

Systemic Use of Sexual Violence as a Weapon in Armed Conflicts
A Comparative Study of Kashmir and the Democratic Republic of Congo



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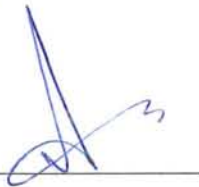
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DECLARATION

I hereby certify that this Dissertation is the result of my individual research and that it has not been submitted concurrently to any other University for any other degree.

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Dedicated to

All the Women and Children who suffered from the brutalities of war..

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LIST OF ABBREVIATIONS

CEDAW	Convention on the Elimination of all forms of discrimination against women
CRC	Convention on the Rights of the Child
DRC	Democratic Republic of Congo
HRW	Human Rights Watch
IHL	International Humanitarian Law
OHCHR	Office of the High commissioner on Human Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHRC	United Nations Human Rights Council

ABSTRACT

The research aims to find out the causes of the prevailing menace of systemic sexual violence in armed conflicts. Rape has been executed as a tactic in several armed conflicts and has been explained as a weapon by Realist and Feminist perspectives. This thesis explores the reasons for systemic use of sexual violence as a weapon and uncovers how and why it was used in the cases of Kashmir and the Democratic Republic of Congo. For the purpose of finding out the reasons for systemic sexual violence, it was observed through the combined perspective of Realism and Feminism. The study explains the distinction between the two schools in context of systemic use of sexual violence, as well as the merger of two to analyze the problem. Both perspectives are explained through an inquiry into the case of Kashmir and DRC. Further, the study explores the patterns of sexual violence in three time periods – Cold War, Post-Cold War and Post 9/11 Era. The main argument suggests that systemic sexual violence is an outcome of power politics between the states, when they engage in armed conflicts. This is exacerbated by the misogynist structure of the societies which are targeted, as well the patriarchal mindset of the state which executes sexual violence. These claims are examined in war rape that occurred in Kashmir and DRC. The thesis also studies the role of the United Nations, which has not been able to effectively solve the issue of systemic sexual violence. The two cases are compared based on the patriarchal system of societies, and their responses to the UN resolutions regarding systemic sexual violence, which has been negligible and ineffective in both cases. The conclusion, thus, provides reasoning for the issue of systemic sexual violence, why it has worsened despite the resolutions of the UN, Geneva Conventions, and the Protocols, and why the issue prevails in its worst form in Kashmir and the Democratic Republic of Congo.

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INTRODUCTION

The central question that has been addressed in this thesis was “why systemic sexual violence is used as a tool in armed conflicts”? Systemic sexual violence refers to the planned acts of sexual violence that are carried out in conflicts between states and non-state actors. It has been widely used as a strategy to gain political interests and to overpower the adversary. Millions of women and children have suffered the vice of systemic sexual violence during incidents of war and armed conflict, especially in the regions of the Democratic Republic of Congo, and Kashmir.

Background

The history of systemic sexual violence in armed conflicts dates to the day when an armed conflict first took place. It has been used as a tool to spread terror among the people and to lower down the morale of the civilians as well as the opponent army. Many areas of the world have been affected by the horrors of systemic sexual violence such as Sri Lanka, DRC (Democratic Republic of Congo), Kashmir, Sudan, Uganda, and many more¹. Although there have been measures to avoid sexual violence, the problem remains. For example, several steps were taken by the United Nations, and the International Humanitarian Law which states in Additional Protocol I of 1977; Article 76(1): "Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault." ²

The phenomenon is still taking place in many places in the world. In August 2019, according to a report conducted by 4 Indian civil society activists, states that in Indian-administered Kashmir, which has been under a communications blackout for more than three weeks, Kashmiri women were being harassed by armed personnel during house raids following the abrogation of Article 370 of the Indian Constitution. ³ There have been several misogynistic remarks by the ruling Bharatiya Janata Party (BJP) leaders about Indian men now being able to marry ‘fair-skinned’ Kashmiri women. These statements show how the Indian leaders perceive the control of bodies of Kashmiri women as the control of Kashmir. It has been discussed by several

¹ "Women2000."

² "Protocols I and II Additional to the Geneva Conventions - ICRC."

³ Mushtaq, "Militarisation, Misogyny and Gendered Violence in Kashmir | Engenderings."

scholars, For example; Seema Kazi notes how 1990 onwards, rape has been used as a means to dehumanize, humiliate, and induce collective fear in the Kashmiri community.⁴

Another example of the systemic use of violence is in the region of the Democratic Republic of Congo where rape was used as a weapon of war for punishing a specific ethnicity. It was used to instill fear in the communities, and violence was used to prevent women from reporting rapes.⁵ According to a report by human rights watch, perpetrators of sexual violence are members of virtually all the armed forces and armed groups that operate in eastern Congo. Such crimes were committed by the former Congolese Rally for Democracy-Goma (RCD-Goma), a Rwandan-supported armed group that controlled large parts of eastern Congo during the war. The RCD-Goma and its Rwandan allies had several adversaries Mai Mai rebels and Burundian and Rwandan Hutu armed groups who also committed widespread acts of sexual violence.⁶ This thesis aims to find out the reasons why states pursue the strategy of using sexual violence as a weapon of war, and how and why it has been as a weapon of war in the regions of Kashmir and Congo.

Research Questions (RQs)

1. Why Systemic Sexual Violence is used during an armed conflict as a tactic?
2. How was sexual violence used as a weapon in Kashmir?
3. How was sexual violence used as a weapon in DRC?
4. How can the two cases be compared in the context of systemic sexual violence?

Hypothesis

Systemic Sexual Violence is used as a tool in armed conflicts by states and non-state actors to gain their self-interest. The dependent variable in this study is systemic sexual violence, whereas the independent variables are power politics and misogyny. To test the hypothesis, the case study of Kashmir and the Democratic Republic of Congo is considered. Systemic sexual violence is a tactic

⁴ "Nyla Ali Khan, *Islam, Women & Violence in Kashmir: Between India and Pakistan*, New Delhi: Tulika Books, 2009, Pp. 185, Rs 395 - Seema Kazi, 2010."

⁵ "Democratic Republic of Congo; Ending Impunity for Sexual Violence" Human Rights Watch Org. 2014

⁶ "Seeking Justice: The Prosecution of Sexual Violence in the Congo War."

used by states and non-state actors to exploit the already existing patriarchal structure in Kashmir and Congo and to pursue the self-interest. In other words, misogyny and power politics is the main reason behind sexual violence in armed conflicts. This strategy of planned rapes to destroy the communities of the enemy, not only proves as an effective strategy from a realist perspective for gaining power but also strengthens patriarchy.

Research Methodology

The thesis used qualitative research for testing the hypothesis. The study included theoretical and interpretative evaluation of the subject, qualitative data, and quantitative analysis along with examining Feminist and Realist perspectives. For finding out the reasons behind this, the history of such violent assaults were compared i.e. comparison of systemic sexual violence in Kashmir vs that in the Democratic Republic of Congo. Moreover, secondary sources of data were used such as books, research journals, and newspapers such as New York Times, BBC World News, etc. Moreover, Primary sources of data were used such as Geneva Convention 1949, Protocols, Reports.

Theoretical Framework

This research uses the theory of realism and feminism to explain the reasons behind the sexual violence committed in armed conflicts. The Realist school of thought believes that states pursue power, and self-interest.⁷ It is used to understand and explain the behavior of states in international politics. Moreover, it says that states go for war and conflict in order to gain their self-interest, and thus are selfish beings who are concerned more about power rather than morality.

The Feminist ideology believes that the women always had a weaker status in the political, social and economic spheres. The reason behind this is the male domination and patricentric attitudes of the society, which has hindered the progress of women and thus paved way for their exploitation. It has impeded the progress of women, and their independence in societies. Therefore, they were used as a commodity rather than having a significant role in society and politics.

Both theories explain the reason why sexual violence was used as a tool to pursue political interests in armed conflicts. The primary reason for it, as realists points out, is the interest of the

⁷ Baylis, Smith, and Owens, *The Globalization of World Politics*.

state in scenarios of war and for achieving their objectives, states conduct systemic sexual violence. By looking at sexual violence through the lens of Machiavellian Realism, the concept can be made further conspicuous, as it explains the behavior of states as cruel and brutal when it comes to war and pursuance of personal interest.⁸ Thus, states involve in such vicious acts, as immoral or selfish beings.

Whereas, the feminist ideology points out systemic sexual violence which is used as a tool to exploit patriarchal communities by lowering the morale of communities using women as commodities.⁹ The gender hierarchy created in patriarchal societies, and the perception of women as commodities or objects of exploitation further encourages the use of systemic sexual violence in armed conflicts.

The key literature on the topic of systemic sexual violence does not address how realism and feminism ideologies can be implied simultaneously to understand war rape.

Literature Review

There are several books and articles written on the topic of systemic sexual violence in armed conflicts. The key literature sources are being discussed here. The literature review has been divided into three sections based on the research questions. The first section is based upon literature on reasons of systemic sexual violence, the second section is based upon use of systemic sexual violence in Kashmir, and the third section considers the use of systemic sexual violence in Congo.

For the first section, an important piece of literature regarding war rape is written by Maria Eriksson and Maria Stern, called; "Sexual Violence as a Weapon of War". In this book, the authors give reasons on why systemic sexual violence occurs in the scenarios of war. The whole argument is based on the gendered perspective of sexual violence, and how the feelings of masculinity in the armies and armed groups contribute to becoming a factor for encouraging sexual violence in armed conflicts. The book concludes a feminist analysis of the problem and thus is not enough to explain the other factors taking place globally.

⁸ "Machiavelli and the Orders of Violence | SpringerLink."

⁹ Kalpana, "Misogyny, Feminism, and Sexual Harassment."

Another important book regarding reasons of sexual violence in armed conflicts is written by Sara Meger, called “Rape Loot Pillage”, which considers the political economy to be the major reason behind the war rape. This also is based on the feminist perspective, as it considers the weak economic conditions of women, and their less participation in politics to be the reason for the lack of prestige and power in their communities. This is the reason behind the war rape and their exploitation. But Meger fails to answer how sexual violence is related especially in the context of war, as the acts of sexual violence occur in huge numbers during the armed conflicts whereas the political and economic conditions for women are weak even before the conflicts occur.¹⁰

For the second section; systemic sexual violence in Kashmir, An article is written by Seema Kazi, “Shopian ; War, Gender and Democracy in Kashmir” in which she explained that the sexual violence in Kashmir is also based upon the gendered construction, and because of the weak status of women in society, politics, and economy of the region.¹¹ Therefore, the armed conflict leads to sexual violence and acts of barbarity against a specific gender. But the article fails to address how sexual violence has been used by the militant organizations for their political interests, rather it only answers from a gendered point of view.

There is less literature written on the topic of systemic sexual violence in Kashmir, and therefore it is being explored in this thesis. Moreover, the history of systemic sexual violence in Kashmir has not been compared with that in Congo, and therefore there are important points of comparison to be explored in this area.

For the third section, an article is written by Paul Kirby, “The body weaponized ; War, sexual violence and the uncanny” is also about the reasons sexual violence is used in the scenarios of war especially how it was used in the case of the Democratic Republic of Congo.¹² The article aimed at analyzing and interpreting the feminist perspective related to the war rape, and how it occurred throughout history and was used for satisfying the masculinity of the soldiers as well of armies. It concludes that war rape is used by soldiers for winning wars and to establish the hegemony of a state or non-state actor on the other. But it fails to address the question of how the patriarchal structure comes into play and supports systemic sexual violence. Moreover, the case of

¹⁰ Meger, *Toward a Feminist Political Economy of Sexual Violence in War*.

¹¹ KAZI, “Shopian.”

¹² “The Body Weaponized: War, Sexual Violence and the Uncanny - Paul Kirby, 2020.”

Congo has not been studied in comparison with other areas, such as Kashmir. Therefore, it lacks important patterns of systemic violence that are to be studied in comparison with another region.

An article called “Battles on women’s bodies” was written by Jill Trenholm regarding the war rape and trauma created by it in the region of DRC. It discusses the use of sexual violence as a weapon in the democratic republic of Congo, and how it made the communities suffer from the power politics between different groups.¹³ It also analyzes the role of local leaders, as well as the element of corruption in the justice system that does not let the offenders be punished according to the law. But it does not address how the gender roles play in, and why women are the major victims of sexual violence in war. Moreover, there is no key literature on the comparison of systemic sexual violence in Kashmir and Congo, therefore this study focusses on the comparison of both cases as well.

Contribution to Knowledge

The thesis combines the realist and feminist paradigm to give a new understanding of systemic sexual violence in armed conflicts and gives a comparison of cases of Kashmir and Congo in the context of systemic sexual violence. The topic is of special relevance today, especially in the context of Kashmir where a siege by Indian government is raising concerns for the safety of Kashmiris, and in Congo with the decades of conflict between the two tribes; Hutus and Tutsis.

Structure of Research

The thesis has been divided into 5 chapters. The first one discusses the conceptual framework as well as the theoretical context for the research conducted. It explains the basic concepts used in the research, as well as the relevance of Feminist and Realist perspective. The second chapter includes the history of Kashmir and Congo in Cold War, whereas the third chapter includes the history of conflict and sexual violence in Kashmir and Congo in Post-Cold War and Post 9/11 era. The fourth chapter of the thesis discusses the role of UN and International Organizations regarding systemic sexual violence in Kashmir and Congo and how the relevant countries have responded. The final chapter of this thesis includes a comparison of Kashmir and Congo in the context of systemic sexual violence. The conclusion of the thesis will consist of findings of the thesis.

¹³ Trenholm, Olsson, and Ahlberg, “Battles on Women’s Bodies.”

CHAPTER 1

THEORETICAL CONTEXT

This chapter entails the efforts to explain the main concepts used in this research study, along with the theoretical basis of the research. It addresses the question of the systemic use of sexual violence as a war weapon and the application of the theories of Realism and Feminism in International Relations. The central argument of the chapter is that war rape, especially as a tool against women, is used to treat women as a commodity of enemies to be destroyed, as a tactic of war. This argument is addressed by dividing the chapter into two sections.

1. Defining the Concepts
 - i. Armed Conflicts
 - ii. Systemic Sexual Violence
2. Realism, Feminism & their relevance to the topic

Defining the Concepts:

Armed Conflicts:

For the purpose of this research, it is important to understand the meaning of an armed conflict. According to the case book of ICRC (International Committee of the Red Cross), Armed Conflict is a term used for conflict or confrontation between states, non-state actors, factions, or armed groups within the state.¹⁴ International armed conflict is an event that includes the use of armed force by one or more states against the other.¹⁵ The depth or intensity of the conflict might be low or high, that does not change the definition of armed conflict, neither does the cause of the conflict. It also states that for an armed confrontation to be named as an armed conflict, the states don't need to announce war rather it could be undeclared as well.

Furthermore, the incidents taking place during this confrontation decide whether the International humanitarian law would apply to this scenario or not. International Humanitarian Law is a part of International law and consists of specific rules for reducing the impacts of wars and armed conflicts. It provides a protection mechanism to the unarmed civilians and puts limits

¹⁴ Sassoli, "Armed Conflict | How Does Law Protect in War? - Online Casebook."

