

Violating Inner Space, Ruining Aesthetic Body and Tarnishing Dignity: Gendered Sexual Violence by Recognized Militia of Modern States

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Abstract

In 2014, Boko Haram killed 150 people and abducted 300 young school girls, in the name of Islam. If women in real life are not protected by the society, and by the Nation as they should be. Society throughout the world is patriarchal designed to crush individuality and dignity of women at stages. Unfortunately, rapists' mothers and sisters easily accept them and they also get advocates to defend them. The phrase 'systematic rape' may be correctly used to describe the 'sexual crime' as 'war atrocities' committed deliberately against women during armed conflicts. Unfortunately, even in modern times, in conflict zone, women are frequently raped to humiliate and degrade as part of a well-organized programme to boost the so-called morale of 'men in uniform' and to demoralize the males associated with the raped women.

As per the Geneva Conventions (GC) of 1949 and two Additional Protocols (AP) of 1977, the Bosnian Serb Regulars, and soldiers of Rwanda were for 'enslavement and rape of Muslim women, and recognized rapes as war crime and punished culprits and redressed 'long- ignored war crime'. Societies have to take decision as follows: "*Those who abduct woman should be given death punishment. Those who rape and molest a woman or incite them to adultery should be given harsh punishment that create fear among others among others to even think of such crime*" (Manu: 8.323); and as suggested by Islam, "*capital punishment is reserved for most extreme crime which harm individual victim or destabilize society. Rape falls in both.*" It is an attempt to understand the intention of the world community to eradicate this inhumane crime against women.

KEYWORDS: Loot-ka-mal, Systematic-Rape, Comfort-Women, Sexual-Slavery, Enforced-Prostitution, Forced-Pregnancy, Forced-Marriage.

"In Short term our goal is obviously is to help the international community, and the Nigerian Government, as a team to do everything to recover these young ladies." - Mr Obama, Interview with NBC's "Today" published in **The World Post, May 8, 2014.**

1. **Introduction:** Boko Haram (the Islamist Extremist Group) in hours' long attack on GamboruNagla that left at least 150 people dead and abducted roughly 300 young girls, in the name of Islam, from schools.

If women in real life are not always protected by the relatives, members of family, family friends, society, and the Nation as they should be, it is due to lack consciousness and also lack of legal basis. Society, in general, in all civilizations of the world, is patriarchal designed to crush individuality and dignity of women at all level - in womb,

childhood, girlhood, womanhood, ect. All major religious texts, *the Hindu Dharmashastras, the Bible, the Holy Quran*, preach a woman to surrender to husbands will, clearly discriminate 50% of population. In Christianity it is mentioned that Adam came first and then Eve and God did not deceive Adam but Eve was deceived and after some time she become transgender. It clearly shows that in all societies of the world crushing identity and dignity of women is in 'genes' of menfolk and unfortunately women 'genes' have accepted it without challenge. Soldiers are also coming from the same society where women is 'perfectly carved body to enjoy and without soul'. It is reflected by modern civilizations of this world, unfortunately so called advanced, educated and progressive people are condemning 'capital punishment' granted by the courts to rapists/war criminals. Unfortunately, rapists' mothers and sisters easily accept them and they also get advocates to defend them in presence of unprofessional and emotionless policemen and men in uniform. For military men, since historical period, women is '*loot ka mal*' (part of war booty) to be distributed equally amongst the winners' party/army (according to their rank and position). The phrase 'systematic rape' may be correctly used to describe the '*sexual crime*' as '*war atrocities*' committed deliberately against women during International and or non-international wars.

2. It is important to understand that *when sexual violence particularly rape, mainly when beastly committed over a considerable period, women are used as sexual slaves and they were forced to get pregnant, silence of leader can be regarded as approving of war atrocities upon women. Unfortunately, even in modern times, in conflict zone, international or non-international conflicts, women are frequently raped to humiliate and degrade as part of a well-organized programme to boost these-called morale of 'men in uniform' and to demoralize the males associated with the raped women.*

