasion of the body by force, an incursion into the private, personal inner space without consent - in short, an internal assault by multiple ways, involving an intentional violation of emotional, physical, and cognitive integrity... an aggressive, dehumanizing violent act. Women who are sexually assaulted have psychological and emotional trauma, which is

frequently made worse by societal moral norms imposed by cultural and traditional frameworks. For example, in order to create Chetnik offspring as a method of ethnic cleansing, Serb soldiers forced Muslim women to become pregnant during the Bosnian War.

Purpose

Rape is one form of torture that has been used to punish people or groups for views or actions that governments find objectionable. In the **Akayesu case (1998)**, the perpetrator was found guilty of genocide on a criminal basis for seriously injuring Tutsi women in order to eradicate the Tutsi population. Torture is used during interrogations with the intention of intimidating victims and discouraging others from engaging in specific actions, rather than only obtaining information or confessions. Rape is a way for criminals to violate the fundamental dignity and physical integrity rights of incarcerated women.

Coercion

The ICTR trial chamber determined that rape is defined as a “physical invasion of a sexual nature, committed on a person under circumstances which are coercive” because there isn’t a globally accepted definition of the crime. Therefore, governments or military regimes frequently utilize rape as a kind of torture to subjugate and frighten populations.

Prohibition of Rape

No international human rights instrument specifically forbids rape as a *jus cogens* standard. Part of the reason rape is not recognized as a form of torture is a systemic indifference to the relationship between grave human rights crimes and gender concerns (Neuwirth, 1987). Although it has been held that sexual violence is covered by the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR) under the prohibition of “inhuman or degrading treatment,” these documents do not expressly list rape as a violent crime against women based on their gender. According to Patricia Viseur-Sellers (2002), “states are permitted to treat sexual violence as a ‘softer’ offense than other peremptory norms and ignore the seriousness of rape as an international problem in its own right because rape is not defined as a separate *jus cogens* violation.”

Throughout history, the law of war has prohibited rape. The Fourth Geneva Convention explicitly prohibits rape and forced prostitution under Article 27. Additionally, Additional Protocol I and II also forbid rape. However, these provisions tend to frame rape within a gendered context, seeking to “protect” women as “objects of special respect.” Accordingly women are recognized as objects of law rather than subjects in law. States party to these conventions is bound by these provisions, as they have become customary international law (Askin, 1997).

The jurisprudence of the Yugoslav Tribunal unequivocally defines rape as an act of torture. In **Prosecutor v. Furundzija (1998)**, the trial chamber emphatically stated that sexual violence is universally considered a grave offense with no exceptions. It declared that “the prohibition of rape and serious sexual assault has evolved in customary international law into universally accepted norms of international law prohibiting rape and serious sexual assault, applicable in any armed conflict.” Furthermore, the Trial Chamber underscored the legal obligation of states to prosecute these crimes when they occur during armed conflict: “It is indisputable that rape and other serious sexual assaults in armed conflict entail the criminal liability of the perpetrators.”

As a principle of international law, *jus cogens* is broadly acknowledged, although its precise boundaries are up for debate. Genocide, crimes against humanity, war crimes, torture, aggression, piracy, slavery, and dangers to international peace and security are typically considered *jus cogens* rules (Bassiouni, 2023). However, rape is not considered as free standing crime. Rape is classified as an act of war, genocide, or crimes against humanity in the statutes of the International Criminal Court (ICC), the International Criminal Tribunal (ICTR), and the International Criminal Court (ICTY). There is a growing consensus that the prohibition of rape has become a necessary and sufficient condition to maintain international peace and security.

Conclusion

The study contends that the idea of human dignity serves as the primary foundation for international law's prohibition against rape. Because it compromises women's bodily autonomy, security, and privacy, sexual violence such as rape constitutes a flagrant violation of dignity. Additionally, it demonstrates that violence against women in armed situations is a part of everyday life for women and is not an isolated occurrence. Wartime sexual violence stems from entrenched gender inequality and societal norms devaluing women and their autonomy. Therefore, this study contributes to the ongoing discourse on gender-based violence by advocating for stronger legal frameworks and international accountability mechanisms to protect women from sexual violence, especially in conflict settings. This research focuses on placing human dignity at the core of its analysis. It calls for a reevaluation of how sexual autonomy is addressed in law and policy. Ultimately, the goal of this research is to impact future initiatives aimed at addressing sexual violence, advancing gender equality, and protecting the rights and dignity of women globally.

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