¹⁵ Sassoli.

on the ways the war is conducted. According to the International Humanitarian Law, there are two main types of armed conflicts. The first type is; International, whereas the second one is non-international. International armed conflict is between different states, whereas the non-international can be between groups or non-state actors as well.¹⁶ International Humanitarian Law forbids states to commit barbarity against civilians in an armed conflict.

Systemic Sexual Violence

According to the World Health Organization, Sexual Violence is an act which includes harassing a person physically or verbally. The verbal harassment includes comments, threats, and advances whereas physical harassment includes coercion, physical force, penetration, unwanted advances, forced marriages, etc., without any consideration of the relationship between the offender and the victim.¹⁷

The term “Systematic” refers to something planned and well structured. So, systematic sexual violence can be defined as acts of sexual violence that are committed under a well-structured plan in order to achieve specific objectives.

What is Realism?

The theory of realism or the term appeared in the context of International relations during the 1930s. Before the use of this term, international politics was studied under a rather utopian context.¹⁸ Whereas, Realism portrays a more practical approach towards the study of international politics. It explains the relations of conflict between the states and analyzes wars and conflicts as a tool used by states for gaining their interests. It also asserts that states are sovereign beings, that can not be dictated by any actors in the international arena. They can act selfishly, as would humans, if their security and survival are at stake.¹⁹

Therefore, in order to gain more power, states would interact with each other to maximize their interests. Further, the states must rely on the system of self-help, as they are sovereign entities and they can not rely on others during the case of a conflict.²⁰ Thus, realists are dubious about the

¹⁶ “How Is the Term ‘Armed Conflict’ Defined in International Humanitarian Law? - ICRC.”

¹⁷ Moreno, “Sexual Violence - Understanding and Addressing Violence against Women.”

¹⁸ Sutch and Elias, *International Relations*.

¹⁹ Sutch and Elias.

²⁰ Sutch and Elias.

notion of morality in international politics. They suggest that states can be unethical in order to secure their security and survival.²¹ And thus, it shows a rather pessimistic and selfish side of politics that is deprived of the existence of ethics and morals but sets its focus over the power struggle, and security or survival.

Machiavellian Realism:

Machiavelli, who is a key thinker of the Realist Theory of International relations, focused his ideas mainly on the skills of running the state. He wrote a famous book called “The Prince”, in order to advise the prince to adapt to international politics by implementing policies that are favorable to the state according to the power dynamics of the world.²²

Machiavelli, who was born in the 15th century, is known as a political innovator when it comes to the theories of International relations.²³ He was the one who actually segregated the concept of morality and ethics from the inter-state relations, as well as relations of the state with its public. Thus, he considered the morals to be irrelevant while seeking power. He originated the concept of *virtù*, which according to him, is imperative in running the government.²⁴ Virtue is the ability to run the government and seek power and control. It also suggests that to run the affairs of the government, it is justified or legitimate to break the ethical or moral norms. In other words, Machiavelli’s ideology legitimized the use of force or immoral actions to gain political interests.

Machiavelli’s doctrine about wars is also of great relevance, even today. He believed in the notion that in scenarios of war, it is acceptable to employ every tactic to win the war.²⁵ This strategy was widely used in many wars, and thus the norms of morality or justice were not considered to be of any importance when the state’s sovereignty or security was at risk. This leads us to the question of whether realism or Machiavellian realism promotes extremism or political violence that occurs during armed conflicts? And does it justify the systemic sexual violence as a tactic in armed conflicts? The following sections explain the relationship between Realism, especially Machiavellian realism, and sexual violence as a tool or strategy of war.

²¹ Sutch and Elias.

²² Sutch and Elias.

²³ Di Maria, “Review of Machiavelli and the Discourse of Literature.”

²⁴ “Political Realism in International Relations (Stanford Encyclopedia of Philosophy).”

²⁵ Di Maria, “Review of Machiavelli and the Discourse of Literature.”

Relevance with the topic

For centuries now, the violation of women has been used as a thoughtfully planned and carefully executed tactic. Wars carries the stench of the war crimes against women that had nothing to do with it. History, as biased as it may be has still unveiled some of the horrors inflicted during a war. As evident by several incidents across the world, regardless of time and boundary, it is proved that rape has always been in the use of states or non-state actors as a weapon of war. Systematically, the states and non-state actors implement violence against women and actually use it as a war maneuver.

Perhaps, one of the best examples of this concept can be understood by Yves Winter's interpretation of Machiavelli in his book "Machiavelli and the orders of Violence".²⁶ Not only does it explain how actors in an international scenario plan and execute a sequence of events to implement violence for gaining political power but how these acts of violence are not mere incidents, but rather a meticulously planned and deliberately plotted way of gaining the power to rule. Another concept introduced by Machiavelli and interpreted by Winter is of "Cruelty", for dominating or controlling a people.²⁷ Prince uses his power for implementing political violence in different forms in order to keep the population under his control. Even today, this concept of political power is used as a tool for expansionist foreign policy. How something as vile as rape could feed into the war agenda and used as a political tool. This could be seen in the case of Kashmir, where the Indian government is trying to gain political control over Kashmir, and suppress Kashmiris using systematic sexual violence and rape as a weapon.

Systemic Sexual Violence is a strategy used for ethnic cleansing or genocide for gaining political interests. It is a planned rape. It is rape for the purpose of genocide. It is as horrible as wishing for death. It is a policy to destroy society and to ruin the cohesion of a community.

A similar thesis was given by Claudia Card who considers rape as biological warfare to win power politics. She explains war rape, as a weapon to harm the biological system of a living organism, through a living organism.²⁸ And it leads, not to a disease, but to psychological damage and social death. This torture does not stop there, rather the trauma remains in the next generations.

²⁶ Winters, "Machiavelli and the Orders of Violence."

²⁷ "Machiavelli and the Orders of Violence | SpringerLink."

²⁸ "Surviving Long-Term Mass Atrocities1 - CARD - 2012 - Midwest Studies In Philosophy - Wiley Online Library."

Claudia Card says that this is the easiest war against humanity, as the weapon is in human bodies. No one has to carry the weapons or guns, but the bodies can store the weapon and destroy the enemies.²⁹

Rape goes far beyond than just violating the body, it penetrates the mind and society. Like a poison that destroys from within, rape when used as a warfare tactic targets the roots of the nation. The ethnic, religious, and social roots that make-up one's culture slowly crumbles. As immoral as it is, its effects are seen even years post-war, which is why warmongers pride themselves on this war-tactic.

What is Feminism?

Feminism is an ideology based upon the rights of equality of male and female genders. It suggests that there should be equal opportunities and rights for both, contrary to what has been the norm and experiences of women in the past. Feminism suggests that the reason for discrimination against women in social, political and economic context is misogyny and patriarchy which has affected the lives of women and led to the crimes against women like sexual harassment and violence.³⁰

Feminists also point out towards male privilege as a reason for belittling women and reducing their status in the society. The male dominated societies give less privileges and powers to women and thus they are considered inferior and made victims of abuse and violence.³¹

Causal Explanation by Feminists:

Rape and sexual abuse are a practice adopted by militaries, and history is full of such examples, even goes as far as to pay homage to them. It is not just a meaningless act of war, but a carefully executed strategy to inflict maximum horror and target the cohesion of a community. The causal explanation of rape can be understood with the help of the Feminist Theory of IR. The feminist ideology claims that the patriarchy is to be blamed for an increase in rape cases; the rapist grows up believing in it and is influenced by patriarchy himself. Usually linked with sexual violence and rape, feminists functioning under the realm of International Relations accuses patriarchy of such heinous acts of aggression. According to this school of thought, if the patriarchal

²⁹ "Surviving Long-Term Mass Atrocities1 - CARD - 2012 - Midwest Studies In Philosophy - Wiley Online Library."

³⁰ Kalpana, "Misogyny, Feminism, and Sexual Harassment."

³¹ Kalpana.

attitude in society were to be decreased, it would consequently lead to a significant reduction in the events of violence against women. As victims of patriarchy, it would suffice to say that women have always been at the brunt end of the stick in history. For example; In case of Kashmir, the patriarchal structure of Kashmir, as well as the misogynist mindset of the Indian army is the leading cause of war rape in Kashmir.

Now, we need to understand how patriarchal or misogynist views lead to war rape?

In the words of Kurki; "Feminism explains the causes about the nature of male-dominated societies and global structures",³² Moreover, the historical specificity of the concept is given more importance by the Feminist IR, rather than focusing on the variables of causal explanation. For example; by studying history it can be concluded that war rape in societies is aimed at destroying or destabilizing the communities.³³

In the case of Congo and Kashmir, rape can be understood as Genocidal rape, which is a term referred to as the concept of "genocidal intent". In the Rwandan Tribunal, the concept is described as "surfacing gender in genocide", or attacking or harming a gender (women) in order to destroy the whole community of Tutsis.

Relevance with the Topic

Another way of explaining the war rape through a feminist perspective is the role of women in holding communities together. They are important actors in maintaining the stability of their community, as well as culture. According to Siefert in his book "The Second front; The logic of Sexual Violence in wars",

"Rape of a woman is a symbol of raping the whole body of the community".³⁴

And this is the one that can inflict pain on a whole community or nation, without doing much. It is considered an act for humiliating the whole community as the men in patriarchal societies who are considered to be the protectors are unable to protect the women. Therefore, it is no wonder that rape and systemic sexual violence against girls and women is considered a weapon, especially when it so deeply instills a sense of weakness and insecurity in the community.³⁵ The very pillar

³² Trenholm, Olsson, and Ahlberg, "Battles on Women's Bodies."

³³ Trenholm, Olsson, and Ahlberg.

³⁴ Seifert, "The Second Front."

³⁵ Seifert.

that carries the nations on its back crumbles and disintegrates like something that rots away in acid. The women who are the embodiment and physical manifestation of cohesiveness and cultural practices become victims and symbols of destruction of the community life. It is a fall from glory to dishonor, on the community's part.

Another way of describing the phenomena of war rape is through the inequalities faced by women in the economic, social, and political structures. Admittedly, this would explain as to why more women are attacked and targeted in sexually violent crimes in wars as compared to men. This would also help explain sexual violence in war in relation to the power play and domination politics. War rape further discourages women to grow economically and politically, and thus it is also a cause of economic inequality, and misogyny.

In conclusion, these two theories try and explain the reasons behind the war crimes against women, but at the same time work simultaneously. The realist approach views it as almost necessary for steering the war on your side, with women acting as nothing but a commodity. As depraved and unethical as it may be, those who lean more towards the realist side of the spectrum sees it as something that could win wars and destroy your adversary from within, as it's the determined end-goal. At the end of the day, there is no morality in war or politics in the eyes of the realist state anyways. For a state where the ultimate objective is to always put itself first, regardless of anything else, the best way to infiltrate to the adversary is through their women; weakening their resolve internally, and dismantling their culture and societal forms at the cost of even women. Unfortunately, history has only proved that states are only as moral as they can be and that nothing comes above their own benefit. Perhaps, everyone is a realist in their small way. Whenever one puts their self-interest above anyone else's, moral code slips away. States too are no different than the humans they hold.

The feminist theory, at the same time, supports the above ideology, on the other hand, questions as to why the role of women in war is reduced to as that of a dispensable object, why their identity is confined to that of their male counterparts, and as victims of patriarchy. For actors that have nothing to do with war, feminists find it highly unfair and unjust that they are still the ones most affected by it; in every way possible, whether it'd be physical or mental.

CHAPTER 2

SYSTEMIC SEXUAL VIOLENCE DURING COLD WAR IN KASHMIR AND THE DRC

The main argument of this chapter is that sexual violence exists because of the armed conflict. In other words, the absence of armed conflict indicates the absence of sexual violence. This chapter outlines the histories of conflicts in Kashmir and Congo, and how the regions went through the rise of systemic sexual violence during the armed conflicts. The chapter also outlines the histories of brutal acts and uncovers the wickedness and beastliness of war crimes. For better understanding, it has been divided into 2 main sections based on the historical context.

1. Kashmir Conflict and Systemic Sexual Violence during the Cold War Era
2. The DRC Conflict and Systemic Sexual Violence during the Cold War Era

The Cold War Era (1947-1991)

To understand the regional developments in the area of Kashmir and Congo, it is imperative to consider the global context as well. There are impacts of global developments over regional politics, and therefore in order to understand the conflict and its impacts, the major are being discussed.

The Kashmir issue was born on the onset of decolonization, as well as the outbreak of the Cold War. Whereas, the political problems in Congo also started during the Cold War. Thus both of these issues are discussed here during the Cold War Era.

The Kashmir Issue

History of Conflict:

Kashmir is a region known for decades of rivalry and belligerence between the two important actors of the Indian subcontinent; India and Pakistan. This area was a princely state before the independence of India from the British Raj.³⁶ The ruler of Kashmir was a Hindu Maharaja; Hari Singh, whereas Muslims were in majority in the area. According to the decisions of the British Raj, and their representative in India, Lord Mountbatten, the princely states had 3 options to choose

³⁶ Sattar, *Pakistan's Foreign Policy 1947-2019*.

from.³⁷ They could accede to India, join Pakistan, or could retain their status as an independent princely state. The last option was not favorable as the princely state would not have been recognized by the international community as a separate entity.³⁸ Moreover, these states lacked the indispensable security apparatus.