3. Rape is being strategically programmed as a spoil of combat. This is evident throughout history of warfare. Today, rape and other types of sexual and gendered violence have shaped as a tactical weapon of war and terror. This world came to know about 'atrocities' against women by 'men in uniform' when a girl came forward and journalists confirmed of sex-enslavement camps and also exposed a programme of '*systematic war rapes*' as an element of intentional genocide. This real time shocking torture, narrated as International Sexual Violence by Thom Shanker, is related with teen age girl "*named herself as Marijanna (real name Mirsada), half Croat and half Muslim, who most probably might be thinking of her charming prince to start second spell of her life after girlhood, arrived at the maternity ward of Zagreb Hospital in August 1992 within a few months of Bosnia-Herzegovina conflict, was one of the victim of the brutality and victim of mass rape. The girl was imprisoned along with her mother and two dozen other women in the municipal hall in her home town of Teslic in Bosnia. The jailer raped her and other women and force them to have sex with uniformed Bosnian Serb Regular Soldiers. They were regularly brutalized, three times a day, for four months. This poor girl, now pregnant and fetus was too developed to abort, was asked by the jailer that "go bear our Serbian children."* The Bosnian Serb Regulars were charged by the International Criminal Tribunal for former Yugoslavia for '*enslavement and rape of Muslim women during 1992 and 1993. The charges focused on 'various forms of sexual violence committed against women and girls' and it represented 'the first sexual slavery prosecution' in any international criminal proceedings.*

4. During WW II, Japanese Army military brothels had enslaved roughly 100,000 Asian 'Comfort Women' including Dutch women and girls for 'sexual atrocities' including rape, coercion to prostitution, abduction of women and girls for forced prostitution, and ill treatment of prisoners in South-East Asian Countries where these women were repeatedly raped by soldiers in order to get them pregnant. The Special Court for Sierra Leone framed two charges against senior commanders charging them with rape, sexual slavery, and 'forced marriage' (is a form of more intimate form of slavery where a woman or a girl is continuously raped by one combatant in place of many). These prosecutions may be considered as redressing 'long- ignored war crime' against women. Here, it is an attempt to understand the intention of the world community to eradicate this inhumane crime against women all over world and also perverted mentality of menfolk despite of positive teachings of various religions.

5. **What are war atrocities/violence against women?** Violence against women is the history of socio-cultural construct where "women being viewed as property and a gender role assigned to be subservient to men also other women". Even in contemporary world, it is recognized that violence against women exists everywhere, and that "there is no region of the world, no country and no culture in which women's freedom from violence has been secured", and "rape, sexual slavery, enforced prostitution, forced pregnancy, forced marriage, enforced sterilization or any other form of sexual violence comparable gravity, discrimination include gender based violence in all stages even pre-birth, and during infancy, girlhood, adolescence and adulthood" are some of the examples of "violence against women" including "any act of gender based violence that result in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".

6. Violence against women is a technical term used collectively and refer to violent acts that are primarily or exclusively committed against women. This type of violence targets a specific group with a victim's gender as a primary motive. It is gender based, meaning that acts of violence are committed against women particularly because they are women, or as a result of age old patriarchal gender construct. "Violence against women is a manifestation of historically unequal power relation between men and women" and "violence against women is one of the crucial social mechanism by which women are forced into subordinate position compared with men". This crime can fit into following categories: violence carried by individual and violence by as state such as war rape, sexual violence, and sexual slavery during armed conflict. The WHO has categorized it as occurring and experienced by women through five stages of their life cycle: "pre-birth, infancy, girlhood, adolescence and adulthood". The UN in its resolution has clearly defined "violence against women" and "any act of gender based violence that result in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" as act against humanity. It is further noted that this violence could be perpetrated by assailants of either gender from individual, communal to state level.

7. The term 'gender-based violence' refers to any acts or threats of acts intended to hurt or make women suffer physically, sexually or psychologically, and which affect

women because they are women or affect women disproportionately. It is believed that the history of violence against women is the history of socio-cultural construct where “*women being viewed as property and a gender role assigned to be subservient to men also other women*”. Even in contemporary world, it is recognized that violence against women exists everywhere, and that “*there is no region of the world, no country and no culture in which women’s freedom from violence has been secured*” and hence, claim of any civilization about safety of women is untrue. The effect of rape are long-term and trauma is incurable and can include both the physical trauma and deep psychological trauma. Physical Trauma effects of rape are: “*painful sexual intercourse, urinary infection, uterine fibroid – non-cancerous tumor in muscle wall, pregnancy and STD*”. Psychological Trauma effects of rape are: “*post – traumatic stress disorder – feeling of severe anxiety and stress, depression, flashback, borderline personality disorder, guilt, distrust of others, anger and feeling of personal powerlessness.*”