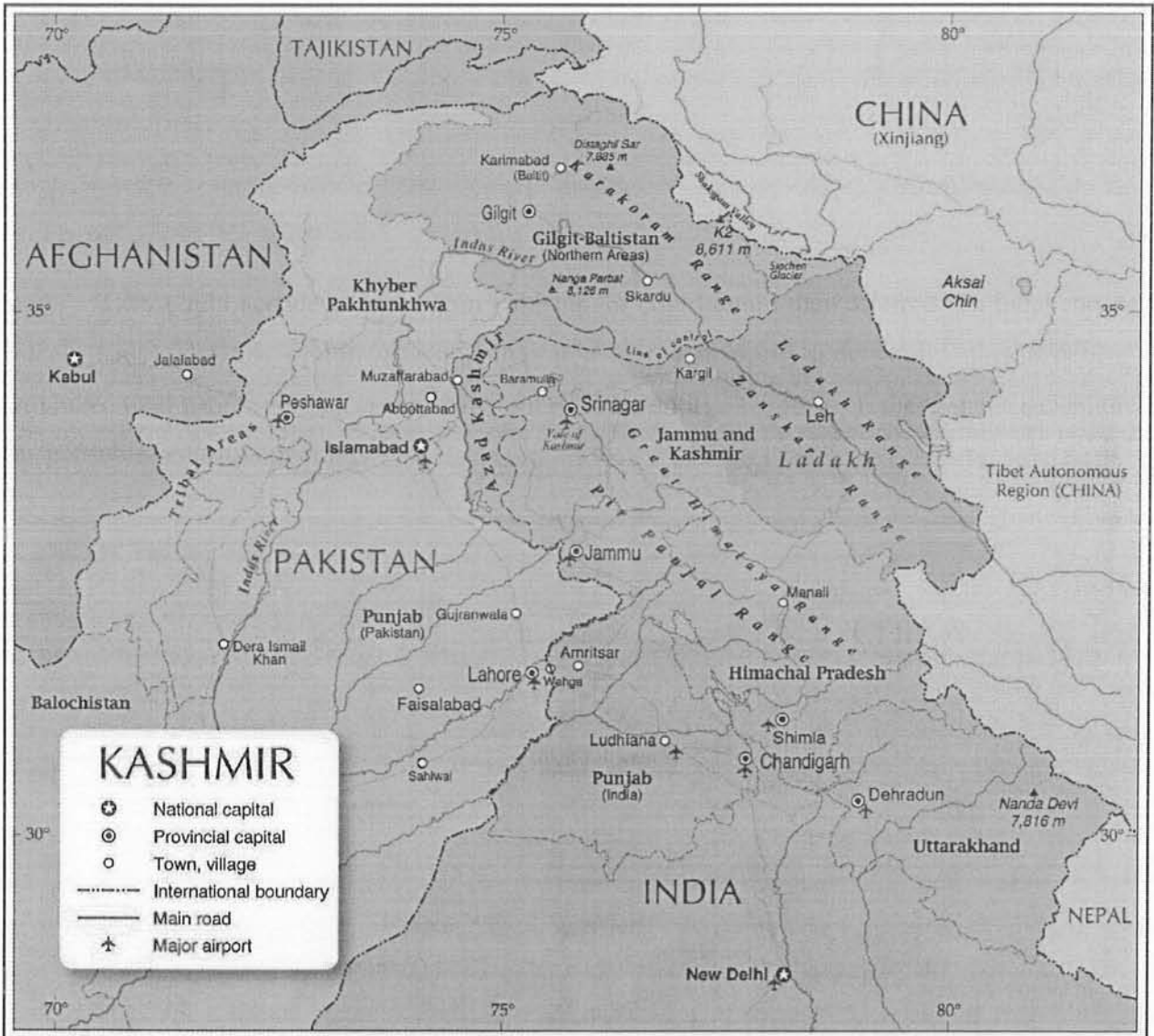


Figure 01 : Map of Kashmir showing borders ³⁹

³⁷ Sattar.

³⁸ Sattar.

³⁹ nationsonline.org and nationsonline.org, "Map of Kashmir Region."

Governor-General Lord Mountbatten advised the rulers of princely states to join either of the two countries in order to peacefully run the states. Out of 500 princely states in India, only 3; Hyderabad, Junagadh, and Kashmir delayed their decision. Maharaja Hari Singh initially showed resistance in acceding to any of the states ⁴⁰.

Indian leaders were trying to convince Maharaja Hari Singh to join India, although most of the population was Muslim. Hari Singh was also ill-famed for his repression of the population, and even before the separation of Pakistan and India, prominent Muslim leaders were arrested in 1946 under Maharaja Hari Singh's command⁴¹. These included the representative of two important political parties; The Muslim Conference and the National Conference. ⁴²

The Muslim Conference openly and unequivocally advocated the decision of accession to Pakistan, and the National Conference also did not exclusively support acceding to India. Maharaja's decisions were against both parties. The steps he took to oppress the suspected Muslim rebels were extremely ruthless and severe⁴³. He sought assistance from the princely states like Kapurthala which were already a part of India, along with RSS - Rashtriya Swayamsevak Sangh. The agenda of RSS was based on Hindu supremacy and it fully supported the accession of Kashmir to India. ⁴⁴

The RSS leaders believed that Kashmir naturally belonged to India because it was the land of Hindu Gurus and Saints and thus it should not accede to a Muslim country.⁴⁵ RSS had already been working and spreading its control in Jammu and Kashmir since the 1940s.

Several sources claim that Muslims were allegedly killed and murdered systematically to suppress them during the accession period.⁴⁶ These massacres and butchery of Kashmiri Muslims were backed by the RSS, and this left deep imprints on the minds of Kashmiris for decades to come, and also became the reason for the formation of the Kashmir Liberation Movement or Azad

⁴⁰ Jamwal, "J&K STATE'S ACCESSION TO INDIA-A DEBATE OVER DELAY."

⁴¹ Hiro, *The Longest August*.

⁴² Hiro.

⁴³ "Accession of Jammu & Kashmir and Role of RSS - VSK Telangana."

⁴⁴ "Accession of Jammu & Kashmir and Role of RSS - VSK Telangana."

⁴⁵ "Accession of Jammu & Kashmir and Role of RSS - VSK Telangana."

⁴⁶ Snedden, "What Happened to Muslims in Jammu? Local Identity, 'the Massacre' of 1947' and the Roots of the 'Kashmir Problem.'"

Kashmir Movement.⁴⁷ There were revolts and demonstrations by the population in 1947, and simultaneously a campaign was started by Sheikh Abdullah for the accession of Kashmir to India after he was freed from the prison upon the insistence of Nehru.⁴⁸

The mass murder of Muslims led the Muslims from various parts of Pakistan to intervene and support the Kashmiri Muslims against the oppressive rule of Maharaja. These groups were majorly constituted of the Pathan or Pakhtoon tribesmen from the NWFP, Pakistan. These tribesmen were When the tribesmen went to fight for the Muslims in Kashmir, there were several incidents of massacre and sexual assault of children and women belonging to Hindu and Sikh communities in the area of Poonch which is seldom discussed.⁴⁹ So the believers of all the three dominant faiths; Hindu, Sikhs, and Muslims suffered at the hands of violence, but the number of Muslim suffering was much larger.⁵⁰

To counter these forces, Maharaja had to seek military support from India. For this purpose, he signed the instrument of accession and invited the Indian army to intervene, which was against the will of the people of Kashmir and was seen by them as an oppressive and despotic rule. These feelings were later manifested as “The Poonch uprising”.⁵¹ The Indian army started their control on the land and tried to fight away the tribal Pashtuns as well as Kashmiri rebels. Meanwhile, Pakistani forces also joined the encounter and supported the Azad Kashmir movement against the Indian army.

In January 1948, in order to avoid the escalation of the conflict, the United Nations was asked by India to jump in, and both countries were asked for a cease-fire. Complaints were filed by both countries in the UNSC (United Nations Security Council).⁵² Under the Indian Complaint, the country asked the UN to order Pakistan to terminate the assistance it is providing to the freedom fighters – a term used by Abdul Sattar regarding the people fighting for Kashmir’s accession to Pakistan. Whereas, Pakistan’s complaint included the Indian army to stop the annihilation and

⁴⁷ Snedden.

⁴⁸ Sattar, *Pakistan's Foreign Policy 1947-2019*.

⁴⁹ “An Introduction to the Disputed Territory of Gilgit Baltistan.”

⁵⁰ “An Introduction to the Disputed Territory of Gilgit Baltistan.”

⁵¹ “An Introduction to the Disputed Territory of Gilgit Baltistan.”

⁵² “War and Diplomacy in Kashmir, 1947-48 / C. Dasgupta. - Trove.”

genocide of innocent Kashmiri population.⁵³The massacre was not a meager loss of a few individuals, but the loss of two hundred thousand people of Jammu and Kashmir, along with millions of migrations to Pakistan.⁵⁴

As a result of the complaints, the United Nations Security Council established a commission in 1948; UN Commission for India and Pakistan, to scrutinize the situation and come up with a viable solution.⁵⁵ The commission came to the sub-continent to collect data, and present recommendations to solve the dispute. The first-ever recommendation which was presented as a UN resolution was for Pakistan and India to conduct a plebiscite.⁵⁶ This would be imperative to understand the will of the population, and the decision would be unbiased of the affiliation of the ruler of Jammu and Kashmir. If implemented properly, the plebiscite could result in the de-escalation of tensions, and loss of more lives.⁵⁷

It led to ease of tensions, and a full-fledged war was thus avoided. According to the ceasefire agreement, the territory was divided into two parts i.e. Pakistani Kashmir, and Indian held Kashmir. Pakistan got two main regions, now known as; Azad Jammu & Kashmir, and the Northern areas. Whereas Today India has established its control over 48% of the land which was part of the princely state of Jammu and Kashmir, Pakistan administers 35% of that land, whereas China has 17% of the land under its control.⁵⁸

Although not all parts of Jammu and Kashmir wanted to join Pakistan. The population of Frontier districts and Jammu advocated for accession to Pakistan and wanted the expulsion of Maharaja's rule. The frontier districts included the region of Gilgit, and they incarcerated the official sent by Hari Singh, and a representative was sent from Karachi, the then capital of Pakistan, to control the Gilgit region.⁵⁹ Moreover, Muslims from Eastern Jammu also supported the accession of Kashmir to Pakistan. Whereas, the Kashmiri population was still dubious about the

⁵³ Sattar, *Pakistan's Foreign Policy 1947-2019*.

⁵⁴ Snedden, "What Happened to Muslims in Jammu? Local Identity, 'the Massacre' of 1947' and the Roots of the 'Kashmir Problem.'"

⁵⁵ "UNITED NATIONS INDIA-PAKISTAN OBSERVATION MISSION (UNIPOM) - Background."

⁵⁶ Refugees, "Refworld | Security Council Resolution 38 (1948) [The India-Pakistan Question]."

⁵⁷ "War and Peace in Modern India | S. Raghavan | Palgrave Macmillan."

⁵⁸ "An Introduction to the Disputed Territory of Gilgit Baltistan."

⁵⁹ "An Introduction to the Disputed Territory of Gilgit Baltistan."

question of accession to Pakistan. The people from this Kashmir valley were not enthusiastic nationalists, they were more secular than people from other parts of Kashmir and followed Sheikh Abdullah who also had somewhat secular beliefs, but was inclined towards the accession to India⁶⁰.

Even in the following years, during 1951, the stance of India was to prove the referendum as futile, contrastingly, Pakistan and the United Nations kept on emphasizing the importance of a referendum. As Sheikh Abdullah was arrested as a result of his bias towards a referendum, the new government in Kashmir arrived. It signed the ratification of Kashmir's accession to India.⁶¹

In the same decade, Kashmir was declared to be a part of the state of India, by the constitution. On the other hand, a part of Kashmir "Aksai Chin" was taken by China, and the trans-Karakoram tract was conceded to China by Pakistan. The next year resulted in a war between Pakistan and India over the issue of Kashmir, and before it could escalate, a ceasefire agreement was signed between the two countries.

During the early 1970s, another war was fought between the two countries which resulted in the ceasefire agreement. And the coming year, the Simla agreement was signed which demarcated the boundaries and line of control between the two sides of Kashmir.⁶² This also resulted in the appeasement of relations between Pakistan and India. In 1974, considerable autonomy was given to the Indian administered Kashmir. But the rivalry between India and Pakistan continued over the Siachen Glacier. This is the area, which was not demarcated under the Simla agreements, and both countries tried to capture it in the coming decades. Another important event took place in 1977, when (JKLF) Jammu & Kashmir Liberation Front was formed in the United Kingdom.⁶³ The JKLF was later brought to Indian and Pakistan Kashmir in the 1980s and played an important role as a militant organization till 1994.⁶⁴

⁶⁰ Snedden, "What Happened to Muslims in Jammu? Local Identity, 'the Massacre' of 1947' and the Roots of the 'Kashmir Problem.'"

⁶¹ "Kashmir Profile - Timeline - BBC News."

⁶² "What Is Shimla Agreement | India News | Zee News."

⁶³ Talbot, "India, Pakistan and the Secret Jihad."

⁶⁴ Canada, "Activities of the Jammu Kashmir Liberation Front (JKLF); Whether the JKLF Practices Forced Recruitment, and If so, Whether This Is Done in Collaboration with the Sipah-e-Sahaba Pakistan (SSP) [PAK41794.E]."

In the next decade of the 1980s, there were yet important developments in the Kashmir Region. The conflict, as well as the brutality, continued. Kashmir was now being ruled by the son of Sheikh Abdullah; Farooq Abdullah. Moreover, an important development was the capturing of Siachen by the Indian forces in 1984.⁶⁵ And therefore, there was again a rise in tensions between Pakistan and India. By the end of the decade, as the cold war was approaching its end, it had impacts on Kashmir as well. A huge number of weapons were given by Pakistan to the rebel groups in Kashmir, leading to a greater risk of escalation and brutality.⁶⁶

Sexual Violence:

Kashmir, a region facing extreme militarism, has often been regarded as a place where systemic sexual violence has prevailed for decades. The conflict seems like a never-ending war, that has caused thousands of acts of violence and continues to do so on regular basis. The hostile environment marked by sexual violence is a challenge for the residents of Kashmir, created by the Indian forces to achieve the purpose of “Indian Militarism and Militarization” over the disputed territory.⁶⁷ The people of Kashmir have been unable to live a peaceful life with their rights preserved by the government because of the ongoing conflict. The type of violence faced by men and women in this conflict has been gendered and completely different, and the emotional and physical torture upon women has been mostly related to sexual violence.⁶⁸

The Indian military has been committing sexual violence upon the encouragement of the state of India. This point has been generalized by Brown miller in the following words; “Men are not engaged in sexual violence just because they have the chance, rather because the system encourages them to involve in planned sexual violence”⁶⁹

When the conflict started in 1947, Hindus and Sikhs along with the troops of Maharajah carried out rapes on a mass level.⁷⁰

⁶⁵ “Siachen Dispute: India and Pakistan's Glacial Fight - BBC News.”

⁶⁶ “Human Rights Watch Report.”

⁶⁷ Anjum, “Moving from Impunity to Accountability - Women's Bodies, Identity, and Conflict-Related Sexual Violence in Kashmir.”

⁶⁸ Christine, “Rape and Sexual Abuse of Women in International Law | European Journal of International Law | Oxford Academic.”

⁶⁹ “Against Our Will—Men, Women and Rape - Carol Riddell, 1977.”

⁷⁰ “Revisiting India's Partition: New Essays on Memory, Culture, and Politics - Google Books.”

Many researchers, scholars, and Human Rights agencies claim that after 1945, in the insurgency of 1988, Indian security forces including Border security, Central Reserve Police Force as well as the armed forces of India not only carried out the heinous act of rape but also used it as an instrument to get leverage and coerce people. The government of India, however, refuses any such claims.⁷¹ Apart from the Indian forces, the other actors working in the form of separatists groups have also carried out such activities. Although the research on this is very limited yet it is considered that the scale is much less than the number of incidents carried out by Indian security forces.⁷²

The Democratic Republic of Congo:

Conflict:

To comprehend the patterns of violence in Eastern Congo, it is imperative to study the history of conflict in Eastern Congo. The conflict that occurred in Eastern Congo is known to be the most horrific conflict since World War II. Before the occurrence of two wars in Congo, there are important factors that occurred during the cold war era, which gave rise to the escalation of tensions and still have impacts today. There were waves of violence that finally resulted in the victimization of women as targets during the war. These waves of violence which also resulted in the death of 5 million people in Africa during the years 1994-2003 are explained here shortly.⁷³

The size of the Democratic Republic of Congo is four times smaller than that of the United States,⁷⁴ and the population of DRC is almost 70 million people, comprising mostly of French-speakers. The borders of the DRC were at first decided by Belgium, which colonized the DRC in 1908.⁷⁵ The country was named the Democratic Republic of Congo 4 years after its independence in 1960. With its independence, Patrice Lumumba established his control who was later murdered

⁷¹ Christine, "Rape and Sexual Abuse of Women in International Law | European Journal of International Law | Oxford Academic."

⁷² Kazi, *Gender and Militarization in Kashmir*.

⁷³ Venugopalan, "Understanding the Conflict in Congo."

⁷⁴ "Size of United States Compared to Congo, Democratic Republic Of."

⁷⁵ "Democratic Republic of Congo Profile - Timeline."

as a result of circumstances created by the administrators of the government. ⁷⁶

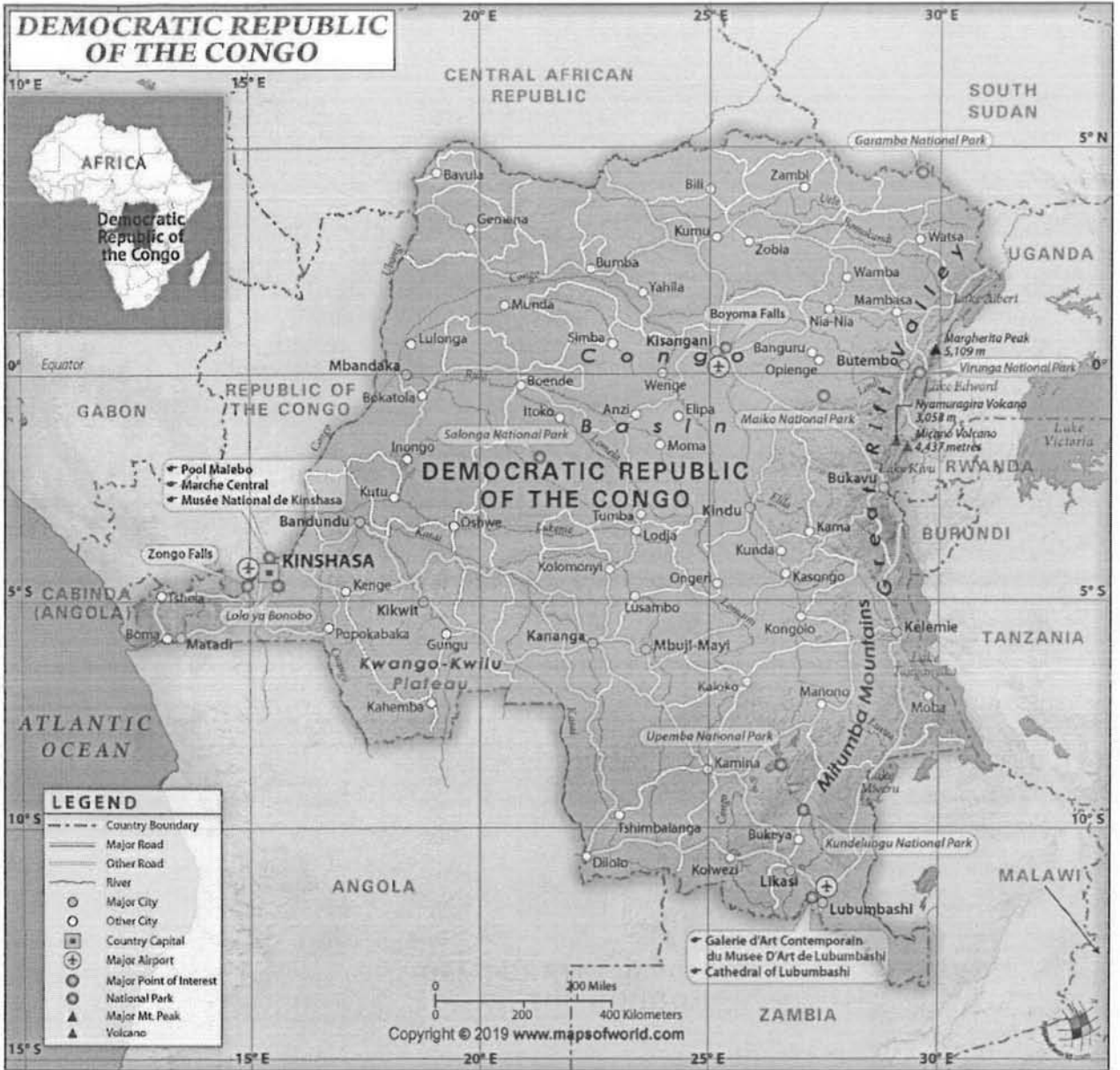


Figure 1 : Map of the DRC showing provinces and borders ⁷⁷

During the 1960s, there was instability because of the power struggle between the leaders of different tribes, and that of the government. Therefore, there were problems in the administration of the country. Several Civil Wars occurred during the Cold War era. During this crisis, different

⁷⁶ Venugopalan, "Understanding the Conflict in Congo."

⁷⁷ "DR Congo Map | Map of Democratic Republic of Congo."

groups were being supported by the US and USSR against each other, and thus the Cold War had deep impacts on the events that happened in the “Congo Crisis of 1960 to 1965”.⁷⁸

Although Congo had achieved independence from the Belgian Colonizers, it could not completely get rid of the social order created by the colonizers. The whites were still in Congo, and they retained important positions in the government and army.⁷⁹ As the Congolese population could not get prominent positions, there were sentiments of resentment in the hearts of the public. Because of the resentment, the black soldiers mutinied against the white people and thus it led to more chaos, racial violence, and instability.⁸⁰

In 1965, a coup d'etat was launched by Mobutu Sese Seko against President Lumumba who was being supported by the Soviets and ruled the country for the next three decades.⁸¹ He even renamed the state to “Zaire”, and the steps taken by him during his rule are collectively known as the Zairianisation of DRC. ⁸² In this policy, most of the industries and businesses were nationalized. Being a country rich in natural and mineral resources, Mobutu’s government aimed to establish its hegemony over the mineral resources for economic gains. They tried to market these resources and ended up harming the economy of the country along with taking huge loans which were also used in illegal ways. ⁸³

This led to a huge economic decline in the DRC. The main countries which helped the Zairian government were the US, Germany, Belgium, and France, but Mobutu failed to properly benefit from these.⁸⁴ The corruption in the country kept on worsening, and Mobutu was unable to tackle the problem effectively. Rather, when he was faced with a protest arranged by students, he ordered the troops to settle the problem using force. This resulted in the increment of resentment of the public against Mobutu’s regime and the financial aid by his western allies was also halted.⁸⁵ These incidents became the reason for the violence and conflict that took place in the late 20th century.

⁷⁸ Iandolo, “Imbalance of Power.”

⁷⁹ “Lumumba: Africa’s Lost Leader - Leo Zeilig - Google Books.”

⁸⁰ Gondola, *The History of Congo*.

⁸¹ Gondola.

⁸² Kabemba, *The Democratic Republic of Congo - From Independence to Africa’s First World War*.

⁸³ Venugopalan, “Understanding the Conflict in Congo.”

⁸⁴ Venugopalan.

⁸⁵ Venugopalan.

Sexual Violence:

Like many other countries, Sexual Violence has been a part of the Democratic Republic of Congo's history in one or another way. However, the number of cases increased significantly after the armed conflict started in the 1990s and later.⁸⁶

During the Cold war, as the conflicts between the rebel groups and the government in DRC were arising, the government was unable to properly fight these groups and maintain peace and security. In Mobutu's era of the 1960s, there was a unit known as 5 Commando ANC (Armee Nationale Congolaise), which caused disturbance and disorder in DRC.⁸⁷ This group was involved in mass rapes, as well as acts of violence against the people of DRC. But these acts were a lot less as compared to the violence that occurred after the Cold War.

Similar incidents took place, in a racial context as well. During the 1960s, the Congo Crisis, there were revolts against the government by the rebel groups. The government tried to stop these revolts but they kept on growing and exacerbating the security situation. Moreover, there was a situation of mutiny against the white rulers or officers by the black or indigenous soldiers. During this mutiny, the armed groups attacked the white officers. There were brutal incidents of racial violence, in which white women were sexually abused.⁸⁸

Conclusion

Thus, from the above incidents, it can be concluded that most of the rape incidents that occurred before the actual conflict started were not because of the rivalry of the enemy groups, but rather was based upon discrimination and racism. This can not be categorized as systemic sexual violence, as the scope and conditions were not according to the extent that was reached during or after the war. Thus, with the absence of conflict, there was an absence of systemic or planned incidents of sexual assault and violence.

⁸⁶ "Africa :: Congo, Democratic Republic of the — The World Factbook - Central Intelligence Agency."

⁸⁷ Mockler, "Soldiers of Fortune : 5 Commando, The Congo 1964-65."

⁸⁸ Gondola, *The History of Congo*.

CHAPTER 3

SYSTEMIC SEXUAL VIOLENCE POST-COLD WAR IN KASHMIR AND CONGO

The main argument of this chapter is that as soon as the conflict in Kashmir and Congo started, the systemic sexual violence started arising. In other words, conflict was the cause of planned sexual violence in Kashmir and Congo. The chapter also includes how the sexual violence existed throughout the conflict and continues to exist even after the Post 9/11 period. The chapter has been divided into two main sections.

1. Systemic Sexual Violence Post-Cold War in Kashmir and Congo
2. Systemic Sexual Violence Post 9/11 in Kashmir and Congo

Systemic Sexual Violence Post Cold War in Kashmir and Congo (1991-2001)

Kashmir Conflict & Systemic Sexual Violence

Conflict:

In the Kashmir Conflict, there have been numerous incidents of brutality and systemic sexual violence after the post-cold war. A few main incidents include; In 1990, the Gawkadal massacre happened in Srinagar where the Indian armed forces of the Central Reserve Police Force started targeting the people of the valley who were protesting and some researchers have described it as the worst incident of ethnic cleansing or genocide in the disputed territory, other than the one which is known as the Bijbehara Massacre in 1993.⁸⁹ After this brutality, more protests were staged and that triggered more death and massacres. By the start of 1990, the Indian troops had killed more than 300 protectors.⁹⁰

In January 1990, a newspaper from Sri Nagar published a notice, which posted a threat for all people belonging to Hindu Religion, to flee the valley in order to save their lives, this was posted by Hizbul Mujahideen – a militant organization. Earlier, more than 300 people who were followers of Hinduism, along with the Hindu Pandits, were murdered and women were sexually assaulted. The statements to leave Kashmir were played at loudspeakers and Hindus were to flee from

⁸⁹ Bloomsbury.com, "Kashmir in Conflict."

⁹⁰ "BBC NEWS | South Asia | Growing up in Kashmir's War Zone."

Kashmir without taking their girls or women. On 19 January 1990, many of the Hindu Kashmiri women and men migrated from Kashmir to avoid atrocities such as killing and gang rape.⁹¹

During the last decade of the 20th century, the situation on both sides of Kashmir was threatened by attacks. An act, known as “Armed Forces Special Powers” is imposed in Jammu and Kashmir which safeguards the Indian soldiers for being accountable for their actions and the lives of Kashmir citizens. There are huge deployments of the Indian Army inside Jammu and Kashmir, and the violence becomes further unrestricted and large-scale. The Kashmir issue was once again expanded because of the Kargil War, which was fought between India and Pakistan in 1999. Pakistan was arraigned for sending militants to the Indian administered Kashmir in the area of Ladakh and thus the relations took a violent turn again.⁹² The Indian Army launched Operation Vijay, under which the major positions of Kashmir and Pakistan had to draw out from the area of Indian held Kashmir. This further created a situation of violence in the Kashmiri region, threatening to cause more severity and damage.⁹³

Sexual Violence

During the year 1991 Indian armed forces started an operation in the area of Kunan Poshpora, Kashmir, situated in far off region of Kupwara. A huge number of women living in the village were assaulted by being gang-raped overnight. The number shared by the villagers was approximately about 100 women which were assaulted. Every single woman was raped during the night these included young, pregnant, and even old women. Basic freedoms associations including Human Rights Watch on the Kunan Poshpora incident uncovered how many ladies were assaulted. It said that the assaulted women were more than a hundred. This despicable act happened when the Indian army surrounded the town and especially attacked the women of the town. They burst into homes, females wept for help, however, nobody was there to help the poor women. That incident appeared to be ceaseless torture for the people living in the village which included the women and girls who faced sexual assault and violence. For a long time, the Indian armed forces didn't call off the cruelty and brutality.

⁹¹ "On 'Holocaust' Day, Kashmiris Seek Probe into Pandit Exodus | Greater Kashmir."

⁹² "DAWN - Editorial; October 21, 2006 - Newspaper - DAWN.COM."

⁹³ "Kargil: The Forgotten Victims of the World's Highest War - BBC News."

After the cruel act which has its terrible and deep scars on Kashmir, the government acted strangely. To add on, instead of battling for the equity for the rape victims the government tried every possibility to silent the case and demolish realities and proof. Since 1991, not a single government official went to their assistance. They have been facing a conflict for equity all alone.⁹⁴

According to Kashmir Media Service, during the years 1989 to 2020, there have been 11,179 women who were molested or gang-raped.⁹⁵ The civilians were brutally attacked in a number of incidents, and the perpetrators of violence and sexual assault were mostly the Indian armed forces including the police as well. Furthermore, they tormented and immediately executed prisoners in care and killed regular folks in retaliation assaults.⁹⁶

In 1992, a team of delegates went to Kashmir to report the ongoing situation from Asia Watch and Physicians for Human Rights, they reported assaults and cruelty, and the violation of international humanitarian laws.⁹⁷ It reported that these incidents were perpetrated by the Indian army, and they were involved in war rapes.⁹⁸

These brutal acts of Rape mostly occur during the events of army crackdown, or operations. In these scenarios, a common practice by the military or forces is to punish the citizens, which also sometimes can turn into violent assaults. The incidents can also include burning the households as well. The entire community is thus destroyed through these practices. Moreover, it is considered to be a punishment for the communities who do not condemn or support the militias.⁹⁹

Women of Kashmir have not been able to get actively engaged in Youth Activism campaigns by the Kashmiri Youth.¹⁰⁰ The reason for the oppression might be that they are too scared to leave their homes because of the sexual violence committed against them.

There are thousands of stories of the horrendous crimes especially related to sexual violence which left the Kashmiri Youth physically and psychologically wounded for life. The

⁹⁴ "Rising Kashmir."

⁹⁵ "Kashmir Media Service."

⁹⁶ "Kashmir Media Service."

⁹⁷ "The Human Rights Crisis in Kashmir: A Pattern of Impunity - Patricia Gossman, Human Rights Watch. Asia Watch - Google Books."

⁹⁸ "The Human Rights Crisis in Kashmir: A Pattern of Impunity - Patricia Gossman, Human Rights Watch. Asia Watch - Google Books."

⁹⁹ van der Molen and Bal, "Staging 'Small, Small Incidents.'"

¹⁰⁰ van der Molen and Bal.