8. State Violence: war rape and sexual slavery during military campaign/conflict: Here, in this attempt main concentration is on ‘state sponsored sexual violence’. Militarism produces special environment that allow for increased violence against women. War rapes have accompanied warfare in virtually every known historical era. Rape in the course of war is mentioned in the Bible that “*for I will gather all the nations against Jerusalem to battle, and the city shall be taken and houses plundered and the women raped....*” and “*their children will be dashed to death before their eyes. Their home will be sacked, and their wives will be raped*”. War rapes are ‘rapes’ committed by soldiers, other combatant or civilians during armed conflict or war, or during military occupation, distinguished from sexual assaults and rape committed amongst troops in military service. It also covers the created situation where women are forced into prostitution or sexual slavery by an occupying power- military established brothels filled with comfort women [women forced by the Japanese Army in to forced prostitution during WW II], girls and women who were forced into sexual slavery for soldiers, exploiting women for the purpose of creating access and entitlement for ‘men in uniform’. During II WW, the Jewish male prisoners had access to Jewish women forced into the forced brothels by the Nazis who also raped them. Rape was also strategically used by the Pakistan Military as warfare in Bagladesh in 1971 to demoralize East Pakistanis to end their freedom struggle and over the period of nine months as per one study hundreds of thousands of women, eight years old little girl to grandmother of seventy five years, suffered sexual attacks.

9. Rape was also used as weapon in the Bosnian war where rape was used by the Serbs as a highly organized instrument of war by Serbs targeting girls and women of the Bosniak Ethnic group for physical and moral destruction (50 to 60 thousand females). Unfortunately only 12 cases have been prosecuted in 2010. Similarly, in Rwanda genocide, the International Criminal Tribunal for Rwanda recognized rapes as war crime and in a historic judgment Justice Navanethem Pillay stated that “*from the 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*”. [The UN. Rape at the National Level, number of police recorded offences] in 2006, so called well civilized soldiers (six men unit) from USA raped a 14 years girl and finally she was shot at head and her lower part was burnt by them. A 1995 study of war veterans,

a similar survey in 2003 and 2004 90%, 70% and 30% respectively were sexually harassed and maximum of them (71%) were raped while serving and sought help for post-traumatic stress disorder.

10. **Sexual Violence an International Criminal Rules:** Rape and Other Forms of Sexual Violence are Prohibited and applicable in both International and non-international Armed Conflicts. Despite adoption of the Geneva Contentions (GC) of 1949 (Convention I: Article 3,12; Convention II: Article 3, 12; Convention III: Article 3, 1, 1, 25/4, 29, 49, 88/2,3, 97/4, 108/2; and Convention IV: Article 3, 14/1, 16, 17, 21, 22/1, 23/1, 27/2) and Two Additional Protocols (AP) of 1977 (Protocol I: 8a, 70/1, 75/1 and 5 and 76; Protocol II: 4/2e, 5/2a, 6/4), women as member of civilian population continues to be first victim of indiscriminate attack against civilians, since men are usually engaged in the fighting. Article IV of GC, which provides special protection for women against any attack on women in particular against (war) rape, enforced prostitution or any form of indecent assault, did not prevent rape of countless women (50,000 to 60,000) in the conflict in Bangladesh in 1971 during the Op Searchlight by the Pakistani Armed Forces. The ICRC has found that women are in the greatest danger of such inhuman assaults at the time of their arrest or captive and particularly during the interrogation which follows, this assault is ranging from the threat of rape to obtain confession to the act itself. Following is the pen picture of thoughts mentioned in International Law to protect women from well-organized state sponsored bestiality:

Article 3: *“women should be treated with all consideration due to their sex.”*

Article 4: *“Differences of treatment between Prisoners are permissible only if such differences are based on military rank, state of physical or mental health, the professional abilities or the sex of those who benefit from them”.*

Article 75, 76: *“Women shall be especially protected against any attack on honour, in particular against rape, enforced prostitution or indecent assault.”*

Article 85: *“..... the provision of separate sleeping quarters and sanitary conveniences for the use of such women interns shall be obligatory.”*

Additional Protocol II: *Provide for treatment “without any adverse destination founded on sex....”* It is also specified that women *“shall in case benefit by treatment as favorable as that granted to men.”*

Additional Protocol I, Article 76: *“Protection of women”* is the resolution of the UN Economic and Social Council of April 1970 on *“the protection of women and children in time of emergency, war, struggle for peace, national liberation and independence.”*

Additional Protocol II, Article 4: Expressly forbids *“outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault.”*

Additional Protocol I, Article 75: *“Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separately from men’s quarters. They shall be under the immediate supervision of women. Nevertheless, in case where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.”*

Additional Protocol I, Article 76: *“Mothers being dependent mothers who are arrested, detained or interned for reasons related to the armed conflict shall have their cases considered with the utmost priority.”*

11. **Some Judgments by International Courts/Tribunals:** The International Criminal Courts and The International Criminal Tribunals framed charges and pronounced judgments against ‘war criminals’ and tried to protect women from ‘sexual violence’ in International and Non-international Armed Conflicts.