Youth were tortured by the Indian police as well as the army, some of the examples of sexual violence include gang-rape, molestation, electrocution of genitals, forced stripping, forcing to urinate on electric heaters which left them sexually dysfunctional, etc. Many of these were systemic in nature to inflict terror and horrors in the hearts of young Kashmiris, and the other purpose was the sadistic nature of the members of the army or police.¹⁰¹

Another important event took place in the August of 1992, which is known as Operation Tiger launched by the Indian military. It caused huge damage to the local population, and the incidents of sexual assault were reported to Asia Watch and Physicians for Human Rights.¹⁰² The New York Times reported that people were assaulted brutally, and there were raids in the hospitals.¹⁰³ Asia Watch reported that as a result of sexual violence, people suffered from renal failure as the violence was unbearable.

A similar incident took place in October of 1992, in which women were again raped brutally along with killing citizens. Similarly, in the same month, an incident of sexual violence took place in Shopian in which 8 women were made victims of sexual violence, along with a child.¹⁰⁴

The reported cases were even lower because most incidents occurred in remote areas, and thus getting the exact number was impossible. This is the reason that the entirety of the brutal behavior of forces is still unknown.¹⁰⁵

Democratic Republic of Congo Conflict and Systemic Sexual Violence

Congo War I (Nov 1996 – May 1997)

During the first Congo War which occurred in the post-Cold War years; 1996 and 1997, the situation was exacerbated with the mass murders in neighboring Rwanda where the conflict between the two tribes Hutus and Tutsis resulted in 800,000 killings executed by the radical Hutus group. With the shift of the power to RPF (Rwandan Patriotic Front), a mass migration of Hutus

¹⁰¹ "Sexual Warfare in Indian Kashmir – Tribune Labs."

¹⁰² "2 Reports Find Wide Abuses by India in Kashmir - The New York Times."

¹⁰³ "2 Reports Find Wide Abuses by India in Kashmir - The New York Times."

¹⁰⁴ "2 Reports Find Wide Abuses by India in Kashmir - The New York Times."

¹⁰⁵ "Rape in Kashmir - A Crime of War," n.d.

took place. Hutus fled away to the Eastern Congo to save themselves from being the victims at the hands of Tutsis. They set up camps in Eastern Congo and later started spreading to the Kivu region as well. The province of Kivu became the pivot point for the worsening ethnic violence, which later transformed into a war.¹⁰⁶ These camps were also safe havens for the armed groups and men who were involved with militias that committed the mass murder of Tutsis.

These camps later became the centers or army bases for launching more on attacks Rwanda.¹⁰⁷ These Hutus did not limit themselves to the barbaric actions committed against Rwandan Tutsis, but also extended the atrocities to the Congolese Tutsis. They were also backed by the then government of Congo run by Mobutu. The situation was further aggravated because the economic support extended by foreign countries was now being given to these Hutus immigrants rather than the Congolese population.

The conflict between Hutus and Tutsis kept on growing in the North Kivu region of the DRC. Both of these two ethnicities had started shifting towards the Kivu region long before the war had started. The refugees who had migrated from Rwanda to the Kivu region (comprising of all three ethnicities; Hutus, Tutsis, and Batwa) were not given the right of citizenship because they were considered to be foreigners, and the conflict was shaped into a Hutus-Tutsis war. The Hutus joined Interahamwe, and the Tutsis sought help from and collaborated with the RPA. The Banyamulenge (comprising of mostly Tutsis) and Banyarwanda initiated pre-emptive strikes when they faced the threat of a resolution passed by the government for abolishing the citizenship of both groups. The strikes were aimed at the National Zairian Army and the camps established by the Hutu refugees. The war officially started with the intervention of the Rwandan army in Congo. There were appeals on behalf of the General Kagame, that the civilians of Rwanda should not be harmed and the international community to play their part in de-escalating the conflict. But these calls were ignored, and thus the Rwandan army decided to take matters in its own hands. There were strikes against the Interahamwe group, as well as the former Hutu military groups.

Meanwhile, the Conflict kept on growing, and several other countries got involved in the conflict because of the geographical and strategic importance of the Democratic Republic of

¹⁰⁶ Refugees, "Refworld | North Kivu."

¹⁰⁷ Murison, "The Politics of Refugees and Internally Displaced Persons in the Congo War."

Congo. Uganda also initiated its part in the Congo war by allying with Rwanda. The reason for this was the same as for Rwanda. It faced security threats because of DRC being the launching pad for attacks on Uganda. Similarly, Angola also joined the war and all of these countries wanted to destroy Mobutu's government which was providing an opportunity to tear down the security of the region. Simultaneously, Alliances des Forces Democratiques pour la Liberation du Congo (AFDL) rose to prominence during these years with the massive support of the regional actors who were part of the war; Uganda, Angola, Rwanda, and Burundi. These AFDL was successful in toppling down Mobutu's government and made Kabila the president of the DRC.¹⁰⁸

Congo War II (Aug 1998 – July 2003)

During the second Congo war, the rebel groups were again active in launching attacks on the neighboring countries of Uganda, Burundi, and Rwanda because of the lack of complete control of Kabila's government on the entire DRC. This again compelled the neighboring countries to intervene in Congo for preserving their national security. The Hutus were successful in collaborating with the local groups, and safeguard themselves from foreign attacks. Whereas, Tutsis were unable to do that. Therefore, the Tutsis in Kivu suffered the loss of a huge population in genocidal incidents. In the Southern region of Kivu, which was populated by Banyamulenge people, there were efforts to fight back as many of the Tutsis there were former members of the Rwandan Patriotic Front (RPF). They also were able to gather help as weapons from the RPF. The reason that the Tutsis population was being attacked provided the Rwandan government with a reason to intervene in the matters of the DRC. The neighboring countries who supported Kabila's government initially were now disappointed because of his lack of sensitivity and control towards these rising issues. The local insurgents supported the rebel groups in neighboring states, and the FAC (Forces Armees Congolaises) of DRC were also supporting these rebel groups. On the other hand, the Tutsis were trying to establish their control in the land by force and violence. Several operations were held to fight these insurgencies and there were thousands of casualties as a result of these operations. Heinous human rights abuses were reported against the Hutu refugees by the Rwandan Patriotic Army (RPA), which Kabila tried to conceal because Rwanda has assisted him

¹⁰⁸ Venugopalan, "Understanding the Conflict in Congo."

in coming to power. Also, he felt intimidated for allowing the UN to carry out an investigation in DRC that could harm the Rwandans, and ultimately him as well.¹⁰⁹

Kabila had also recruited many foreigners in the army of Congo, who he later ordered to be eliminated.¹¹⁰ This was based on the perception of threat to the national security of DRC and resulted in a revolt by Uganda and Rwanda against the President of DRC; Kabila. Kabila's government was also denied by the ANC (Armee Nationale Congolaise). The first attacks were launched by the army of Paul Kagame (military leader of Rwanda) on the Katangan Tutsi soldiers in Kitona (a town in DRC), these were the attempts to replace the President Kabila by a person who would be politically favorable to Rwanda. This attack costed the lives of many innocent civilians.

Simultaneously, ADLF (Alliance for Democratic Forces for the liberation of Congo) came into action. Some of the neighboring countries sent support in the form of military men such as Angola, Zimbabwe, and Chad for assisting President Kabila. The war continued for another 8 months, and the ceasefire agreement known as the Lusaka agreement was finally signed.¹¹¹ But DRC still could not achieve peace, as Rwanda and Uganda started supporting rebel groups in order to exploit the country's natural resources. These rebel groups included RCD (Rassemblement Congolais pour la Democratie) and MLC (Mouvement pour la Liberation du Congo), and another group named Mai Mai.

The intervention of DRC by other countries was motivated by the presence of mineral resources in DRC that could provide huge economic benefits to these countries. Especially, the eastern provinces of the DRC are rich in resources that are being exploited by other countries for their gains.¹¹² The level of violence in the area still is extreme, and the alliance between different rebel groups against the government and Congolese army keeps on shifting, depending upon their interests and their alliance with the country of Rwanda.

¹⁰⁹ Weiss and Nordiska Afrikainstitutet, *War and Peace in the Democratic Republic of the Congo*.

¹¹⁰ Reyntjens, "Briefing."

¹¹¹ Venugopalan, "Understanding the Conflict in Congo."

¹¹² "Lynne Rienner Publishers | The Democratic Republic of Congo Economic Dimensions of War and Peace."

These two conflicts explain the level of hostility that existed between the groups and led to the events of sexual violence. The horrendous crimes of genocide were also planned and executed as a result of hatred and venom caused by the series of war, both in the case of Kashmir and Congo, And make the basis for militancy, as well as for the war rape.

Sexual Violence

The armed conflict in DRC has resulted in violence against civilians, in the form of war rape and sexual violence. The perpetrators of sexual violence are different groups such as the Congolese army, military groups, foreign military, and others.¹¹³ The cases were reported by a number of women as well as men who were sexually abused or raped, but the complete information about the number of people who have faced sexual violence is still not clear as many of the victims choose to remain silent on the issue. During 1996-2003, there an estimated number of “a minimum of tens of thousands” of women who were sexually abused.¹¹⁴

Many of the rape cases go unreported. And the reason for Congolese society considers it a humiliation of the women and shame for the families therefore they do not report the cases, and these women are often ostracized by the communities. 15000 sexual violence victims are being treated in South Kivu Panzi hospital since 1999. 1/3rd of victims are children.¹¹⁵

Rape is cheaper than bullets and thus is used so often in conflicts and wars.¹¹⁶ The sexual assaults were indiscriminate of the age of the person, for example; in the Panzi hospital of South Kivu, the survivors of rape are as young as 3 years of age and as old as 75 years of age. These included horrendous cases of use of gun barrels and branches for inflicting pain to the victim.

In the case of Congo, the victims of sexual violence feel insecure and are shamed and humiliated by their communities. Moreover, it is a way to spread terror in the villages and leads to the reduction of population in the communities through the spread of dangerous diseases such as HIV and Sexually transmitted infections (STIs).

¹¹³ Maedl, “Rape as Weapon of War in the Eastern DRC?”

¹¹⁴ Maedl.

¹¹⁵ “Congo’s Rape War - Savage Sexual Violence Is Sweeping the Troubled Nation, Demanding a Global Response - Democratic Republic of the Congo.”

¹¹⁶ “Rape as a Strategy of War in the Democratic Republic of the Congo | International Health | Oxford Academic.”

A research study shows that 40% of women in the Eastern Democratic Republic of Congo have reported assault and violence, and many of them go unreported because of the stigma surrounding the issue of sexual violence. 74% of these women consider these assaults to be related to the conflict existing in the DRC.¹¹⁷ Another problem that can also be related to this issue is that women turned to survival sex because of the deteriorating social and economic conditions after the war.¹¹⁸ This became the reason for the objectified rape. The reasons of rape according to the combatants are described in the Figure 01, and the viewpoints of offenders and victims are described in the table 01.

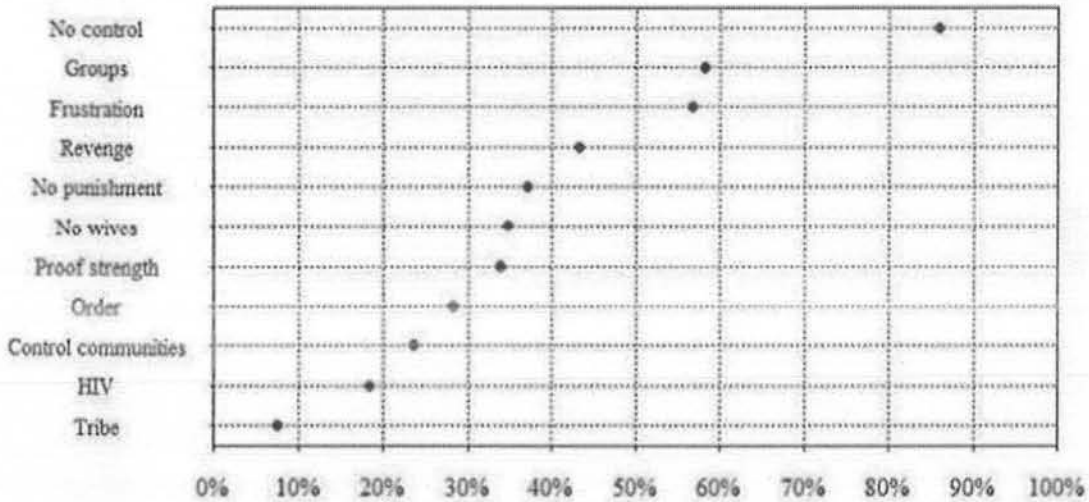


Figure 01 : Reasons of sexual violence according to former combatants¹¹⁹

¹¹⁷ Johnson et al., "Association of Sexual Violence and Human Rights Violations With Physical and Mental Health in Territories of the Eastern Democratic Republic of the Congo."

¹¹⁸ Baaz and Stern, "Why Do Soldiers Rape?"

¹¹⁹ Haer, Hecker, and Maedl, "Former Combatants on Sexual Violence During Warfare."

<i>Reason</i>	<i>Perpetrators—Not</i>	<i>Victims—Not</i>	<i>Witnesses—Not</i>
<i>Opportunity argument</i>			
No control	91.3%–85.3%	88.9%–85.5%	90.6%–78.8%**
Frustration	87.0%–53.2%**	81.5%–53.2%**	64.8%–44.7%***
No punishment	43.5%–36.3%	55.6%–34.4%*	44.5%–25.9%***
No wives	39.1%–34.2%	48.1%–32.8%	35.2%–34.1%
<i>Strategic argument</i>			
Proof strength	30.4%–34.2%	70.4%–28.5%***	39.8–24.7%**
Order	34.8%–27.4%	37.0%–26.9%	37.5%–14.1%***
Groups	69.6%–56.8%	63.0%–57.5%	68.0%–43.5%***
Control communities	30.4%–22.6%	37.0%–21.5%*	30.5%–12.9%***
HIV	17.4%–18.4%	25.9%–17.2%	20.3%–15.3%
Tribe	4.3%–7.9%	18.5%–5.9%**	8.6%–5.9%
Revenge	65.2%–40.5%**	66.7%–39.8%**	56.3%–23.5%***

Note: * significantly different at 10%; ** significantly different at 5%; *** significantly different at 1%.

Table 01

Differences of Opinion among the offenders, victims and witnesses.¹²⁰

By seeing the above examples, and studying the patterns of violence after Cold War, it can be concluded that after the cold war, there was a huge spike in the conflict, and resultantly sexual violence also saw a huge spike in both regions of Kashmir and DRC.

Post 9/11 Era:

Kashmir Conflict & Systemic Sexual Violence:

Conflict:

Since the 2000s, there have been several attempts to improve the relations between the two countries, but incidents like the attack on the parliament of Indian occupied Kashmir in 2001, has made it impossible for both countries.

After 9/11, the issue and human rights violations in Kashmir continued despite the world's efforts to eradicate terrorism and violence. During 2001 to 2004, although there were tries to

¹²⁰ Haer, Hecker, and Maedl.

establish good relations between India and Pakistan, the relations exacerbated because of the attack on Sri Nagar parliament,¹²¹ a part of Indian held Kashmir by a Pakistani based militant organization. Thus, the relations could not be improved for the next 4 years.

The year 2010 was also marked with unrest and there were protests in Kashmir, and the Indian government handled it these in cruel ways. An example of this brutality can be observed by seeing the practice of killing and murders of demonstrators committed by the Indian Army.¹²²

Similarly, In 2011 many bodies were found on line of control and they were identified by many demonstrators and activists to be of the people who were kidnapped or disappeared.¹²³ Similarly, the next 2 years were marked with killing of innocent Kashmiris, and protests throughout the valley.¹²⁴

During the era of PM Modi, Modi's brazen policies of vicious violence are unconcealed. In 2015, there was again a murder of an innocent Kashmiri during demonstrations.¹²⁵ From 2016 to 2018, there were violent clashes between the Indian army and the local population of Kashmir, the human rights watch reported the violent acts, and a call to stop these. But the situation got worsened.¹²⁶

The final nail in the coffin was on Aug 05, 2019, with the revocation of Article 35A and 350, the Indian government has deployed thousands of troops in the Indian occupied Kashmir, and there is a communication blackout which makes the situation in Kashmir concealed from the rest of the world. The schools and colleges have been closed, and important Kashmiri leaders have been incarcerated. This is another effort to silence the voices of the Kashmiri population and will have catastrophic consequences in the years to come.¹²⁷

¹²¹ "CNN.Com - Bombing at Kashmir Assembly Kills at Least 29 - October 1, 2001."

¹²² "Kashmir 2010: The Year of Killing Youth | The Nation."

¹²³ "Kashmir Profile - Timeline - BBC News."

¹²⁴ "Kashmir Profile - Timeline - BBC News."

¹²⁵ "Kashmir Profile - Timeline - BBC News."

¹²⁶ "Kashmir Profile - Timeline - BBC News."

¹²⁷ Srivastava, "India Revokes Special Status for Kashmir. Here's What It Means."

Sexual Violence:

The use of sexual violence as a tool for gaining political interests continued to serve its purpose even after 9/11. The main incidents of sexual violence after 9/11 include the following.

The incident of sexual violence that occurred in Handwara in 2004. It included the horrendous brutality against a mother and daughter. Although the reported incident clearly explains the cruelty of rapists, the Kashmir coalition of civil society denies the fact.¹²⁸ The officer who was dealing with the case said that this should not be a matter of concern as the person who committed rape was a Muslim, Major Rahman Hussain. However, he was later charged for violating the civilian property instead of rape¹²⁹

Another incident occurred in 2009, protests occurred when the women of Kashmir were again raped. This time in the area of Shopian, South Kashmir. Some people alleged that police were involved in this.¹³⁰ A judicial inquiry carried out by a retired High Court official found the allegations true, but another inquiry conducted by CBI gave the opposite conclusion. This heated the sentiments of the protestors, and these protests were carried out with more hatred against India.¹³¹

The situation kept on getting worst, till it could reach its most horrible form. The incidents of 2019, when the Modi government announced the revocation of the special status of Kashmir, the situation has worsened. As there was a communications blackout, therefore the real face of the brutality being committed is still concealed.¹³² According to the statistics of 2019, during the recent uprising after July 2016, 933 women were gang-raped or molested by the members of the Indian Army.¹³³ This shows the ruthless image of the planned violence being committed and how politics is affecting the lives of women and children in Kashmir.

¹²⁸ Bhat and Moorthy, "Impact of Security Provisions in Kashmir."

¹²⁹ Bhat and Moorthy.

¹³⁰ "Deaths Provoke Kashmir Protests."

¹³¹ "Deaths Provoke Kashmir Protests."

¹³² "Article 370: Curfew in Kashmir as Protesters Plan 'black Day' - BBC News," 370.

¹³³ "Kashmir Media Service."

The Democratic Republic of Congo Conflict & Sexual Violence:

Conflict

After the occurrence of 9/11, the situation of conflict in the Democratic Republic of Congo could not be changed. The second Congo war which had started in the late 1990s came to an end in 2006. This also marked the start of the presidency of a democratically elected President; Kabila. But even the democratic government could not stabilize the country. There were major conflicts in the DRC, especially in the Kivu region. In 2007, there was a conflict between the army of DRC, and that of the Tutsi forces. The rebel movement was yet again perpetrated. It also had support from the neighboring countries; mainly Rwanda and Uganda.¹³⁴

Similarly, the conflict has only heated up in the next two decades of 9/11. The main incidents of conflict include; the major fight which was fought in 2008 between the rebel group of Nkunda,¹³⁵ and then the Congolese army got involved in the conflict which turned into a battle and led to several deaths.¹³⁶ The next few years were marked with the involvement of Angola in the conflict, as well as the capture of Nkunda. In 2009, the democratic forces for the liberation of Rwanda (FDLR), now acting as rebels were accused of attacking the villages in Kivu.¹³⁷

Similarly, there were rebel movements and attacks in the following 5 years. In 2015, there was a resurgence in which FDLR or Hutu Rebels were attacked by the Congolese army, which resulted in many casualties,¹³⁸ and the conflict kept on growing. From 2017 to 2020, the main clashes have been between the anti-government rebels who kept on trying to establish their hegemony or rule in the DRC, including the ADF (Allied Democratic Forces) and the Congolese army had been trying to fight them without taking any external help.¹³⁹

¹³⁴ "Letter Dated 12 November 2012 from the Chair of the Security Council Committee Established Pursuant to Resolution 1533 (2004) Concerning the Democratic Republic of the Congo Addressed to the President of the Security Council."

¹³⁵ "Thousands Flee Fighting as Congo Rebels Seize Gorilla Park - CNN.Com."

¹³⁶ "Thousands Flee Fighting as Congo Rebels Seize Gorilla Park - CNN.Com."

¹³⁷ "'Dozens Killed' in DR Congo Raids."

¹³⁸ "DR Congo Says Offensive against Hutu Rebels Underway."

¹³⁹ "Rebels Kill 15 Peacekeepers in Congo in Worst Attack on U.N. in Recent History | Reuters."

These incidents lead us to the conclusion that the situation in DRC has been in a vicious cycle of struggle for power and hegemony, which is costing the lives of many and putting the lives of many women and children at risk because of the factors of systemic sexual violence.

Sexual Violence

The incidents of sexual violence did not cease even after the end of the wars in DRC. The conflict kept on growing, and so did the systemic sexual violence. Although the issue has been acknowledged by the International community, the level of systemic sexual violence could not be reduced.

In a report shared by Amnesty International about the cases of sexual violence in DRC during the year 2004, there were approximately 40,00 women and children who were raped or assaulted.¹⁴⁰ These numbers exclude those women who can not report the cases, and thus the number includes only those who have gotten treated at hospitals. Moreover, it is reported that the total number of people who survived sexual assault in Congo in 2004 was around 200,000 people.¹⁴¹

Many of these victims are assaulted by the FDLR (the military group that migrated from Rwanda to Congo and responsible for the genocide in Rwanda). According to a report, the number of victims of systemic sexual violence in 2005 was around 30000 to 32000 individuals.¹⁴² Moreover, many of the cases still are unreported.

In 2007, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) documented that 54% of observed cases of Rape and assaults in the first six months of the year in which research was carried out, were committed by FARDC soldiers.¹⁴³ Most of the commander tends to overlook such incidents of violence carried out by the people under their command. One of the investigations discovered that there

¹⁴⁰ "Kira Cochrane Talks to Filmmaker Lisa F Jackson on Her Documentary about Rape in the Congo."

¹⁴¹ "Kira Cochrane Talks to Filmmaker Lisa F Jackson on Her Documentary about Rape in the Congo."

¹⁴² "Congo's Rape War - Savage Sexual Violence Is Sweeping the Troubled Nation, Demanding a Global Response - Democratic Republic of the Congo."

¹⁴³ "Soldiers Who Rape, Commanders Who Condone."

were some army officials who asked the subordinates to commit rape. The events also show that apart from military police, civilians and criminals were also involved.¹⁴⁴

In 2010, according to the report of UNHCR (United Nations High Commissioner for Refugees), the cases of rape ranged from 1200 to 1300 in that year alone.¹⁴⁵ Most of the cases were reported in Kivu, which is marked with armed conflict. The number of victims remained almost similar in 2009 as well. Thus there are no traces of improvement of the situation for the women of DRC. Thus, the Secretary-General of Humanitarian affairs of the UN called rape in Congo as the worst ever on the entire globe.¹⁴⁶

A 2011 report documented that almost 1,000 women were raped daily.¹⁴⁷ Another research carried by The Journal of the American Medical Association in 2010, concluded that 39.7% of women in the Eastern Region of the DRC have been found to have been exposed to sexual violence once in their lifetime, and most of these incidents were of rape.¹⁴⁸ It saw a huge spike in 2009, and from 2009 too 2020, there have been more than 200,000 incidents of rape and assault.¹⁴⁹

Conclusion

From the above studies, it can be concluded that the systemic sexual violence through out the history of the conflict existed because of the armed conflict. In other words, as soon as the conflict started, the systemic sexual violence started rising in the case of Kashmir, as well as the DRC. This can be proved by observing and analyzing the examples of planned sexual violence before and after the conflict.

¹⁴⁴ "Soldiers Who Rape, Commanders Who Condone."

¹⁴⁵ Refugees, "Refworld | World Report 2010 - Democratic Republic of Congo (DRC)."

¹⁴⁶ "Rape in War."

¹⁴⁷ *Congo Refugee Wants to Help Homeland Victims of Sexual Violence.*

¹⁴⁸ Johnson et al., "Association of Sexual Violence and Human Rights Violations With Physical and Mental Health in Territories of the Eastern Democratic Republic of the Congo."

¹⁴⁹ "Rape in War."

CHAPTER 4

SYSTEMIC SEXUAL VIOLENCE AND THE ROLE OF UNITED NATIONS

The chapter argues that UN resolutions did not work effectively in reducing the crimes of systemic sexual violence in case of Congo and Kashmir and thus the systemic sexual violence still prevailed in both cases. It also discusses the response of the relevant actors and groups to the UN resolutions and reports of International Human Rights Organizations. The chapter has been divided into two sections.

1. UN on the Use of Systemic Sexual Violence
2. Role of UN in Kashmir & Congo, and the Responses

UN on the Use of Systemic Sexual Violence

Of all the horrific crimes committed against humanity during a war, there are none more heinous than crimes of sexual violence. The victims generally are women and children of both genders, boys and girls who are left in the aftermath of the war with lives full of trauma and terror that continues long after the war ends.

The first step taken on an international level against sexual crimes was during the fourth Geneva convention of 1949 along with the additional protocols added to it in June 1977.¹⁵⁰ The historical Geneva convention stated that there should be a special mechanism for the protection of women against all kinds of sexual violence including rape and prostitution.¹⁵¹

Hence for the first time, sexual violence against women especially in the times of war was condemned and prohibited. However, the events that forced the world's attention to this significant and sensitive issue occurred during the war in the former Yugoslavia and the genocide committed in Rwanda which happened in the early 1990s. These two wars brought the severity of crimes into sharp focus for the world to see and attracted the attention and sympathies of humanitarian organizations all over the globe.

¹⁵⁰ "OHCHR | Protocol Additional to the Geneva Conventions of 12 August 1949."

¹⁵¹ "Article 27 of Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949," 27.

During the Bosnian war, rape was used as an instrument to spread terror. It was a policy of systemic violence that was gender-targeted and assumed a mass form. Rape was used as a key tactic in this program of ethnic cleansing. According to the Dictionary of Genocide, a book written by Paul R. Bartrop and Samuel Totten estimated what was the approximate number of the incidents of sexual assault against women, which ranges between 10,000 and 50,000, with further estimates that for one reported case there are 15-20 unreported cases.¹⁵²

In the Rwandan genocide committed in 1994, over the course of 100 days about 800,000 people were slaughtered.¹⁵³ An overwhelming number of women and children estimated to be around half a million were sexually violated and murdered. This act of mass violence against women and children during the time of armed conflict was an unimaginably cruel tactic designed as a strategy for mass ethnic cleansing. A genocidal rape that destroyed the lives of millions stands out in the history of the world. The organized sexual crimes were actually planned by the political and military leadership. Mass inciting the public via print media and radio played a role in it as well. The aftereffects of sexual crimes were not limited to the victims, they also resulted in the forced impregnation and birth of war babies, hence affecting the generations to come.

The mere idea that a whole nation was led by its leaders to sexually mutilate another ethnic community is enough to convince us all that humans are lacking humanity at the very basic level. The task of bringing justice and the basic human rights to the citizens of the world is a crucial and challenging task requiring a formidable amount of effort by the world humanitarian organizations, For enforcing justice the role of the United Nations is of paramount importance.

Therefore, considering such blatant violations of basic human rights, an immensely important step was taken by the United Nations Security Council. For the first time crimes of sexual violence including rape and forced prostitution were brought to the court to be apprehended. The crimes of sexual violation were openly added to the mandate of the International Criminal Tribunal for Yugoslavia.¹⁵⁴ The International Criminal Tribunal dealt with war crimes. The perpetrators of the barbaric crimes committed in the name of war were held responsible to an extent. The ICTY was a historical step that monumentally changed the landscape of international humanitarian law.

¹⁵² Bosmans, "Challenges in Aid to Rape Victims: The Case of the Democratic Republic of the Congo."

¹⁵³ Bosmans.

¹⁵⁴ Bosmans.

Through the tribunal, the prosecution of sexual crimes was made possible but the importance of the tribunal is not limited to the war crimes of former Yugoslavia, instead, it is a beacon of hope that such crimes in other regions of the world will be strongly adjudicated as well.

According to the tribunal's mandate, thorough inquiries were made.¹⁵⁵ The reports of systematic detention and sexual crimes were investigated and convicted of their crimes. The tribunal was a practical manifestation of the conventions and conventions of the past that were only in writing previously.

Similarly, following the manslaughter and mass rape of the Rwandan genocide, the security council established the International Criminal Tribunal for Rwanda in accordance with the United Nations charter. Similar to the planned rapes committed in the Bosnian war, sexual violence was deliberately employed as an instrument of ethnic cleansing against Tutsi women.

Forced impregnation was not the only tactic, willful, and knowing sexual transmission of the HIV/AIDS virus was also used to exterminate the Tutsi tribe.

The tribunal not only recognized rape as a crime against humanity but it also made a most significant declaration. ¹⁵⁶The ICTR's Akayesu decision stated that rape is considered as a component of genocide when it is committed with the intention to annihilate a group. It was also for the first time that the crime of sexual violence committed in a civil war could be punished in an international court of law.

The establishment of international criminal tribunals to punish the sexual crimes during the wars in former Yugoslavia and Rwanda are extremely significant steps and laid the foundation stones of a new era for International Humanitarian Law. Sexual violence was not to be taken lightly and condoned as an inevitable part of war crimes. Protection of rights of women, as well as children, particularly in the context of protection against sexual violence, became a much-discussed part of many of the united nations' procedures in the years after the above-mentioned wars.

¹⁵⁵ Bosmans.

¹⁵⁶ Bosmans.