i) **Bosnia Judgment:** Though rape is not clearly mentioned but sexual assault charges were framed by the prosecutor at the International Criminal Tribunal for the former Yugoslavia under Article 3 by citing its provision on *“cruel treatment, torture, and outrages upon human dignity, in particular, degrading treatment and thus, violation of the 1977 Additional Protocol to the Geneva Conventions.* The Yugoslavian Tribunal also convicted AntoFurundzija *“who tortured this girl by means of rape during interrogation, when a colleague orally, vaginally, and anally raped a Bosnian Muslim woman.”* It was the first United Nations war crime trial to focus exclusively on rape committed against ‘the victim’ whether man or woman. *“Poor seventeen years old girl gave birth to a girl and on second day she was not in the room, nor in the ward, nor anywhere. She never contacted the hospital again.”*

There is provision under the statute of the Yugoslavia Crime Tribunal, a commander can be prosecuted for ‘sexual violence committed by his subordinates if he knew or had reason to know that subordinate was about to committed such inhumane act and superior failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.’

ii) **Rwanda Judgment:**The most ground breaking decision on gender-related crimes was rendered by the Rwanda Tribunal, when Jean-Paul Akayesu, leader of Taba Community, was convicted of not only rape as a crime against humanity, but also rape as an instrument of the genocide in Rwanda.In addition, the tribunal convicted Akayesu for inhumane acts for several instances of forced nudity.The above cases represent some of the most pioneering jurisprudence in successfully prosecuting gender-related crimes.In Arusha, rape has successfully been prosecuted, *“as a form of torture, a means of persecution, and indicia of enslavement, among other crimes. It is now indisputably regarded as a serious crime of war, crime against humanity, and instrument of genocide.”* It is found that he *“encouraged and even at one point of time ordered Hutu Militia and civilians of the community to commit all type of ‘sexual atrocities’ against Tutsi*

women.”The statute establishing a permanent International Criminal Court, adopted by the United Nations diplomatic conference in Rome on July 17, 1998, grants jurisdiction to prosecute rape, enforced prostitution, sexual slavery, forced pregnancy, “*enforced sterilization, and other forms of sexual violence of comparable gravity.*” (The Yugoslav and Rwanda tribunals have noted that other forms of sexual violence include forced marriage, forced abortion, forced nudity, sexual mutilation, and sexual humiliation.) In the same way Rwanda Criminal Tribunal held that the rape of Tutsi women ‘*was systematic and was perpetrated against all Tutsi women and solely against them*’ and Tribunal concluded and explained that sexual violence as ‘*a step in the process of destruction of the Tutsi group - destruction of the spirit, of the will to live, and of life itself.*’

12. **International Criminal Court Statute, Article 7(1)(g):** “*Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence comparable gravity*” constitute a crime against humanity under the International Criminal Court Statute and “*rape*” constitute a crime against humanity under the International Criminal Tribunals for the former Yugoslavia and Rwanda. The United Nations Security Council, the UN General Assembly and the UN Commission on Human Rights condemned the sexual violence that occurred during the conflicts in Yugoslavia, Rwanda, Sierra Leone, Uganda as a war crime, and Committee on the Elimination of Discrimination Against Women General Recommendation recommended “*discrimination*” as “*gender based violence.*” [**judgment in the Furundzija Case in 1998**]; According to **the Rwanda Judgment in 1998** and the **Kunarace case in 2001**, “*rape is a form of aggression*” and that “*the central elements of the crime of rape cannot captured in a mechanical description of object and body part*” and “*other factors*’ which would render an act of sexual penetration, non-consensual or non-voluntary on part of the victim respectively. The Rwanda Judgment has clearly defined rape as a “*Physical insertion of a sexual nature, committed on a person under circumstances which are coercive.*”

14 Religion and Women: Having gone through religious texts it is found that most popular religions of the World are speaking little positive about the women though practitioners or believers are actually not remembering the teachings at the crucial time. Here some examples are being given to have glimpses of them.