The next step taken by the United Nations for the protection of women's rights was the appointment of a special rapporteur. The resolution was passed on 4th March 1994. The mandate of the special rapporteur is to monitor, advise, and publicly report on the cases of sexual violence against women considering the reasons behind it, and their impacts. Ms. Radhika Coomaraswamy was the first rapporteur appointed by the UN. The first report submitted by Ms. Coomaraswamy to the United Nations commission stated that rape continued to be a crime that is given the least importance or condemnation.¹⁵⁷

Systemic Sexual Violence in Kashmir and the UN

The investigation for the Kunan Poshpura act which occurred in the Kashmir (J&K) high court in 1991. The Kunan Poshpura incident occurred in 1991 in which around 100 women were assaulted and raped by the Indian army in Kashmir.¹⁵⁸ The results of the investigation were completely unfair as they were biased and that is why it could not attain the results that were wanted. There were many reasons to it but the main reason for this is the culture of liberty and freedom that not only exists but prevails in the Indian occupied Kashmir, thus due to this the high court could not decide about the case and it was sent back to the sessions court. As the time passed by the period for the inquiry kept on delaying this reduced the hope of the victims to achieve justice¹⁵⁹ Moreover, efforts were made to threaten the victims by the army force, and they were told to keep their mouths shut by offering them an amount of money. The worse situation is that even today, there are no records for an investigation carried out to decide jurisdiction on this case. However, an appeal was filed by the officers of the military so that the process could be delayed more. The attitude shown by the army was discouraging and biased as the proof was in one of their recordings that said that the rape was just a stereotype, being used by the victims.¹⁶⁰

To use rape as an instrument hardly attracts attention and condemnation. In the time, PHR and Asia Watch carried out their investigations in Kashmir, there were 15 cases of rape, 44

¹⁵⁷ Coomaraswamy, "Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Radhika Coomaraswamy, in Accordance with Commission on Human Rights Resolution 1994/45."

¹⁵⁸ "Rape in Kashmir - A Crime of War," n.d.

¹⁵⁹ PERVEZ, "Sexual Violence and Culture of Impunity in Kashmir."

¹⁶⁰ PERVEZ.

extrajudicial murders, 8 cases of torture, and 20 incidents of injuries of non-combatants as a result of indiscriminate shootings by the Indian army and security agencies.¹⁶¹

Almost 80% of the events of sexual violence occurred during the visit or in the past two weeks. We gathered data on multiple incidents of abuses that took place in the few weeks and months before the visit, and both organizations working continues to receive similar data. As this information comes from valid sources, the reporters believe that many such cases of abuse have been taking place periodically and might have increased significantly especially if considered the brutal murder of people who were involved to support international organizations such as Asia Watch.¹⁶²

An important role in bringing the world's attention was of the Asia Watch. The report by Asia watch which was released in 1993 described how Kashmiris were made victims of horrendous crimes against humanity.¹⁶³ The report includes the comments and experiences of the team of researchers who went to Kashmir to report the human rights violations committed by the Indian military. It also condemned the Indian government, and asked the world community to take immediate steps in order to stop the sexual violence and human rights abuses. Along with that, it provided recommendations to eliminate the use of systemic sexual violence and protect the lives of women and children in Kashmir.¹⁶⁴

Similarly, the UN Human Rights report on Kashmir which was presented in 2018 called the International community to take immediate and effective measures to stop violence in Kashmir.¹⁶⁵ The report also condemned the role of AFSPA (Armed forces special powers act), which is a hindrance to the accountability of Indian military forces for the sexual violence and thus creates an unfair structure by giving impunity to the Indian forces.¹⁶⁶

Since the revocation of the special status of Kashmir, organizations such as Amnesty International have condemned the actions of the Indian government in the Kashmir Valley. The

¹⁶¹ "Rape in Kashmir - A Crime of War," n.d.

¹⁶² "Rape in Kashmir - A Crime of War."

¹⁶³ "Rape in Kashmir - A Crime of War."

¹⁶⁴ "Rape in Kashmir - A Crime of War."

¹⁶⁵ "OHCHR | First-Ever UN Human Rights Report on Kashmir Calls for International Inquiry into Multiple Violations."

¹⁶⁶ "OHCHR | First-Ever UN Human Rights Report on Kashmir Calls for International Inquiry into Multiple Violations."

report of Amnesty International also talks about sexual violence and the mechanism of impunity of soldiers.¹⁶⁷ It calls the international community, as well as India, to stop the systemic sexual violence and provide protection of rights to people, especially women and children of Kashmir.¹⁶⁸

The Response of India:

Post-Cold War: even after the evidence was presented by the Human rights watch report of 1993, India continues to refute the fact that its military is involved in the acts of systematic sexual violence in Kashmir.

India's reply to the report of the UN was which said that 882 women were made victims of dreadful crimes of sexual violence in 1992 was disappointing as they tried to negate it on clear terms.

Furthermore, the government of India did not accept their crimes which were committed in the 1992 incident. It kept on denying the fact stated by the human rights organizations, and the concerns of these were not answered properly. Rather it kept on trying to prove the army innocent and kept on letting the animosity grow.

Moreover, the State Human Rights Commission had recommended paying an amount to the people who were assaulted in 1991. There were 34 victims, who were to receive a payment for sexual violence. This raises the question that if there was no sexual violence, then why was it a recommendation by the State Human Rights Commission to pay the victims of sexual violence?

The US department of state also stated that the human rights report contained important evidence to depict that violence was committed and thus India can not deny this fact that mass rape strategy was used by India in Kunan Poshpura.¹⁶⁹

Recently, In 2019, a report was presented by the UNHCHR (UN High Commissioner for Human Rights", which says that the international community is worried about the status of armed forces in Kashmir.¹⁷⁰ Although there is enough evidence, the Indian government as well as the military does not accept this fact. Rather they keep on using tactics to prove it as the wrong information or

¹⁶⁷ "India."

¹⁶⁸ "India."

¹⁶⁹ "State Department Cites China and Other Nations for Human-Rights Abuses - The New York Times."

¹⁷⁰ "Kashmir."

report.¹⁷¹ The report also says that Pakistan and India have been unable to hold the offenders accountable, and the main reason for that is the Armed Forces Special Powers Act. Thus it can be concluded, that the violence against women and children can not be reduced unless the act is eliminated. And that would be the perfect step towards ensuring peace and providing basic human rights to the people of Kashmir.

Systemic Sexual Violence in DRC and the UN

The International Criminal Tribunal for former Yugoslavia declared rape as a weapon of war in 2001, and thus it was a horrendous crime against humanity. The perpetrators of war rape are to be prosecuted under this tribunal but in the case of DRC, most perpetrators are not held responsible or punished.¹⁷² Even when they are sentenced, they get released soon. The United Nations is trying to collaborate with the Congolese government to fight against the crime of sexual violence, through educating the military forces and training them to be more disciplined. The UN is also working with the officials to implement the rule of law in order to punish the offenders, and thus apply punitive measures. Moreover, for stronger safety measures, more women are being hired in these missions to help the young girls and women and strengthen them. This had led to a decrease in the number of missing individuals from 3.3 M to 1.2 M. But there is still an immense need for the Congolese communities to respect their women and fight sexual violence.¹⁷³

The international community needs to play a role to end the conflict, in order to end the rape war against women and children. Some international organizations such as Amnesty International and Human Rights watch are highlighting the issues of war rape in Congo but with little effect on the ground. The presence of UN troops in the region is also not bearing the kind of results that are needed to create peace in the region.¹⁷⁴

DRC, unfortunately, has a long and brutal history of war and instability. There have been ongoing conflicts between different ethnic groups and civil wars along with invasion and intervention of

¹⁷¹ "Kashmir."

¹⁷² "Congo's Rape War - Savage Sexual Violence Is Sweeping the Troubled Nation, Demanding a Global Response - Democratic Republic of the Congo."

¹⁷³ "Congo's Rape War - Savage Sexual Violence Is Sweeping the Troubled Nation, Demanding a Global Response - Democratic Republic of the Congo."

¹⁷⁴ "Rape as a Strategy of War in the Democratic Republic of the Congo | International Health | Oxford Academic."

the neighboring countries. The armed conflicts in the early 1990s and later brought along with them a show of human savagery and brutality that has its own place in the history of war crimes. The sexual crimes committed during these wars in the democratic republic of Congo have won it its name as the rape capital of the world.¹⁷⁵

After the first few years of war, an agreement was signed between the enemy groups for ceasing the conflict. It was termed the Lusaka ceasefire agreement. By the terms of this agreement, all of the foreign forces were to withdraw from the National Territory of DRC.¹⁷⁶ Also, the agreement demanded the disarmament of groups involved in the armed conflicts.

The terms of the agreement however were not respected fully and Rwandan armed groups did not return to their own regions. It is to be noted that these armed groups from Rwanda were the participants of the 1994 Rwanda genocide. They remained in DRC and their presence led to unrest and conflict. They were also the perpetrators of a large fraction of sexual crimes committed in the region.

In 2002 an agreement was signed between the democratic republic of Congo and the republic of Rwanda. The agreement, named as the Pretoria agreement¹⁶ demanded the withdrawal of Rwandan forces from DRC territory. However, despite all the official agreements mutually signed by both the countries, the conflict did not resolve. The regions particularly affected were the provinces of North and South Kivu located in the eastern part of DRC.

The crimes of sexual violence occurred on such a large scale that the determination of an accurate number of victims is impossible. However, efforts were made to roughly estimate the number of victims by collective observations of human rights organizations and medical reports collected from the health centers, hospitals, and clinics, and the results indicate that tens of thousands were sexually violated. The sheer number of victims is horrifying. The victims of sexual crimes range in age from 23 months to 84 years.¹⁷⁷ There are no words sufficiently strong to portray the cruelty of these crimes. The act of rape was not secret or private, it was committed publicly

¹⁷⁵ Bosmans, "Challenges in Aid to Rape Victims: The Case of the Democratic Republic of the Congo."

¹⁷⁶ Refugees, "Refworld | DRC."

¹⁷⁷ "INTERVIEW."

often in front of the victim's family or the whole community. The victim was physically abused, beaten, stabbed, cut, and genital region severely mutilated with sticks, knives, and guns.¹⁷⁸

Sexual violence was committed against both genders. Most of the victims belonged to the female gender, and the age did not matter, because even toddlers and 70-80-year-old women were raped. But at the same time, there are also reports of boys and men being abused sexually.

The locals like to believe that all the sexual crimes were committed only by the invaders from neighboring countries; the Rwandan troops. However, the Human rights reports indicate that all the armed groups including the armed forces of the Republic of Congo itself and many local military groups used sexual violence as an instrument of war against the opponent groups.

Response of the DRC

Systemic sexual violence was used for years in order to spread terror in the communities of the enemy. The international community did not respond effectively to the issue of systemic sexual violence. Moreover, the groups which were accused of the violence kept on denying their acts. Despite this, there were reports by a few human rights organizations including the USAID, Amnesty International, and Asia Watch (A part of Human Rights Watch). These helped in raising the issue and getting international attention.

Regardless of the foreign or local armed groups who committed the crimes, the civilians suffered ghastly crimes of sexual violence.

In the case of DRC, there was a special contribution of international NGOs in raising the voice for human rights violations. These organizations include Human Rights Watch and Amnesty International.¹⁷⁹ Moreover, the UN 4th report on "Children and Armed Conflict" also sheds light on this issue. In this report, there was a focus on the issue of rape as a systemic tool for achieving goals related to war or politics.¹⁸⁰ It said that war has been used as an inhumane tactic against women and children. It also focusses on the fact that children have been facing extreme brutality, and they are unable to seek proper help regarding the issue. They need to be provided with proper medical support along with providing them with therapy sessions to cure the psychological trauma

¹⁷⁸ Bosmans, "Challenges in Aid to Rape Victims: The Case of the Democratic Republic of the Congo."

¹⁷⁹ Bosmans.

¹⁸⁰ "Children and Armed Conflict - Report of the Secretary-General (A/74/845-S/2020/525) - World."

they go through. The report also highlighted that the young girls who are raped, later are left with the option to leave their homes and sell their bodies for their survival.¹⁸¹ But despite the issues raised in the reports and the call to action, there was no effective implementation mechanism by the DRC government, and the rebel groups also did not pay much attention to the cries of international organizations.

Further, a report was presented by Lulia Motoc to the Special Rapporteur on Human Rights Situation in the DRC, in which she stressed the importance of providing support to the women and children facing systemic sexual Violence.¹⁸² Then another report was presented in 2005, which talked about the continuation of systemic sexual violence despite it being highlighted throughout the world. The women and children are still not safe, and their fight against sexual violence continued.¹⁸³

Although DRC is a party to CEDAW (Convention for the elimination of all forms of discrimination against women, as well as CRC (Convention on the rights of the child), it still is unable to perform well when it comes to systemic sexual violence.¹⁸⁴

Conclusion

From the above study, It can be concluded that the UN and the Human Rights organizations were unable to get an immediate response from the actors involved, and the systemic sexual violence prevailed in both cases. India keeps on denying the existence of brutality and sexual violence in Kashmir by the armed forces, whereas in the case of Congo, the military of Congo, and the rebel forces have not paid much heed to the international voices, and continue the human rights violations in Congo.

¹⁸¹ Bosmans, "Challenges in Aid to Rape Victims: The Case of the Democratic Republic of the Congo."

¹⁸² "Question de La Violation Des Droits de l'homme et Des Libertés Fondamentales, Où Qu'elle Se Produise Dans Le Monde."

¹⁸³ "Seeking Justice: The Prosecution of Sexual Violence in the Congo War."

¹⁸⁴ Bosmans, "Challenges in Aid to Rape Victims: The Case of the Democratic Republic of the Congo."

CHAPTER 5

COMPARISON OF KASHMIR & CONGO IN THE CONTEXT OF SYSTEMIC SEXUAL VIOLENCE

The chapter argues that systemic sexual violence has served the political interests of being a tool of war in both cases. This became the reason behind the failure of relevant actors to work upon the UN suggestions to eliminate systemic sexual violence, it also discusses the major points of comparison between Systemic Sexual Violence in the regions of Kashmir and Congo. The chapter has been divided into two main parts.

1. Comparison of Systemic Sexual Violence in Kashmir and Congo
2. Inefficacy of UN Resolution in the cases of Kashmir and Congo

Comparison of Systemic Sexual Violence in Kashmir & Congo;

There are important factors of comparison between the conflict of Kashmir and the DRC. The conflict in both regions led to large scale massacre and genocide and was also a reason for several wars that occurred between the relevant actors. Moreover, there were important issues related to the administration of both regions, and there was a lack of governmental control over the territories which is the major reason why the militant organizations were able to penetrate in the system and exploit both.

Further, in the case of DRC and Kashmir, both areas were previously colonized. Kashmir was colonized by the British whereas the DRC was colonized by the Belgians. The administrative as well as the social order of both was based upon the system of the colonies.

Sexual Violence Before the Conflict

As noticed in the historical context of the conflict in Kashmir and Congo, before the conflict started, sexual violence existed in both cases. But it was in different forms, for example; the data related to the incidents of sexual violence in Kashmir before the partition of India and Pakistan is very low to negligible. Whereas, the data just after the partition is available in different reports. Similar is the case with Congo, there are enough evidence and data regarding sexual violence

during and after the war. Whereas, before the war, the only data of rape and sexual violence is related to racial sexual violence, and not systemic or war rape.

In the case of Kashmir, there are claims of murder and butchery before the conflict occurred in 1947. Similar was the case with Congo, the rebel groups kept on spreading violence and terror before the wars started. This violence was based on racial discrimination, whereas in case of Kashmir, the violence was based upon religious discrimination and animosity.

Sexual Violence During the Armed Conflict:

During the conflict, the course of systemic sexual violence changed from fewer events of sexual violence to a huge number in both cases. The patterns of sexual violence can be observed throughout this study of how sexual violence was used as a weapon or tactic to destroy the communities in both cases. Thus, the mass rapes started as soon as the conflict started in both cases. In the case of Kashmir, the sexual violence started with the first uprising in 1947 in the area of Poonch, where Hindus and Sikhs were targeted, and which sexual violence was used as a weapon.¹⁸⁵ Similar was the case with the Democratic Republic of Congo, and mass rape started as soon as the war began.

After the war in Kashmir, the patterns of sexual violence continued in armed conflicts throughout the history till December 2019. According to Human Rights Watch, In the year 1992, there were 882 cases of sexual violence and assault against women.¹⁸⁶ Similar trends were seen in the decades after 9/11.

If both cases are compared, it is found that acts of sexual violence perpetrated in case of Kashmir were based on discrimination related to religion, whereas, in case of Congo, it was based upon the discrimination between the Hutu and Tutsi tribes. Moreover, the events of sexual violence in both regions included torture and humiliation of women, through using inhumane weapons and brutal ways of committing rapes and violence.

The reported case in both Kashmir and Congo are far less than the original figures. The reason for this is, that there is a feeling of guilt and shame in the communities in which women are

¹⁸⁵ "An Introduction to the Disputed Territory of Gilgit Baltistan."

¹⁸⁶ "Human Rights Violations - Painful History Shared by Women in Korea, Kashmir."

systematically raped¹⁸⁷. Therefore, many women avoid to report cases and thus live their lives in guilt and shame. Another, another finding was how women were treated as a commodity during the war years, and thus the tool was more effective in lowering the morale of the civilian population and spreading terror and threat of cruelty and inhumane behavior.

The Role played by Neighboring States

The case of DRC and Kashmir can also be compared in a way that it was an international conflict, involving different states. In the case of Kashmir, as the territory was disputed between Pakistan and India, therefore major role was played by both countries. Whereas in the case of Congo, many countries jumped in the conflict such as Rwanda, Uganda and Angola because of their interest in the area of DRC being mineral rich and full of resources.

Role of Militant Organizations

If the case of Kashmir is studied, an important role was played by non state actors in perpetrating terror, as well as systemic sexual violence. For example; the Pakistani based militant organizations like Jaish-e-Muhammad, played a major role in terrorizing the Hindu and Sikh communities in the Jammu and Kashmir. The militant group attacked the region of Jammu and Kashmir several times,¹⁸⁸ and sexually assaulted women and children. The militant organization was involved in barbaric acts of assaults, and also played a role in destroying the lives of many Kashmiri women by involving them in sex slavery.¹⁸⁹

Similar was the case in DRC, where the army as well as the militant groups are involved in systemic sexual violence. Out of the 1409 incidents of systemic sexual violence, 955 were perpetrated by the Non state militant organizations.¹⁹⁰

The Role of UN in context of systemic sexual violence in Kashmir & Congo

UN offered to solve or mediate the problem through resolutions, but the results were meager. In the case of Congo, the UN presented several resolutions, and the issue got international attention.

¹⁸⁷ "Rape as Torture in the DRC: Sexual Violence beyond the Conflict Zone - Democratic Republic of the Congo | ReliefWeb."

¹⁸⁸ "JAISH-E-MOHAMMED on JSTOR."

¹⁸⁹ "Militants Sexually Assault Kashmiri Women in the Name of Jihad."

¹⁹⁰ Refugees, "Refworld | World Report 2010 - Democratic Republic of Congo (DRC)."

Whereas, in the case of Kashmir, there was less international attention. Few human rights organizations were able to present reports, or collect data but the situation could not be resolved. If we observe the situation after the revocation of the special status of Kashmir in 2019, it becomes obvious that the international organizations are unable to play an active role in eliminating the communications blockade and help the civilians.

Taking the history of the conflicts in account, it can be observed that an effective mechanism for the sexual violence in war did not exist at the time the conflict initiated in Kashmir. Whereas, when the conflict in Congo took place, UN had already designed some mechanism for the elimination of systemic sexual violence. For example; 4th Geneva Convention had already given the statements regarding the elimination of sexual violence,¹⁹¹ and the additional protocols which were added in 1977 also included major recommendations and steps regarding combating sexual violence in conflicts.¹⁹² Similarly, Special rapporteur for protection of women rights was already in place in 1994 when the first Congo war took place, but it could not save the women of Congo from the crimes of sexual violence.

Another factor for comparing both cases is that the investigation of mass rapes was not held in DRC as well as Kashmir. In the case of Kashmir, the major reason was the impunity provided to the Indian armed forces by Armed Forces Special Protection Act (AFSPA), whereas the case in Congo is the weak justice system which let the victims fall prey and the offenders are not punished. There are huge deficiencies in the legal system, and thus the systematic sexual violence prevailed. Recommendations to improve the Justice system were made by the Human Rights Watch to DRC but it could not bear a fruitful result.¹⁹³

Both countries continue to face systemic sexual violence. As the situation of Kashmir, after a year of siege from 2019 to 2020 has further accentuated the need for international organizations and the international community to step in for the preservation of human rights. Whereas, in the case of Congo, the conflict exacerbated in 2018 and 2019 leading to more casualties and systematic rapes, which shows how UN failed to stop the human rights abuses in both regions.

¹⁹¹ Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*.

¹⁹² Henckaerts and Doswald-Beck.

¹⁹³ "Democratic Republic of Congo."

Conclusion

From the above studies, it can be concluded that systemic sexual violence was a tool used by states to gain their self-interest, and thus also exploited the societies in Kashmir and Congo. The women in both cases were made victims of barbarity and sexual violence, because of the power politics and misogynist ideas. And because of the interest of the states, the UN failed to address the problem effectively, and it continues to destroy communities in Kashmir and Congo.

CONCLUSION

The central question of this research was, “why systemic sexual violence is used as a tool in armed conflicts”? The systemic sexual violence has been used by states and non-state actors without following the international humanitarian law or laws of war. And thus, research focused on finding out the reasons for the systemic sexual violence and considered the examples of Kashmir and Congo.

The hypothesis of the thesis suggested that, systemic sexual violence is executed by state and non-state actors, for their elicit personal benefit. Considering the realist explanation of this phenomenon, the states pursue their self-interest and in order to maximize their power and benefit, they can act selfish or disregard the human rights or morality. Whereas, the feminist perspective considers the misogyny to be the main problem. Systemic sexual violence is employed to exploit the communities by treating the women as commodities, which destroys the communities of the enemies by annihilating the morale of societies.

The thesis was divided into five sections. The first section studied the reasons for systemic sexual violence through a theoretical and conceptual framework. It argued that sexual violence is used as a tactic of war to destroy the communities of the enemy through generating humiliation and shame for being unable to protect their women. This thesis was proved through using the Realist and Feminist perspective, which explains that the moral norms and ethics are not followed by states during their pursuit of power, and hegemony over the other. Similarly, the Feminist school of thought also proves the thesis that states treat women as objects and use them for wrecking their opponents.

The second section of the thesis was about the history of Kashmir and Congo before the conflict started. It argued that when the conflict was absent, systemic sexual violence was absent. It was proved throughout the chapter by seeing relevant examples from Kashmir and Congo and how the systemic sexual violence did not exist before the conflict started. The violence and sexual abuse that existed before the conflict, though abhorrent, could be categorized as common offence, and thus proved the argument correct that systemic use of sexual violence does not occur in the absence of armed conflict.

The third section of the thesis discussed the histories after the conflict started, and how it continued until December 2019. The main argument was that as soon as the conflict started, the rates of systemic sexual violence started rising in the regions of Kashmir & Congo. By seeing the history of conflict throughout Post-Cold War Era, and Post 9/11 Era, it can be proved that the systemic sexual violence was the outcome of the conflict, and it started as soon as the conflict started.

The fourth section of the thesis was about the role of the UN in the context of systemic sexual violence in Kashmir and Congo. The main argument stated that the UN did not play an effective role in both cases, and thus the response from the relevant actors involved was not enough to eliminate systemic sexual violence. The chapter included the mechanism and role played by the UN for systemic sexual violence in general and in the cases of Kashmir and Congo in particular. By studying the responses of India and Congo, it was concluded that no effective response could be established based on the UN resolutions and the Geneva Conventions, and the reason behind was that the actors involved in armed conflict were not ready to give up their quest of power even for the sake of humanity or morality.

The last chapter of this thesis is a comparison of the case studies of Kashmir and the Democratic Republic of Congo. It argued that systemic sexual violence has served the self-interests of the relevant actors who were involved in the systemic sexual violence in Kashmir and Congo. And, because of the patriarchal societies in both cases, the communities underwent feelings of guilt and shame and thus, are destroyed because of sexual violence. It was concluded through the study of systemic sexual violence in both cases, that the political interest of relevant actors is the motive behind the systemic sexual violence in Kashmir and Congo.

This thesis is relevant in the current time because of the ongoing conflicts throughout the world, where Human Rights are being desecrated in the name of war. The women and children suffering from the horrendous crimes of sexual violence. Moreover, the case studies studied under this thesis; Kashmir and Congo have the worst conflicts ongoing in 2020. This has heightened the risk of Systemic sexual violence and human rights abuses, therefore, it is significant to focus the attention on this issue to find the reasons behind the failure of the UN to eliminate sexual violence and to find solutions to the persisting problem of systemic sexual violence.

The thesis paves way for further studies in systemic sexual violence. As it combined the two main schools of thought; Realist and Feminist. These could further be studied under the context of human rights abuses in different regions of the world. Moreover, the comparison of Kashmir and Congo in the context of sexual violence has not been given due importance before, therefore it can be further studied to find out the patterns of similar behavior of communities and societies and how these tackle such human rights abuses as a result of wars or conflicts.

During the study of this thesis, the main limitation was the global pandemic of COVID 19. It restricted the mobility and reach to the university libraries and local libraries, therefore it was hard to find data from sources that are not available online, such as books, etc.

The thesis was an effort to identify the causes of sexual violence that occur in the scenarios of armed conflicts and wars. And for that purpose, Kashmir and Congo were studied as case studies, which proved that systemic sexual violence is an outcome of the conflict between states, to maximize their power, and to exploit the communities of the enemy. As long as the conflict existed, the sexual violence kept on growing and continues to do so.

The main thesis is focused upon sexual violence which is a problem that continues to risk the lives of millions of women in different regions of the world. But, the risk to these women and children can be reduced. The international human right bodies are working to increase cooperation between states in order to create a more peaceful world. Such a world where there is no violation of the human rights and the international humanitarian laws are implemented. If the root of the problem is identified, then perhaps one day it will be possible to eliminate systemic sexual violence, save the lives and secure the bodies of millions of women and children who suffer in this age.

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ANNEXURES

Protocol Additional to the Geneva Conventions of 12 August 1949

SECTION III

Treatment of persons in the power of a party to the conflict

CHAPTER I

Field of application and protection of persons and objects

Article 72 — Field of application

The provisions of this Section are additional to the rules concerning humanitarian protection of civilians and civilian objects in the power of a Party to the conflict contained in the Fourth Convention, particularly Parts I and III thereof, as well as to other applicable rules of international law relating to the protection of fundamental human rights during international armed conflict.

Article 73 — Refugees and stateless persons

Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction.

Article 74 — Reunion of dispersed families

The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the reunion of families dispersed as a result of armed conflicts and shall encourage in particular the work of the humanitarian organizations engaged in this task in accordance with the provisions of the Conventions and of this Protocol and in conformity with their respective security regulations.

Article 75 — Fundamental guarantees

1. In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction

based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons.

2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

a) violence to the life, health, or physical or mental well-being of persons, in particular:

i) murder;

ii) torture of all kinds, whether physical or mental;

iii) corporal punishment; and

iv) mutilation;

b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

c) the taking of hostages;

d) collective punishments; and

e) threats to commit any of the foregoing acts.

3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial

and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:

- a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;
- b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
- c) no one shall be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;
- d) anyone charged with an offence is presumed innocent until proved guilty according to law;
- e) anyone charged with an offence shall have the right to be tried in his presence;
- f) no one shall be compelled to testify against himself or to confess guilt;
- g) anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- h) no one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;
- i) anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and
- j) a convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters.

They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.

6. Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by this Article until final release, repatriation or re-establishment, even after the end of the armed conflict.

7. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:

a) persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and

b) any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this Article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.

8. No provision of this Article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1.

CHAPTER II

Measures in favour of women and children

Article 76 — Protection of women

1. Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.

2. Pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority.

3. To the maximum extent feasible, the Parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women.

Article 77 — Protection of children

1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.

2. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.

3. If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.

4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.

5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed.

Article 78 — Evacuation of children

1. No Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for a temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in occupied territory, their safety, so require. Where the parents or legal guardians can be found, their written consent to such evacuation is required. If these persons cannot be found, the written consent to such evacuation of the persons who by law or custom are primarily responsible for the care of the children is required. Any such evacuation shall be supervised by the Protecting Power in agreement with the Parties concerned, namely, the Party arranging for the evacuation, the Party receiving the children and any Parties whose nationals

are being evacuated. In each case, all Parties to the conflict shall take all feasible precautions to avoid endangering the evacuation.

2. Whenever an evacuation occurs pursuant to paragraph 1, each child's education, including his religious and moral education as his parents desire, shall be provided while he is away with the greatest possible continuity.

3. With a view to facilitating the return to their families and country of children evacuated pursuant to this Article, the authorities of the Party arranging for the evacuation and, as appropriate, the authorities of the receiving country shall establish for each child a card with photographs, which they shall send to the Central Tracing Agency of the International Committee of the Red Cross. Each card shall bear, whenever possible, and whenever it involves no risk of harm to the child, the following information:

- a) surname(s) of the child;
- b) the child's first name(s);
- c) the child's sex;
- d) the place and date of birth (or, if that date is not known, the approximate age)
- e) the father's full name;
- f) the mother's full name and her maiden name;
- g) the child's next of kin;
- h) the child's nationality;
- i) the child's native language, and any other languages he speaks;
- j) the address of the child's family;
- k) any identification number for the child;
- l) the child's state of health;
- m) the child's blood group;

- n) any distinguishing features;
- o) the date on which and the place where the child was found;
- p) the date on which and the place from which the child left the country;
- q) the child's religion, if any;
- r) the child's present address in the receiving country;
- s) should the child die before his return, the date, place and circumstances of death and place of interment.

Protection of Civilian Persons

PART III

STATUS AND TREATMENT OF PROTECTED PERSONS

SECTION I

PROVISIONS COMMON TO THE TERRITORIES OF THE PARTIES TO THE CONFLICT AND TO OCCUPIED TERRITORIES

ART. 27.— Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

ART. 28. — The presence of a protected person may not be used to render certain points or areas immune from military operations.