i) **Hinduism:** Manu Smrti is highly criticized work by the progressive forces in India so far as his views, as selected by them to put forward their point of view. Manu Smrti also mentioned that “*a family- where women feel insulted or discriminated against because of their menfolk – is destroyed in the same manner as poison kills all those who eat it*” (Manu: 3.58); “*a woman who is kept constrained at a home by noble men (husband, father, son)is still insecure. It is futile to restrict women. Security of woman would only come through her own capabilities and mindset*”; (Manu: 9.12) and “*a woman should always ensure that she is protected. It is duty of father, husband and son to protect her.*” (Manu: 5.149) Please note that “*the protection does not mean restrictions.*” To deter the society from committing ‘gendered crime’ Manu Smrti further elaborate that “*those who abduct woman should be given death punishment. Those who rape*

and molest a woman or incite them to adultery should be given hash punishment that create fear among others among others to even think of such crime.” (Manu: 8.323)

ii) **Christianity:** It is said that, *“at the time of Christ, women similar to Islamic countries today (in 12st c) also had very little freedom and dignity. She was called ‘evil’, ‘inferior’, ‘unclean’ and ‘unequal’.”* Women is typically stereotyped as a sensual object of pleasure and not a respectful motherly force despite of rapid progress and material progress. Thanks to reformation era, things changed and Bible ceased to be taken seriously and women started getting due dignity in the society though at the same time western world is still inflicted with insecurity and lack of inner peace.

iii) **Islam:** *“O mankind, keep your duty to your lord who created you from a single sole and from it created its mate (of same kind) and from then twains has spread a multitude of men and women.....”* (Quran 4:1) and in 2:36, 7:20-24 *“woman is not blamed for Adam’s first mistake. Both were jointly wrong in their disobedience to God, both repented and both were forgiven.”* (Quran 2:36, 7:20-24) In Islam, *“capital punishment is reserved for most extreme crime which harm individual victim or destabilize society. Rape falls in both.”*

15. If all leading religions tried to establish high regards o the 50% population of the World, there is need to debate the reasons behind ‘sexual violence’ against them. In following words, it is attempted to understand the phenomenon which is encouraging men and ‘men in uniform, to have such *psychology and construct behind the perverted mindset.*

16. John Stuart Mill painfully mentioned that *“we are continually told the civilization and Christianity have restored to the women her ‘just rights’.* Meanwhile the wife is *“the actual bondservant of her husband; no less so, as far as legal obligations goes, than slaves commonly so called.”* According to David and Vera Mace, *“....women are represented as the door of hell, as mother of all ills. She should ashamed at very thought that she is a woman, she should be ashamed of her dress, and her beauty.”* Hindus are practicing that, *“a good wife is “a woman whose mind, speech and body are kept in subjugation, require high renown in this world, and, in the next, the same abode with her husband.”*

17. Athenians believed that, *“women were always minor, subject to some male - to their father, to their brother or to some of their male kin.”* Romans considered their Wife as *“a babe, a minor, a ward, a person incapable of doing or acting anything according to her own taste, a person continually under the tutelage and guardianship of her husband.”* According to the Roman Civilization and the English Common Law, *“a woman was even in historic times completely dependent. If married she and her property passed in to the power of her husband..... The wife was purchased property of her husband, and like a slave required only for her benefit.”* The situation probably changed up to some extent after Married Women Act of 1870 and thereafter amendment in it in 1882 and 1887. And one of the most scathing of these attack on women in that of Tertullian: *“..... You (women) are the devils gateway. You are the unsealer that*

forbidden tree; you are the first deserter of the divine law; you are she who persuades him whom the devil was not valiant to attack.....”

18. It seems, psychologists may work upon the psychology of such perverted and criminal mind, that unconscious mind of people have stored negativity against women: just enjoy the world and whatever sins you may commit, God will take care. All you need to do is to just accept the God.

19. **Conclusion:** The International community cannot get success in its endeavor in remedying this situation, merely by adopting new rules. Most of all, it must be seen that rules already in force are respected. Responsibility to apply the provisions given, giving special protection to the women and for that matter, all the rules of International Humanitarian Laws (IHL), is a collective one. The ICRC can certainly also help to render the protection accorded to women held as PW or in civilian detention or internment by providing material assistance or by making enquiries into the where about of missing persons.

20. Dissemination of knowledge of these rules by National Red Cross and Red Crescent Societies or by organizations such as the World Veteran Foundation, an strengthen the existing laws. Every efforts made in this respect undoubtedly facilitates the task of those who bear the prime responsibilities for implementation of IHL and encouraged his ‘m’ in their endeavours.

21. All societies have to take decision as per prescribed in Manu Smrti: *“Those who abduct woman should be given death punishment. Those who rape and molest a woman or incite them to adultery should be given hash punishment that create fear among others among others to even think of such crime”*; and or, as suggested by Islam, *“capital punishment is reserved for most extreme crime which harm individual victim or destabilize society. Rape falls in both.”* It is time to give equal status to 50%, equally intelligent and progressive population for overall development of this World by establishing justice to give respect and to maintain dignity.

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